



ALJ/RIM/hma 5/12/2025

FILED

05/12/25

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
10:15 AM
11706027

Order Instituting Investigation into
the Creation of a Shared Database or
Statewide Census of Utility Poles and
Conduit in California

Investigation 17-06-027

And Related Matter.

Rulemaking 17-06-028

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS
ON STAFF PROPOSAL TO MODIFY THE COMMISSION'S
RIGHT-OF-WAY RULES**

This *Ruling* seeks party comments on the Commission's Staff Proposal to modify the Commission's Right-of-Way Rules, which is appended to this *Ruling* as Attachment A. The Staff Proposal has been developed based on the staff's investigation and on party comments to the *Ruling Requesting Party Comments on Right of Way Rules* (May 10, 2019) and the *Ruling Requesting Responses on Remaining Proceeding Issues* (December 12, 2022). The Right-of-Way Rules issue has been scoped into this proceeding through the *Scoping Memo and Ruling* (August 8, 2018), the *Amended Scoping Memo and Ruling* (February 6, 2020), the *Second Amended Scoping Memo and Ruling* (December 15, 2020), and the *Third Amended Scoping Memo and Ruling* (June 15, 2022).

Unauthorized Attachments Reporting and Fine Increases.

1. Background

Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) request that penalties for unauthorized attachments be

increased from \$500 to either \$2,000 (SCE) or \$2,500 (PG&E). They point out that the \$500 penalty fee was established over 25 years ago, and that unauthorized attachments have continued to occur since 1998. Specifically, PG&E claims that its postconstruction inspections of attachments have shown that approximately 25 percent of denied pole access applications have resulted in unauthorized attachments by applicants. Further, PG&E argues that due to the increased labor costs to initiate, track, and follow-up on attachment issues, the \$500 existing penalty is not an effective deterrent and does not provide PG&E with sufficient funds to effectively administer such a program.

The five major pole owners were directed to provide data on the unauthorized attachments their companies have identified over the past 5 years. The data provided by pole owners was mixed:

- AT&T indicated that it “does not track this information on a comprehensive basis in the normal course of business and therefore does not have the requested data.”
- Frontier did not respond.
- PG&E indicated that it has “identified thousands of authorized attachments over the past five years. PG&E consistently notifies its licensees that it has identified potential unauthorized attachments so that they can investigate, update their records and apply for attachment under the license agreements. To date, PG&E has not yet issued or recovered penalties from its licensees. Collection of the penalty has been deferred as PG&E continues to work through office verification of records with its licensees. Upon completing the verification process, PG&E anticipates that it will be assessing penalties for unauthorized attachments identified in prior periods.”
- SDG&E indicated that it “does not have any verified records of unauthorized attachments from the past 5 years. SDG&E adopted a new system to track and manage

attachment applications in 2012, but due to record retention guidelines and differing historic regulatory requirements, the records for attachments prior to 2012 were not sufficiently reliable to issue a penalty charge to a communications company for an unauthorized attachment.”

- SCE identified 17,334 unauthorized attachments from a variety of attachers. “SCE billed \$8,667,000 in fines from 2018-2022, which represents the amount from invoices billed and not disputed by the identified unauthorized attacher within the 30-day time period. SCE has collected most, but not all, of this amount.”

In addition, pole owners have identified that many attachers have not provided the data required by Decision 21-10-019.

2. Staff Proposal

Staff proposes that the Commission increase the fine (due from violator to utility) for unauthorized attachments from \$500 to \$1,000, per inflation. The expanded fine authority would include compliance with Decision 21-10-019. In addition, utilities would be required to report to the Commission unauthorized attachers and associated fines which would include an annual compliance filing with the Commission identifying the number of unauthorized attachments identified in the previous calendar year.

For the proposed revisions, refer to Attachment A, Section “D. Unauthorized Attachments.”

3. Questions for Party Comment

1. The Commission is considering posting the submitted filings to its public website to increase transparency. What information, if any, contained within the annual compliance filing should the Commission consider as confidential, and why? Your response must comply with the requirements of General Order 66-D for establishing a claim for confidentiality.

2. Is it reasonable to delegate enforcement of D.21-10-019 to pole owners?
3. How should information from pole owners regarding unauthorized attachments and fines be reported to the commission and what information should be included?
4. For electric utilities, where do the monies from unauthorized attachment penalties go? How are these costs divided between ratepayers and shareholders?

