

Decision 12-10-029 October 25, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Commission Regulations Relating to the
Safety of Electric Utility Substations.

Rulemaking 10-09-001
(Filed September 2, 2010)

**DECISION ADOPTING A NEW GENERAL ORDER RELATING TO THE
INSPECTION AND SAFETY OF ELECTRIC UTILITY SUBSTATIONS**

1. Summary

This decision adopts a new general order, General Order 174 (Attachment I) which will require all jurisdictional utilities, both publicly and investor-owned, to adopt and implement new safety rules and inspection practices for electric substations. The decision finds that the Commission has safety jurisdiction over publicly owned utilities and therefore may require them to comply with this general order. Finally, this decision imposes a requirement that both publicly owned and investor-owned utilities meet on an annual basis with the Commission's Consumer Protection and Safety Division to review and compare their safety rules and inspection practices for electric substations in order to develop a "best practice" for safety rules and inspection practices for electric substations in California.

No utility rates are changed as a result of this decision. This proceeding is closed.

2. Background

Rulemaking 10-09-001 (Rulemaking) considered the adoption of a new general order¹ setting minimum inspection and maintenance standards for electric substations. The Commission's current General Orders 95, 128, and 165 are already designed to promote safe operation of electric utility and communications infrastructure facilities, and provide minimum safety requirements which the utilities are to supplement with additional safety precautions when local conditions warrant. However, these General Orders do not give guidance as to how utilities operate and maintain their substations, and there are no specific regulations governing substation operation. The proposed new general order was the product of a settlement by various interested parties.² The Rulemaking also addressed the threshold question of the Commission's authority and jurisdiction over public health and safety arising from utility operations, including its jurisdiction over the electric facilities of publicly owned utilities.

3. Commission Safety Jurisdiction Includes Publicly Owned Utilities

It is well-established law the Commission has jurisdiction over the publicly owned utilities for safety matters. The record shows, as discussed below, that

¹ Attachment I to today's decision. The general order is unchanged from the draft attached to the original rulemaking.

² Southern California Edison Company, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company, International Brotherhood of Workers Local 47 and 1245, NV Energy North, PacifiCorp, and Los Angeles Department of Water and Power. (Rulemaking at 3.)

the opposition by the publicly owned utilities is not based on the law. The California Municipal Utilities Association (Muni Association) and the Northern California Power Association argued that the Commission lacks the jurisdiction to impose this general order on publicly owned utilities. We disagree.

The publicly owned utilities argue that their opposition to this general order is not in opposition to the concept of safety, but only to the Commission's jurisdiction. (Muni Association Opening Brief at 2.) The Muni Association "...acknowledges that previous Commission Decisions have determined that it has broad authority over the electric facilities of [publicly owned utilities]. However, [Muni Association] and its members believe that these Decisions were wrongly decided and should be overturned." (*Id.* at 4.) PG&E aptly responded to this argument noting that the wishes of the publicly owned utilities have nothing to do with the law which clearly supports the Commission's jurisdiction. PG&E cites to the 1945 *Polk v. City of Los Angeles*,³ noting that the Commission's electric safety rules (originally General Order 64, now General Order 95) were developed pursuant to this specific legislative direction, and the Court further stated: "There can be no doubt that the Legislature was empowered to pass such a statute and make it applicable to municipally operated electric systems even though the municipality is chartered and has control over municipal affairs. ... [and the Commission's safety rules challenged in *Polk*] are nothing more than safety requirements in which the entire state has an interest." (*Id.* at 540-41.)

³ 26 Cal.2d 519 (1945).

PG&E also cites to the much more recent electrical restructuring legislation (Stats. 1996, ch. 854) which did not repeal Public Utilities Code Sections 8001-8057, which continue to give the Commission jurisdiction over the safety of overhead and underground electric facilities (including those owned by publicly owned utilities). PG&E further noted: "Sections 8037 and 8056 state in pertinent part: '...[T]he commission may **inspect** all work which is included in the provisions of this article, and may make such further additions or changes as the commission deems necessary for the purpose of safety to employees and the general public. (Emphasis added.)'⁴ In fact, as noted above, it was in 1998 (after AB 1890 was enacted) that the Commission expressly applied the maintenance standards adopted in Decision (D.) 97-03-070 (General Order 165) to municipal and publicly owned utilities."⁵

The Commission's Consumer Protection and Safety Division (Safety Division) makes essentially the same arguments as PG&E that the safety matters concerning the publicly owned utilities are subject to Commission's jurisdiction. The Safety Division points out, like PG&E, that the existing legislation and the courts consistently support the Commission's safety authority. (Safety Division Opening Brief at 2.) We need not recite the entire brief of the Safety Division or PG&E where they meticulously cite example after

⁴ (PG&E footnote 10) "D.98-03-036; [Muni Association] *Application for rehearing denied* D.98-10-059; [Muni Association] *petition to modify decision denied* D.99-12-052. This progression of Decisions addressed all the jurisdictional arguments posed again by [Muni Association] and [Northern California Power Authority] in this proceeding."

