

COM/JLN/rmn **

Decision 96-09-097 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion and Order to Show Cause)
 to determine if San Diego Gas &)
 Electric Company should be held in) I.94-06-012
 violation of the Commission's) (Filed June 8, 1994)
 General Order 95 for failure to have)
 exercised reasonable tree trimming)
 practices and procedures.)
 _____)

O P I N I O N

In this decision we address proposed modifications to General Order (GO) 95 that govern utility tree trimming around electric power lines as one aspect of the plenary review of statewide tree trimming practices which we have undertaken in this investigation. We are taking the extraordinary step of proposing adoption on an interim basis of standards proposed in a settlement made among a number of the parties in this proceeding, in the interest of immediately affording specific standards to assure public safety and electric distribution system reliability. We also provide for further proceedings to conclude this investigation and to promulgate permanent standards based upon broadened public comment.

Introduction

Several circumstances have recently converged to motivate us to propose rules modifying GO 95 as it concerns utility tree trimming. Severe rainstorms in Pacific Gas and Electric Company's

(PG&E) territory during 1995 resulted in outages, hazards and system damage which appear to have been more pronounced as a result of inadequate tree trimming. Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) have also reported outages caused by foliage contacting power lines.

Over the course of the summer, the 11 western states and parts of Canada and Mexico were affected by two widespread sustained outages. Reportedly, both incidents occurred when transmission lines sagged and made contact with trees growing under the lines. In August, a fire broke out in Sonoma County that burned thousands of acres, including homes and vineyards. PG&E has assumed responsibility for the fire, reporting that it began when a tree limb contacted a 12-kilovolt (kV) power line. Officials estimate the cost of the fire to be \$10 million in lost property and fire fighting. Apparently, PG&E has recently been prosecuted criminally by local authorities as a result of fires in forested areas that started when tree branches made contact with PG&E power lines.

The California Legislature recently evinced its concern about such events. The Supplemental Report of the 1996 Budget Act directs the Commission to address various elements of electric service and safety no later than December 2, 1996, as follows:

Standards For Electric Distribution. On or before December 2, 1996, the Commission shall prepare and adopt specific, measurable, and enforceable standards for electric distribution system maintenance and operations to ensure system reliability and to minimize or prevent service interruption due to storms, earthquakes, fire and other disasters. The standards shall specify tree trimming and brush clearing requirements, consistent with existing laws, which ensure that the electric distribution system is protected from damage. The standards shall require the Commission to investigate and take appropriate action against utilities which fail to meet the standards. The Commission shall report to the Legislature on the adoption of these standards on or

before January 1, 1997. (Emphasis added.)

The fires and outages of the past few months, and the recent legislative directive, give greater urgency to our current effort to investigate statewide tree trimming practices and requirements. Our effort to adopt comprehensive uniform requirements as one aspect of this proceeding, which we initiated in June 1994 following the electrocution of a farmworker as he pruned trees beneath a transmission line, has been a difficult task because of the great variations in topography, vegetation, human occupancy, land use, and utility maintenance practices throughout the state. Moreover, arriving at the best solution requires consideration not only of the technical aspects of electric transmission, safety, and arboriculture, but also of the rights and interests of customers and affected property owners, and potential effects upon the natural environment.

Up to this point we have permitted those persons and organizations most directly affected--the utilities and their employees, property owners, and environmental advocates--to conduct their own discourse with the Commission's utilities safety staff in a public workshop setting in an effort to fashion a consensus for improved procedures and better standards under our tree trimming rule. This process produced the settlement proposal now before us, which represents a monumental effort by its sponsors and others over an 18-month period. It is not without controversy, however. Concerns raised by commenting parties reveal a need for closer examination of the problem before we adopt final standards or conclude the investigation. Nevertheless, we cannot ignore the fact that recent events have caught up with this proceeding and given it new dimension and direction, and we embrace the proposed settlement as a temporary solution with adequately specific, measurable, and enforceable standards to ensure system reliability and minimize or prevent service interruption until we are able to

complete our work.

Procedural Background

We opened this proceeding to investigate the tree trimming practices of SDG&E after the unfortunate fatality in that utility's territory. One month later we expanded the scope of our investigation to make all other investor-owned California electric utilities respondents for the purpose of reviewing their tree trimming practices, to ensure that our investigation has statewide scope and effect. (Decision (D.) 94-07-033.)