Contractor Transparency Requirements

1. Background

The Communications Workers of America, District 9 (CWA) and Coalition of California Utility Employees (CUE) proposed revisions that they suggest would further the CPUC's safety objectives. The proposals would require attachers to use utility vetted and approved contractors; requiring contractors to show proof of workers compensation insurance; requiring contractors to certify their employees have an OSHA 10 card; and enforcing contractor requirements by creating a publicly accessible electronic database for contractor verification.

2. Staff Proposal

The staff proposal includes revisions to the Right-of-Way (ROW) Rules to improve transparency of contractor requirements and strengthen the existing requirement for each utility, including electric utilities, to maintain a publicly available list of qualified/approved contractors on its website. The proposal additionally clarifies that contractors must be in compliance at a minimum with all relevant Occupational and Safety Health Administration training and rules. Additionally, the staff proposal clarifies that a Qualified Electrical Worker must perform any work occurring above the communications space, consistent with CalOSHA Title 8, Subchapter 5, §2700. Decline CWA/CUE's database proposal.

For proposed revisions, refer to Attachment A, Section "H. Use of Third Party Contractors."

3. Questions for Party Comment

1. Should the Commission require that incumbent utilities include some minimum number of qualified contractors on its publicly available list for attachers to utilize to select a contractor?

Documentation of Construction Standards in Addition to the Rules Specified in Commission General Orders.

1. Background

The Commission asked for comment on the pole owners' ability to adopt standards that are in addition to and further the objectives of the requirements of the Commission's General Orders (GOs), where these additional standards are documented, and whether these standards are sufficiently transparent for the public and attachers. Attachers suggest these standards are not sufficiently transparent, and dispute whether pole owners should be permitted to adopt such standards.

2. Staff Proposal

The staff proposal includes revisions to the ROW Rules that require all incumbent utility internal design, construction and maintenance standards that diverge from the Commission's General Orders to be made publicly available. The proposal additionally requires incumbent utilities to notify attachers of any proposed changes to these standards.

3. Question for Party Comment

1. Is this a reasonable approach? Why or why not?

Pole Replacement Prioritization and Self Help for Attachers

1. Background

Various communications attachers have indicated over the course of this proceeding that delays in replacing overloaded utility poles – or utility poles that would become overloaded with placement of additional attachments – causes significant delays in deploying broadband infrastructure. These attachers suggest that these delays may result in additional project costs, make projects infeasible, and ultimately may hinder the achievement of the state’s broadband deployment objectives.

Existing rules (GO 95 - Rule 18-B) permit pole owners to delay addressing poles that are out of compliance for as long as 60 months. Since the poles are out of compliance, no new attachments to these poles may be made until the poles are repaired or replaced.

Electric utilities suggest that pole replacements for purposes of broadband deployment should not be prioritized over other maintenance work, as these maintenance schedules are developed well in advance to allow time for design, followed by the procurement and delivery of poles and related construction materials, and efficient deployment of either internal or external crews.

2. Staff Proposal

- Require Pole Owners to Perform Replacements. Staff proposes that the Commission require electric utilities to replace poles upon receipt of a completed request for attachment. Staff believes that requiring the poles to be replaced within a certain period of time may give the utilities the ability to rearrange workload to minimize impact (*i.e.*, replace poles within 6 months or 1 year). Additionally, Staff believes that incentives could be provided by having the new attacher contribute additional

funding for the pole replacements (*e.g.*, all or just a portion of the costs).

- **Authorize “Self Help” for Pole Replacements.** Staff proposes that the Commission permit attachers to hire the same contractors that pole owners utilize for pole replacements, which Staff contends is currently prohibited by Commission rules. Costs should still be covered by the pole owner and existing attachers in instances where poles are already in violation of safety standards. Staff suggests that the Commission could also limit this remedy to pole replacements that do not require deenergization of electric service.
- **Pole Reinforcements.** There are various types of reinforcements to expand the weight-bearing, foundation, and height of utility poles that are consistent with GO 95. However, not all pole owners permit these types of reinforcements. Staff believes that there may be an opportunity to reduce the need, costs, and disruption of pole replacements by requiring pole owners to authorize reinforcements. This will require the parties to further develop the record to understand the extent this would be helpful.

For proposed revisions, refer to Attachment A, Section “E. Self Help Remedy” at subsection E(3).

