

Decision **PROPOSED DECISION OF COMMISSIONER FLORIO**

(Mailed 5/24/2013)

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

Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

Rulemaking 08-11-005  
(Filed November 6, 2008)

**DECISION GRANTING THE PETITION TO MODIFY DECISION 12-01-032**

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**DECISION GRANTING THE PETITION TO MODIFY DECISION 12-01-032****1. Summary**

Today's decision grants the petition to modify Decision (D.) 12-01-032 that was filed jointly by Bear Valley Electric Service, PacifiCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (together, "the Joint Electric Utilities"). The petition seeks to modify the following definition of "year" that was adopted by D.12-01-032 for the purpose of determining inspection intervals for overhead power lines and aerial communications facilities in close proximity to overhead power lines: "12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus or minus two calendar months, not to exceed the end of the calendar year the next inspection is due."

In response to the Joint Electric Utilities' petition, today's decision revises the definition of "year" adopted by D.12-01-032 to remove the lower bound of "minus two months." The upper bound of "plus two months" is revised to "plus three months." Today's decision also allows inspection intervals to be extended by up to six months in areas where there has been a catastrophic event such as a major earthquake that requires entities which own or operate overhead electric supply lines, overhead communications lines, and associated facilities (together, "overhead facilities") to redeploy resources that would normally be used to perform inspections.

The revised definition of "year" adopted by today's decision enhances the ability of entities that own or operate overhead facilities to perform inspections in an efficient and effective manner. This should help such entities to fulfill their obligation under Public Utilities Code Section 451 to "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.” The revised definition of “year” may also reduce the cost of inspections, although the amount of the potential cost reduction is unknown.

This proceeding remains open to address all issues within the scope of Phase 3 of this proceeding.

## **2. Background**

In October 2007, strong Santa Ana winds swept across Southern California and caused dozens of wildfires. The resulting conflagration burned more than 780 square miles, killed 17 people, and destroyed thousands of homes and buildings. Hundreds of thousands of people were evacuated at the height of the fire siege. Transportation was disrupted over a large area for several days, including many road closures. Portions of the electric power network, public communication systems, and community water sources were destroyed.

Several of the worst wildfires were reportedly ignited by power lines. These included the Grass Valley Fire (1,247 acres), the Malibu Canyon Fire (4,521 acres), the Rice Fire (9,472 acres), the Sedgewick Fire (710 acres), and the Witch Fire (197,990 acres). The total area burned by these five power-line fires was more than 334 square miles.<sup>1</sup>

In response to the widespread devastation, the Commission issued Order Instituting Rulemaking (R.) 08-11-005 to consider and adopt regulations to reduce the fire hazards associated with overhead power lines and aerial communication facilities in close proximity to power lines. Most of the Commission’s regulations regarding the construction, operation, and

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<sup>1</sup> D.12-01-032 at 5 and 6.

maintenance of overhead utility facilities are in General Order (GO) 95 and GO 165. A major goal of these GOs is to minimize public safety hazards, including fire hazards, associated with overhead utility facilities.

R.08-11-005 was split into three phases. The focus of Phase 1 was to adopt fire-prevention measures that could be implemented in time for the 2009 autumn fire season in Southern California. Phase 1 concluded with the issuance of Decision (D.) 09-08-029. The purpose of Phase 2 was to address matters that required more time to consider and implement. Phase 2 concluded with the issuance of D.12-01-032. The purpose of Phase 3, which is currently in progress, is to consider and develop additional fire-safety regulations regarding the specific matters identified in D.12-01-032.

The Commission has long recognized that poorly maintained overhead utility facilities are a public-safety hazard. To mitigate this risk, Rule 31.2 of GO 95 requires overhead electric supply lines and communications lines to be inspected “frequently and thoroughly for the purpose of ensuring that they are in good condition.” This requirement applies to all entities that own or operate overhead electric supply lines or communications lines in California, including investor-owned electric utilities, publicly owned electric utilities, communications infrastructure providers (CIPs), and any water, gas, or other utility that owns or operates overhead lines. For ease of reference, we hereafter refer to entities that own or operate overhead electric supply lines and associated facilities as “electric utilities,” and entities that own or operate overhead communications lines and associated facilities as “CIPs.”

In addition to the requirements of Rule 31.2, electric utilities are required by GO 165 to conduct patrol inspections and detailed inspections of their overhead electric distribution facilities at the following intervals:

<b>Table 1</b>			
<b>GO 165 Inspection Intervals for Overhead Electric Distribution Facilities</b>			
<b>Patrol Inspection</b>		<b>Detailed Inspection</b>	
<b>Urban</b>	<b>Rural</b>	<b>Urban</b>	<b>Rural</b>
1 Year	2 Years (See Note 1)	5 Years	5 Years

**Note 1:** Patrol inspections in rural areas are once per year in the Extreme and Very High Fire-Threat Zones of the following counties: Imperial, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura. Extreme and Very High Fire-Threat Zones are defined by the California Department of Forestry and Fire Protection's Fire and Resource Assessment Program Fire Threat Map (FRAP Map).