We investigated the accident in SDG&E's territory and that company's tree trimming practices, and in August 1995 we issued D.95-08-054, which adopted a settlement between SDG&E and Commission staff. The settlement is very specific, addressing the relevant hazards presented by the incident and SDG&E's own practices, and will expressly be superseded by any new tree trimming rules we adopt to the extent that it may not be consistent with new requirements.

With regard to the remaining policy issues, we conducted a series of workshops under staff direction to explore tree trimming issues generally and allow the parties an opportunity to determine whether they could reach a consensus for new rules and standards. After the completion of workshops, several of the parties filed the proposed settlement on April 8, 1996. The settlement is signed by a number of jurisdictional electric utilities, the Commission's Utilities Safety Branch (USB), and others, but several parties filed comments opposing the settlement pursuant to Rule 51 of our Rules of Practice and Procedure, and one signatory has withdrawn his support altogether.

Existing Rules for Tree Trimming Practices

Rule 35 of the Commission's GO 95 governs tree trimming practices of electric distribution utilities. Rule 35 now sets forth our tree trimming requirements in the following very general terms:

Where overhead wires pass through trees, safety and reliability of service demand that a reasonable amount of tree trimming be done in order that the wires may clear branches and foliage.

Trees so located that they can fall into a crossing span or into any span that could communicate the trouble to a crossing span shall be removed wherever practicable.

The state's Public Resources (PR) Code governs the utilities' responsibilities for maintaining vegetation around transmission and distribution facilities in any "mountainous land, or in forest-covered lands, brush-covered land, or grass-covered land." Section 4293 of the PR Code specifies clearances around all varieties of power lines ranging from four feet to 10 feet. The California Department of Forestry (CDF) promulgated rules to implement Section 4293 which are included in Title 14 of the California Code of Regulations, Section 1250 through Section 1258. A copy of PR Code Section 4293 is attached to this decision as Appendix A, and CDF's rules are attached as Appendix B.

The Settlement

The settlement was proposed to the Commission in early April 1996, and was discussed at a prehearing conference held April 15. At that time, it was not yet fully executed by the nominal signatories, nor had the Commission received all of the comments or the replies thereto. It was filed in conjunction with a report on the workshops dated March 1996, which was prepared by members of USB and the Legal Division, with the assistance of three of the utilities. The settlement identifies the workshop participants' perception of what the four major issues of the investigation are, but its substantive provisions on their face address only one of these major issues.

The settlement agreement states that GO 95 "should be changed in three ways." (P. 1.) These changes, as "proposed ...

as Attachment A," are principally in the nature of clarifications to the general language of current Rule 35. A table of specific clearances from Rule 37 would be modified and imported to Rule 35 to provide ascertainable minimum standards under the latter rule, and certain exceptions would be added for circumstances where compliance by the utilities was either impracticable or beyond their control. Additional guidelines are included, but do not appear to be proposed to have any binding effect. Finally, implementation is specified to commence on the effective date of our decision adopting the settlement, but full compliance with the requirements of the clearance table would not commence until two years after that date and would be accomplished on a phased schedule to prevent hardship to the utilities and their customers. The full text of the settlement is attached as Appendix C.

Protests to the Settlement

Intervenors who commented on the settlement raised several issues relating to public safety and environmental impacts. Sevier opposes the 6" clearance proposed by the settlement on the basis that it will make power lines difficult to see and therefore present a safety hazard to children, gardeners and others who trim trees. Sevier believes that the proposed clearance leaves only two weeks of growing time for some trees during peak growing seasons. After that time, new growth may cause the lines to spark. Sevier proposes yearly inspections for clearances and fines for instances of sparking which occur due to utility inaction.

Adams makes similar comments. He also observes that the 6" clearance proposed by the settlement will be difficult to measure and enforce due to the movement of foliage as a result of weather conditions. Adams believes the settlement parties derived the clearances from the American National Standards Institute's standards for porcelain line insulator wet flashover voltages. He observes that these standards apply to clearances between distribution equipment that is stationary, unlike tree branches

which may move substantially due to weather conditions.

Adams opposes as self-evident the proposed exception to the rules that the utilities may not always be in conformance and that the Commission may take corresponding action. Adams compares the proposed settlement to PR Code requirements and proposes their adoption. He also proposes specific changes to Rule 35 which are consistent with PR Code requirements.