3. Questions for Party Comment

1. Communications attachers raise various means of reinforcing or expanding poles to enable additional attachments (*e.g.*, extension arms, boxing, and trussing), however, they suggest that pole owners are not willing to permit these modifications. Are these modifications consistent with GO 95? Are pole owners prohibiting these modifications? If so, why? How should costs be shared?
2. Is it reasonable to permit attachers to hire pole owner-approved contractors to replace poles that do not require deenergization of electric facilities? Will this reduce the impact on pole owners? How should costs be shared?

3. Is it reasonable to require pole owners to replace poles that require deenergization of electric facilities within one year? Does requiring replacement within one year – as opposed to the 30-days proposed by attachers – mitigate impact to pole owner maintenance schedules? Does this proposed timeline strike an appropriate balance between expediency of replacement and potential costs to pole owners and electrical ratepayers to expedite? Is it appropriate to limit these “complex” pole replacements to pole owners? How should costs be shared?
4. Is it reasonable to have attachers take on additional costs when requesting a pole reinforcement or replacement? What are these costs? How should these costs be shared? Should these costs cover the entire pole replacement, an attacher’s proportionate share of the pole replacement, or a subset of these costs (e.g., the administrative, material, labor, etc., costs incurred by the pole owner)?
5. For electric utilities, where does the revenue from renting space on utility poles to attachers go? How are these costs divided between ratepayers and shareholder division?
6. How should plans for pole replacements be communicated to potentially affected customers? Is there an existing standard for communication of this work to affected customers and do those standards need to be updated to include this use case? Should this be required even if there is no disruption to telecommunications or electric service?
7. Should this proposed addition to the ROW Rules be adopted? Should any additional modifications be considered?

Conduit Data Reporting

1. Background

This proceeding was opened to investigate the feasibility of database requirements to enable the sharing of key pole attachment and conduit information. The Commission has adopted database requirements for poles and pole attachments for the state’s major pole owners.

The Commission previously issued a ruling that requested utilities that own and operate utility infrastructure to provide an overview of how they maintain information on their conduit infrastructure, the format in which this information is stored (including database type and data fields), and how they make this information available to other utilities upon request.

Since this proceeding was opened in 2017, new statutory requirements were enacted to require documentation of all subsurface installations. These regulations are overseen by the California Underground Facilities Safe Excavation Board, also known as the “Dig Safe Board.” Of interest to this proceeding, are the provisions of Government Code Section 4216.3(a)(4) and (5) which require the following:

(4) An operator shall amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known. If there is a change in ownership of a subsurface installation, the records shall be turned over to the new operator. Commencing January 1, 2017, records on abandoned subsurface installations, to the extent that those records exist, shall be retained.

(5) Commencing January 1, 2023, all new subsurface installations shall be mapped using a geographic information system and maintained as permanent records of the operator.

2. Staff Proposal

Party comments indicate that underground infrastructure is not shared to the extent that utility poles are shared. Additionally, parties assert that there are existing statutory requirements for utilities to maintain records on past and present underground utility infrastructure. As such, Staff believes it seems reasonable to refrain from taking any action on this issue, given that subsurface installations are overseen by the Dig Safe Board.

3. Questions for Party Comment

1. Is it reasonable to refrain from taking any action on requiring Commission jurisdictional utilities to maintain databases of their subsurface installations, given that subsurface installations are overseen by the Dig Safe Board?
2. Alternatively, should conduit data reporting requirements be adopted? Should any additional modifications be considered?

Applicability of Right-of-Way Rules to Local Governments and Other Utilities.

1. Background

D.98-10-058 adopted “Right of Way Rules,” which govern nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned and operated by specified telephone companies and electric utilities.¹ The adopted rules govern access to public utility rights-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service (CMRS) carriers, and cable TV companies. D.98-10-058 did not apply the ROW Rules to other utilities under the Commission’s authority, despite these utilities also having access to facilities within the states’ various rights of way.² Recently, however, Southern California Gas (SoCalGas) filed a Petition for Modification to amend the ROW Rules to apply the rules to their company. SoCalGas operates poles for maintenance and monitoring of their gas network and seeks to eliminate regulatory uncertainty for other entities that seek to attach to these poles.

¹ D.98-10-058, Conclusion of Law No.10.

² *Ibid.* (See Section III. A. Utility Categories Covered Under ROW Rules, at 14-16.)