⁵ PG&E Opening Brief at 6.

example of legislation and court decisions upholding the Commission's jurisdiction.

The Los Angeles Department of Water and Power argues that is already subject to oversight by other entities. In fact, it is certain that the North American Electric Reliability Corporation and the Western Electricity Coordinating Council already oversee substation maintenance and inspection programs for both investor-owned utilities and publicly owned utilities. (Opening brief at 4.) It argues that the Commission should consider the degree of regulation or oversight by other entities. (*Id.* at 5.) Los Angeles Department of Water and Power makes the argument that it is not subject to the Commission's jurisdiction; however, it fails to cite to any court decision supporting this position. (*Id.* at 5 - 6.)

Los Angeles Department of Water and Power also tends to argue that there is some equipment that is not subject to the Commission's jurisdiction. (*Id.* at 9 -11.) We disagree with this distinction: it is not rational that the Legislature would ever intend to have distinguished within the physically interconnected components of an electric system, with certain pieces exempt from regulation when pieces on either side of the devices are subject to regulation. There can be no good rationalization inferred for such a gap, especially when no such rationalization is specifically stated by the Legislature.

Recently, the Commission revised General Order 95 and addressed the issue of jurisdiction over publicly owned utilities:

As required by the Public Utilities Code, "[e]very public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." (Pub. Util. Code § 451.) In our broad grant of jurisdiction over public

utilities in California, we are authorized to “do all things, whether specifically designated in ... [the Public Utilities Act] or in addition thereto, which are necessary and convenient” to our regulation of public utilities, including, though not limited to, adopting necessary rules and requirements in furtherance of our constitutional and statutory duties to regulate and oversee public utilities operating in California. (Pub. Util. Code § 701.)

This Commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations. (San Diego Gas & Electric v. Superior Court, (1996) 13 Cal.4th 893, 923-924.) Our jurisdiction to regulate these entities is set forth in the California Constitution and in the Public Utilities Code. (Cal. Const., Art. 12, §§ 3, 6; Pub. Util. Code §§ 216, 701, 768, 1001.) While such utilities are required to “obey and comply with every order, decision, direction, or rule made or prescribed by the [C]ommission” (Pub. Util. Code § 702; see §§ 761, 762, 767.5, 768, 770), the Commission is also obligated to see that the provisions of the Constitution and state statutes affecting public utilities are enforced and obeyed. (Pub. Util. Code § 2101.)

Under Pub. Util. Code §§ 8002, 8037, and 8056, the Commission’s jurisdiction extends to publicly-owned utilities for the limited purpose of adopting and enforcing rules governing electric transmission and distribution facilities to protect the safety of employees and the general public. (D.09-08-029 at 8.)

The Los Angeles Department of Water and Power’s timely filing for rehearing of D.09-08-029 was denied in D.10-02-034 where the Commission found no legal error.

We therefore find that the California publicly owned utilities are subject to the general order adopted herein, and are fully subject to the Commission’s jurisdiction for safety oversight.

4. Best Practices

Today's decision requires each electric utility subject to the Commission's jurisdiction to develop new safety rules and inspection practices for electric substations that are appropriate for each utility. We are concerned that over time we will end up with vastly different safety rules and inspection practices for each utility. Therefore, we also require today that the major investor-owned utilities as well as the publicly owned utilities subject to the Commission's jurisdiction meet on an annual basis and have a frank and open comparison and discussion of their newly developed practices. We expect each utility to critically review its own practices in light of this observation of other utilities' practices for similar equipment and facilities. We further expect this will result in an expansion and improvement of these practices across the state. In other words, a "best practice" will evolve that shows how to most effectively operate and safely control the electric systems in California based on the shared experience and expertise of all of the utilities even as these practices continue to reflect the unique elements of each system. We do not expect a single uniform state-wide practice: we expect each utility to develop a best practice of inspection for its own unique circumstances but to build them utilizing the breadth of experiences of all jurisdictional utilities.