Bailey argues that the settlement may present significant impacts on the environment and, accordingly, the Commission must review the settlement in light of the California Environmental Quality Act (CEQA). Bailey states that the settlement will require the utilities to undertake additional tree trimming. As evidence in support of his position, he observes that the settlement anticipates additional utility costs and permits the utilities to defer implementation two years.

Bereckzky apparently mailed comments to the parties which address the settlement. His comments were not filed, and are therefore not presently in the official record of this proceeding. Nevertheless, we recognize his concern that tree trimming efforts of the utilities may affect the ornamental qualities of trees.

Settling Parties' Response to Intervenor Comments

Settling parties acknowledge that the proposed rules will not eliminate all accidents. They do, however, believe that the proposed rules are a reasonable accommodation that would complement existing law, including the PR Code. Settling parties believe that the proposed 6" clearance is adequate to protect the public and balances public safety with cost considerations. Settling parties do not agree with Adams that a 4' clearance is appropriate in urban settings. Specifically, settling parties believe the utilities do not have rights to trim trees on private property. Settling parties comment that the comments of Sevier and Adams lack credibility because Sevier failed to attend the workshops, and because Adams initially appeared to support the settlement.

Settling parties address Bailey's contention that new rules require review under CEQA at some length. First, they argue that tree trimming activities are categorically exempt from CEQA review because they are continuing maintenance activities pursuant to rules which have been in effect for more than 60 years. Because the rules predate the adoption of CEQA in 1970, they are exempt as "ongoing projects," according to Settling Parties. Settling parties respond that the settlement does not substantially change utility tree trimming practices, but merely clarifies utility obligations under the existing rule. They go on to state that changes to the tree trimming rules will not cause damage to environmentally sensitive resources or scenic resources.

Settling parties argue that Berezcky's comments ignore the fact that this proceeding and GO 95 address system safety rather than appropriate clearances for maintaining the aesthetic characteristics of privately owned vegetation.

Applicability of CEQA

CEQA requires a California governmental agency to undertake a specified process of review of the effects of most decisions that may have an impact upon the environment. However, the amendment of GO 95 over which we deliberate here is not a "project" requiring review under CEQA. Tree trimming around utility power lines is an ongoing maintenance activity that has been required by this Commission for over 60 years, and our refinement of the existing generally phrased rule by insertion of specific and enforceable standards merely interprets and clarifies it without substantive change. Under this decision the obligation of a utility to keep its wires clear of branches and foliage remains unchanged, but that obligation is made clearer under the consensus reached by the parties themselves after comparing existing practices, and will be solidified in the final order. The review process under CEQA therefore does not come into play in this instance.

Discussion

The settlement proposed for adoption specifies ascertainable clearance standards for wires or other conductors, varying in extent according to the voltage carried. The suggested standards are rationally related to the well-known problems presented by foliage in the vicinity of energized lines, and we understand from the accompanying motion that these parameters were developed by the workshop participants after some 18 months of continuous and diligent effort. We have high regard for these efforts, and we do not take them lightly.

According to recitals in the settlement document, nine workshops were held to address the issues presented by the need to trim trees in the vicinity of overhead lines. After the first workshop, the participants decided to establish four subcommittees, each of which would address one of the four significant issues they had identified. The subcommittee participants endeavored to have the broadest possible representation. Subcommittee Four was charged with the task of determining whether Rule 35 of GO 95, the tree trimming rule, should be changed. The other subcommittees undertook consideration of regulations relating to tree trimming equipment, local ordinances and private property owners' rights to bar access, and ways to increase public awareness of electrical hazards.

Subcommittee Four held a total of 11 meetings. The debate within the subcommittee was vigorous, and eight of the meetings were conducted with the assistance of a facilitator at the behest of the subcommittee members, who believed that this measure would enhance the productiveness of their deliberations. At the conclusion of its work, Subcommittee Four recommended that Rule 35 and applicable provisions of Rule 37 be modified to provide a specific separation between conductors and vegetation, according to the voltage carried by the conductor. The specific recommendations for these separations are those which are proposed in the

settlement and embodied in the appendices.

From our perspective, this long and intricate process consumed at least as much effort as the parties would have devoted to the formal presentation of evidence and the briefing of issues if we had held hearings on this part of our investigation from the outset. The proposal advanced for our consideration contains language and tables for defining clearances, compliance deadlines, and other features which are appropriate for inclusion in our order. All of these features were obviously worked out with care, and the substance of the settlement cannot in any respect be considered arbitrary.