Furthermore, in adopting the Right of Way Rules, the Commission determined it did not have the express statutory authority to regulate municipally-owned utilities and local governments concerning non-discriminatory access to their poles, ducts, conduits, and ROW Rules did not apply to facilities owned and operated by municipal utilities and local governments.³ Increasingly, however, these public entities are deploying competitive communications networks offering broadband Internet access services for consumers. Deployment of these networks may require access to facilities owned by the IOUs regulated by the Commission. As such, the December 12, 2022 Ruling requested party comment on whether government agencies receive nondiscriminatory access to the rights-of-way and support structures managed by utilities regulated by the Commission, and the CPUC's authority (or lack thereof) to grant licenses and/or access rights to government agencies.

In comments, the City and County of San Francisco (CCSF) explains that it could more easily expand its municipal fiber network (including to help to bridge the digital divide for underserved communities) with access to AT&T's ROW structures, but claims the restrictive agreements currently offered by AT&T would limit CCSF's use of the structures to internal communications only. CCSF cites the California Constitution and various other state laws that grant local governments the authority to provide communications services without a CPCN and argues that the CPUC has broad authority to regulate public utilities and ensure nondiscriminatory access, including an expansion of the ROW rules to local governments. AT&T responds to CCSF's comments by asserting that

³ *Ibid.*, 34 and Conclusion of Law No.10.

CCSF's arguments lack legal support. Specifically, AT&T argues that the PU Code limits the CPUC's authority to compel and regulate pole attachments to public utilities and cable TV corporations only. AT&T highlights that a county or municipality is not a public utility or cable TV corporation and references Pub. Util. Code Sections 767 and 767.5.

2. Staff Proposal

For these issues, the staff has proposed the following revisions:

- Expand their applicability to include attachers that are government agencies. Staff believes that the proposed revisions do not require a new grant of authority by the Commission to government agencies, but instead merely requires incumbent utilities to give equal non-discriminatory access to the government agencies that already possess constitutional authority to access the ROW. Staff considers this approach to be consistent with the Commission's PUC's prior determination that it does not have the authority to grant licenses and/or authority to local government agencies to access the ROW.
- Add a definition for "government agency" that is consistent with Government Code Section 53167 and encompasses: state agencies, cities, counties, community services districts, public utility districts, municipal utility districts, joint powers authorities, local educational agencies, sovereign tribal governments, and certain electrical cooperatives.
- Broaden the definition of entities that may attach to poles to reflect attachers not under the Commission's jurisdiction. For example, the proposal adds a definition for "attacher" that includes "government agency" and "public utility," in addition to the preexisting categories of telecommunications carrier, Commercial Mobile Radio Service (CMRS) carrier, and cable TV company.
- Expand the ROW rules to all other utilities under Commission's jurisdiction that own or control support

structures or ROW that may be used or useful for deploying communications infrastructure. These changes will also create more equitable rules across utility classes.

For proposed revisions, refer to Attachment A, sections "I. Purpose and Scope of Rules," "II. Definitions," and "VI. Pricing And Tariffs Governing Access."

3. Questions for Party Comment

1. Does the proposed definition of "Government Agency" include only entities with existing authority, under the California Constitution and/or other laws, to access and attach to ROW structures/facilities?
2. Will the expansion of the ROW Rules to include attachers that are government agencies impact safety enforcement concerns? If so, how?
3. Should these proposed addition to the ROW Rules be adopted? Should any additional modifications be considered?

Overlashing

1. Background

The December 12, 2022 *Ruling* requested party comment on the practice of "overlashing," which is the process of physically tying additional cables to existing cables on a utility pole to accommodate additional fiber or coaxial cables. The Ruling questions sought to develop the record on whether California's existing ROW Rules would benefit from setting formal parameters, processes, and definitions for this practice.

2. Staff Proposal

Consistent with party comments on the Ruling, the staff proposal includes a new Section V in the ROW Rules that incorporates language from the FCC's overlashing rules (Code of Federal Regulations Title 47. Telecommunication §

47.1.1415). These rules include stipulations on prior approvals; preexisting violations; 15-day advanced notice requirements; overlashers' responsibilities; and post overlashing reviews.

For proposed revisions, refer to Attachment A, Section "V. Overlashing."

3. Questions for party comments

1. Should this proposed addition to the ROW Rules be adopted?
2. Should any additional modifications be considered?

IT IS RULED that:

Opening comments shall be filed no later than May 26, 2025.

Reply comments shall be filed no later than June 9, 2025.

Dated May 12, 2025, at San Francisco, California.

/s/ ROBERT M. MASON III

Robert M. Mason III
Administrative Law Judge