We therefore order that in the first quarter of 2014, 2015, and 2016, the three major investor-owned utilities shall in turn host an annual review for all utilities to meet and discuss the details of their safety rules and inspection

practices for electric substations.⁶ We direct our Safety Division to send appropriate expert staff to these meetings. By the end of the second quarter of 2016, we direct our Safety Division to report to the Commission on the status of the utilities' compliance with this general order and the degree to which the Safety Division believes the utilities have made a good faith effort to share information, modify and improve their own programs, and generally to have developed a best practice for safety rules and inspection practices for electric substations in California. The Safety Division should make any other recommendations it deems apposite at the time.

5. Procedural History

The Commission issued the Rulemaking on September 2, 2010, as a quasi-legislative proceeding, and PG&E, PacifiCorp, Los Angeles Department of Water and Power, San Diego Gas & Electric Company, and Southern California Edison Company were made respondents to this Rulemaking. Timely comments were filed by the City and County of San Francisco (San Francisco), San Diego Gas & Electric Company, Southern California Edison Company, PG&E, Pacific Corp., Sierra Pacific Power Company, Safety Division, California Municipal Utilities Association, Northern California Power Association, Mountain Utilities,

⁶ We believe the utilities are capable of managing this process without detailed intervention by the Commission. We therefore leave to them specific timing, location, and structure of the sessions, so long as they are broad in scope and inclusive with the experts from the public and investor-owned utilities in attendance who are empowered to make meaningful changes to their own utilities' practices with an eye to the development of a best practice in California based upon their collective experiences.

Northern California Power Agency, and Engineers and Sciences of California, Local 20, IFPTE.

On February 18, 2011, California Pacific Electric Company (CalPeco) filed a motion for party status to replace Sierra Pacific Power Company as a respondent to the Rulemaking because it now operates the territory (*see* D.10-10-017). We deem the motion granted, and therefore CalPeco is subject to this decision.

By ruling on March 30, 2011 respondents were directed to brief the issue of jurisdiction over the publicly owned utilities. Timely briefs were filed by the Muni Association, Los Angeles Department of Water and Power, PG&E, and the Safety Division. Timely replies were filed by the Muni Association, Los Angeles Department of Water and Power, and the Safety Division.

6. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Timely comments and reply comments were filed. Southern California Edison Company, PG&E, PacifiCorp, San Diego Gas & Electric Company, Bear Valley Electric Service (a division of Golden State Water Company), and California Pacific Electric Company filed joint comments in support of the proposed decision. Additionally, they indicated their willingness to accept and participate in the best practices workshops and reports as described in this decision.

San Francisco comment that the decision fails to address San Francisco's concerns from the workshop that the Commission should develop detailed robust inspection requirements and not defer to the utilities. This decision does address the concern over the quality and thoroughness of the inspection

practices by establishing the best practices workshops and reports, and by giving an oversight role to the Commission's Safety Division in that process in addition to the Safety Division's existing duty to inspect and enforce safety.

The Commission's Safety Division filed timely reply comments supporting the decision as written and expressing support for the best practices workshops and reports. The Safety Division also opposed the opening comments of San Francisco pointing out that the Division's ongoing inspection program is superior to a restrictive detailed plan proposed by San Francisco and has begun a robust audit and inspection process which will improve safety.

The California Municipal Utilities Association filed comments which reargues its view on the Commission's jurisdiction and we accord the comments no weight.

7. Assignment of Proceeding

This proceeding is categorized as quasi-legislative. The assigned Commissioner is Timothy Alan Simon and the assigned ALJ is Douglas M. Long.

Findings of Fact

1. The attached general order would require jurisdictional investor-owned and publicly owned electric utilities to create safety rules and inspection practices for electric substations that will enhance public safety and provide uniformity in California.

2. Electric substations and all their component parts are connected to other components of electric system.

3. Annual meetings where the electric utilities share and discuss their practice for safety rules and inspection practices for electric substations can lead to the development of best practices for California utilities.

4. CalPeco now operates the service territory previously operated by Sierra Pacific Power Company.

Conclusions of Law

1. The Commission has the authority to adopt a general order requiring electric utilities in California to adopt detailed practice for safety rules and inspection practices for electric substations.

2. Electric substations and all their connected component parts fall within the Commission jurisdiction.

3. The publicly owned electric utilities in California are subject to the Commission's jurisdiction for safety matters.

4. The Commission has the authority to impose this general order on both investor and publicly owned electric utilities in California.

5. The Commission has the authority to direct both the investor-owned and publicly owned electric utilities to annually review and compare their detailed safety rules and inspection practices.