We do not overlook the circumstance that some parties have raised valid concerns about specific features of the settlement. This does not preclude us from adopting it. Although our rules governing settlements (Rule 51 et seq.) allow for adoption of a settlement which lacks the support of all parties, the settlement must nevertheless be "reasonable in light of the whole record, consistent with law, and in the public interest." Contested settlements may be subject to discovery, hearings, and briefs, depending upon the circumstances.

In D.92-12-019, we refined our policy toward settlements by setting forth several criteria which would characterize an "all-party" settlement. Fulfillment of those criteria creates, in effect, a rebuttable presumption of the reasonableness of the settlement, although we would still need to find that the settlement is consistent with the law and in the public interest. The criteria established in D.92-12-019 required:

- a. The unanimous sponsorship of all active parties to the instant proceeding.
- b. That the sponsoring parties are fairly reflective of the affected interests.
- c. That no term of the settlement contravenes statutory provisions or prior Commission

decisions.

- d. That the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests.

Of course, the settlement filed herein does not meet all of these criteria. It is not sponsored by all active parties. Three active parties have contested the settlement by way of comments, and one has withdrawn support altogether. We also have some concern as to whether all affected interests were adequately represented in the workshop process.

Although the settlement does not meet our criteria for an "all-party" settlement, we must consider whether, on balance, it would serve the public interest. Our standard of review is whether the settlement, taken as a whole is in the public interest (see D.94-04-088). In so doing, we consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake, as well as to assure that each element is consistent with our policy objectives and the law.

As we have explained, recent events which have threatened lives, property, and the overall reliability of our electric distribution system compel us to act quickly. This circumstance, coupled with the great deference which we accord the settlement process, leads us to conclude that we must adopt the material terms of the settlement as an interim device to ensure public safety and system reliability. This measure will add specific, meaningful language and standards to the current rule, giving substance to its general directives. It is not the final solution, but it is a significant step in the right direction. Although we have some concern about adopting, even on an interim basis, a standard which would allow a clearance of as little as six inches, we emphasize that these are minimum clearances to be maintained at all times and not standards directing the exact amount of pruning to be

performed.

Inasmuch as the settling parties have agreed that a requirement to implement the new standards immediately would work a hardship on the utilities and their customers, we elaborate upon that portion of the settlement by adding a schedule which requires compliance to be achieved on a cumulative schedule in proportion to the passage of time. Although consistent with the settlement terms, this new feature varies from the literal language of the settlement, and we are therefore providing an opportunity for parties and others to comment on the order.

Our action today is consistent with existing laws, and we provide that the Commission will investigate and take appropriate action against utilities that fail to meet these standards. We thus conclude that our action will serve the public interest, as well as fulfilling the Legislature's expression of intent.

Because we are unable to resolve the issues raised by some of the comments, we will feel more comfortable with any final rule if we accept additional comments concerning the standards we contemplate adopting. Our order provides that we will accept additional comments from parties and the public before adopting the final interim tree trimming rules. Our order also provides a procedure to adopt final rules. We will seek comment on final rules in a schedule to be established expeditiously by the administrative law judge. Parties who comment on final rules should comment on whether the interim rules should be adopted as final rules. Parties should also comment on whether the standards set forth in the Public Resources Code should be adopted as the final rule. Our subsequent investigation in this proceeding will reflect consideration of the work of the other three subcommittees, which our order today intentionally defers.

Findings of Fact

1. Storm damage, fires, and power outages have occurred recently, resulting from contact between vegetation and utility

power lines.

2. The California Legislature has directed the Commission to adopt tree trimming standards no later than December 2, 1996. The legislative directive includes a requirement that the standards specify tree trimming and brush clearing requirements, consistent with existing laws, which ensure that the electric distribution system is protected from damage. 3. GO 95 contains utility responsibilities with regard to trimming trees and vegetation around power lines.

4. Rule 35 of GO 95 currently states the Commission's tree trimming requirements as follows:

Where overhead wires pass through trees, safety and reliability of service demand that a reasonable amount of tree trimming be done in order that the wires may clear branches and foliage.

Trees so located that they can fall into a crossing span or into any span that could communicate the trouble to a crossing span shall be removed wherever practicable.

5. Rule 35 requires the articulation of specific standards to ensure the public safety and reliability of the electric distribution system consistent with the amended order instituting this proceeding, and compliance with the intent of the Legislature expressed in its recent directive.

6. A proposed settlement ("settlement") was filed in this proceeding on April 8, 1996, with a motion for its adoption by the Commission.

7. The settlement was signed, inter alia, by Edison, PG&E, SDG&E, IBEW, PPL, Sierra, William Adams, and USB (jointly, "settling parties"). Subsequently, Adams withdrew from the settlement, and he and Bailey, Sevier, and Bereczky submitted comments in opposition to a number of its features.

8. Section 4293 of the Public Resources Code governs

electric utility responsibilities for maintaining vegetation around power lines in mountainous land, forest-covered land, brush-covered land and grass-covered land.

9. The provisions of the settlement would clarify the tree trimming obligations of utilities under GO 95 by adopting specific, measurable, and enforceable standards for maintenance and operation of the electric distribution system, and specific tree trimming and brush clearing requirements to protect the system from damage.

10. Requiring immediate compliance with the standards proposed in the settlement to apply to Rule 35 would impose a hardship on the utilities and their customers. An incremental compliance schedule requiring cumulative compliance of 25, 50, 75, and 100 percent, respectively, at the six-, twelve-, eighteen- and twenty-four month dates after initial implementation is reasonable.

11. The substance of the settlement was considered by all interests under the procedure established by the parties.

12. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

13. It is in the public interest to adopt interim clarifications to our tree trimming requirements immediately.

14. There is a further need to examine our tree trimming requirements and resolve other issues in this proceeding. Further investigation of tree trimming should encompass all aspects of tree trimming by utilities, including the inquiries conducted by Subcommittees One, Two, and Three in the workshop process.

Conclusions of Law

1. The adoption of modifications to GO 95 which would clarify existing regulatory requirements is not a "project" as defined by CEQA.

2. The material features of the settlement taken as a whole, would effectuate the public interest.

3. Adoption of the settlement terms would carry out the Legislature's intent, as reflected in its recent directive in the

Supplemental Report of the 1996 Budget Act.

4. The settlement terms are consistent with existing laws.

5. The settlement is reasonable in light of the whole record.

6. The Commission should adopt the settlement terms as an interim measure to clarify the utilities' tree trimming requirements, but should hold further proceedings as expeditiously as possible to finalize the tree trimming rules, and to conclude this proceeding. The Commission should add provisions for a compliance schedule and for enforcement of the tree trimming requirements in order to fulfill the Legislature's intent.

7. The Commission should adopt a reasonable cumulative compliance schedule for implementation of the standards to prevent hardship to the utilities and their customers.

O R D E R

IT IS ORDERED that:

1. The settlement, and the various requirements and standards set forth therein, are adopted as part of the Commission's order pending the conclusion of this proceeding, with elaboration as provided herein.

2. Paragraph "A" of the Agreement contained in the settlement shall be construed to require implementation on the following schedule:

Each utility shall comply with the standards under Rule 37, Table 1, Case 13, to the extent of--

25% by the six-month anniversary of this order

50% by the 12-month anniversary of this order

75% by the 18-month anniversary of this order

100% by the two-year anniversary of this order

3. Parties and members of the general public shall have 30 days from the date of issuance of this order within which to file comments on the standards adopted herein. Comments may urge that the Commission

adopt the proposal in this decision as the final rule,

adopt the standards set forth in the Public Resources Code as the final rule, or

adopt any other standard which the commenting party endorses, with an explanation as to why it is more appropriate.

Reply comments may be filed 15 days after the filing date for the opening comments under this paragraph. Following the filing of comments and replies, the Commission will adopt its final tree trimming requirements. The final rule will remain in effect until superseded by a rule, regulation, or standard which may thereafter be lawfully adopted.

4. As expeditiously as possible after the decision becomes final, the assigned Administrative Law Judge shall conduct evidentiary hearings to create a formal record and conclude this investigation proceeding. The record shall include evidence concerning all issues encompassed by the amended order instituting investigation.

5.

The Commission's Energy Division (formerly Utilities Safety Branch) shall monitor the respondents' compliance with the standards applicable under this order and the terms of the settlement, and shall investigate and take prompt and appropriate enforcement action against utilities which fail to meet its standards within the specified times.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

SEE FORMAL FILE FOR APPENDICES.