6. CalPeco is subject to this decision superseding Sierra Pacific Power Company.

7. This decision should be effective immediately.

8. Rulemaking 10-09-001 should be closed.

O R D E R

IT IS ORDERED that:

1. General Order 174 (Attachment I) is adopted. It requires all California jurisdictional utilities to adopt, implement, and use, detailed written safety rules and inspection practices for electric substations.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, must in turn schedule and convene three annual conferences for all California jurisdictional electrical utilities to meet and confer to collectively develop a best practice for safety rules inspection practices for electric substations based upon the shared experiences of all California jurisdictional electric utility. We direct the Consumer Protection and Safety Division (Safety Division) to participate in the three annual conferences. These conferences must be held in the first quarter of 2014, 2015, and 2016. Further, we direct the Safety Division report to the Commission no later than the end of the second quarter of 2016 on the status of all jurisdictional utilities' compliance with the general order, and the progress achieved in developing a best practice.

3. Rulemaking 10-09-001 is closed.

This order is effective today.

Dated October 25, 2012, at Irvine, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT I

General Order 174
Rules for Electric Utility Substations

(Adopted October 25, 2012 by Decision 12-10-029)

Section I General Provisions

10 Purpose

The purpose of these rules is to formulate, for the State of California, uniform requirements for substation inspection programs, the application of which will promote the safety of workers and the public and enable adequacy of service.

11 Applicability

This General Order applies to electric utilities subject to the jurisdiction of the California Public Utilities Commission (Commission).

Facilities subject to the California Independent System Operator's operational control and/or subject to FERC reliability standards and Customer Substations are exempt from this General Order.

12 General

These rules are not intended as complete specifications, but embody only minimum requirements that will promote safety and enable adequacy of service.

Substations shall be designed, constructed and maintained for their intended use, regard being given to the conditions under which they are to be operated, to promote the safety of workers and the public and enable adequacy of service.

Design, construction and maintenance should be performed in accordance with accepted good practices for the given local conditions known at the time by those responsible.

13 Saving Clause

The Commission reserves the right to change any of the provisions of these rules in specific cases when, in the Commission's opinion, public interest would be served by so doing.

Compliance with these rules is not intended to relieve an electric utility from other statutory requirements not specifically covered by these rules.

Section II Definitions/Acronyms

- 20 Discrepancy:** a noteworthy anomaly, material or structural deficiency.
- 21 Inspection:** a basic evaluation, generally performed using visual and auditory senses, but which could be conducted by other means.
- 22 Inspection Plan Summary:** a paper or electronic document that summarizes an Operator's Inspection Program.
- 23 Operator:** an electric utility subject to this General Order.
- 24 Substation:** An assemblage of equipment, (e.g., switches, circuit breakers, buses, and transformers), under the control of qualified persons, through which electric energy is passed for the purpose of switching or modifying its characteristics.
- 24.1 Customer Substation:** a Substation that functions as the main source of electric power supply for a single customer, including those that provide feed through for additional customers.

Section III Inspection Programs

30 General

- 30.1 Each Operator shall establish, update as needed, and follow an Inspection Program. At a minimum, this Program shall specify for each piece of equipment and system listed in Rule 32.1:
- Inspection activities
 - Frequency of Inspections
 - Record keeping and retention
- 30.2 Inspections shall be performed by persons who, by reason of training, experience and instruction, are qualified to perform the task.

31 Frequency

31.1 Substations shall be inspected as frequently as necessary.

- Time intervals or other bases shall be specified in the Inspection Program.

32 Facilities

32.1 Facilities subject to Inspection shall include, but are not limited to:

- Batteries
- Buses
- Support Structures
- Capacitor Banks
- Circuit Breakers
- Fire Detection and Suppression System (Where applicable)
- Grounding System
- Insulators/Bushing/Arrestors
- Perimeter Fences and Gates
- Transformers
- Reactors
- Voltage Regulators

33 Records

33.1 Electronic or hard copy records of completed Inspections shall include, at a minimum:

- Inspector name or identification
- Inspection date
- Brief description of identified discrepancies
- Condition rating (where applicable)
- Scheduled date of corrective action (where applicable)

33.2 Electronic or hard copy records of completed Inspections shall be retained for not less than five (5) years.

Section IV Reporting

40 Annual Filings

40.1 No later than July 1st of each year, each Operator shall transmit to the Utilities Safety and Reliability Branch (USRB) an Inspection Program Summary.

Changes to the Inspection Program shall be reflected in the Inspection Program Summary, including the effective date of the change. Should no changes occur since the previous filing, the Operator shall transmit written correspondence confirming that no changes were made to the Program.

40.2 No later than July 1st of each year, each Operator shall transmit to the CPSD a report summarizing completed and past due Inspections for the prior calendar year.

(END OF ATTACHMENT I)