CIPs are required by Rule 80.1-A(1) of GO 95 to conduct patrol inspections and detailed inspections of their aerial communications facilities located in close proximity to overhead power lines in high fire-threat areas. The GO 95 inspection intervals are as follows:

<b>Table 2</b>		
<b>GO 95 Inspection Intervals for Aerial Communications Facilities in Close Proximity to Overhead Power Lines in High Fire-Threat Areas</b>		
	<b>Patrol Inspection</b>	<b>Detailed Inspection</b>
<b>Southern California</b>	1 Year (See Note 2)	5 Years (See Note 2)
<b>Northern California</b>	2 Years (See Note 2)	10 Years (See Note 2)

**Note 2:** For the purpose of the above Table, the high fire-threat areas in Southern California are the Extreme and Very High Fire-Threat Zones shown on the FRAP Map for the following counties: Imperial, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura. High fire-threat areas in Northern California are areas shown as Threat Classes 3 and 4 on the Reax Map adopted by D.12-01-032

D.12-01-032 defined “patrol inspections” as “simple visual inspections that are designed to identify obvious structural problems and hazards.”<sup>2</sup> D.12-01-032 defined “detailed inspections” as “careful visual inspections using binoculars and measuring devices, as appropriate.”<sup>3</sup>

Of particular importance to today’s decision, D.12-01-032 defined the term “year” for the purpose of determining inspection intervals as “12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus or minus two calendar months, not to exceed the end of the calendar year the next inspection is due.” D.12-01-032 codified this definition of “year” in GO 95 and GO 165.<sup>4</sup>

On February 25, 2013, the following electric utilities filed a petition to modify D.12-01-032: Bear Valley Electric Service (Bear Valley), PacifiCorp, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (together, “the Joint Electric Utilities”). The specific modifications requested by the Joint Electric Utilities and the rationale for the modifications are summarized below.

Responses were filed on March 27, 2013, by the Commission’s Safety and Enforcement Division (SED) and jointly by the members of the CIP Coalition consisting of AT&T California and New Cingular Wireless PCS, LLC; the California Cable & Telecommunications Association; Comcast Phone of California, LLC; Cox California Telcom, LLC and Cox Communications

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<sup>2</sup> D.12-01-032 at 62, Footnote 59, and Appendix B at B-16 and B-22.

<sup>3</sup> D.12-01-032 at 62, Footnote 62, and Appendix B at B-16 and B-22.

<sup>4</sup> D.12-01-032 at 74 – 75, Conclusion of Law (COL) 12 at 170, and Appendix B at B-15 and B-25. The definition of “year” adopted by D.12-01-032 applies only to patrol inspections and detailed inspections. It does not apply to intrusive inspections.

California, LLC; Crown Castle NG West; CTIA-The Wireless Association; Frontier Communications; the Small Local Exchange Carriers (Small LECs);<sup>5</sup> Sprint-Nextel; Sunesys, LLC; SureWest Telephone; T-Mobile; Time Warner Cable; and numerous Verizon companies.

The Joint Electric Utilities filed a reply on April 8, 2013.

### **3. The Petition**

The Joint Electric Utilities' petition to modify D.12-01-032 seeks to eliminate the definition of "year" adopted by D.12-01-032 and codified in GO 95 and GO 165. This modification would allow the Joint Electric Utilities to follow their prior practice of scheduling inspections based on calendar years rather than the timeframe required by D.12-01-032. For example, if an annual inspection occurs in June of Year 1, the definition of "year" adopted by D.12-01-032 requires the next annual inspection to occur during the 5-month window of April 1 through August 31 of Year 2. If the definition of "year" were eliminated, the next annual inspection could occur anytime during calendar Year 2.

The Joint Electric Utilities state the new definition of "year" has imposed counterproductive constraints on the scheduling of inspections. Prior to the new definition, the Joint Electric Utilities scheduled inspections based on the availability of workers, weather conditions, and other factors. This allowed the Joint Electric Utilities to perform inspections efficiently. However, with only a two-month plus-or-minus margin for completing inspections under the new

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<sup>5</sup> The Small LECs are Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co.

definition of “year,” the Joint Electric Utilities must keep part of their workforce focused on inspections for compliance purposes. This results in reduced response times for emergencies and other priorities, and increased use of overtime and contract resources to accomplish work that, in the past, could be managed by rescheduling inspections into less busy periods.

The new definition of “year” also makes it difficult to schedule inspections early in the year so that fire hazards can be found and corrected before the onset of the summer-autumn fire season. It could take several years to transition certain areas into earlier inspection schedules due to the loss of flexibility under the definition of “year” adopted by D.12-01-032.

The Joint Electric Utilities assert that the loss of scheduling flexibility is resulting in higher costs without any benefit to public safety. They request that the Commission restore flexibility by eliminating the definition of “year” adopted by D.12-01-032. The Joint Electric Utilities further request that the Commission exempt inspections of communications facilities owned by electric utilities from the definition of “year.” The Joint Electric Utilities report that scheduling inspections of their communications facilities is proving to be just as difficult as scheduling inspections of their electric facilities.

The Joint Electric Utilities argue that eliminating the definition of “year” would be consistent with D.04-04-065 wherein the Commission held that calendar-year intervals, as compared to time-window intervals, did not “compromise the goals of system safety and reliability. Barring such a showing and recognizing that our [historical] practice has permitted this limited degree of flexibility in scheduling, we are not persuaded that a more restrictive

interpretation of GO 165 does anything but add cost to the utility's compliance."<sup>6</sup> The Joint Electric Utilities contend that just as the Commission anticipated in D.04-04-065, the adoption of a restrictive time-window for scheduling inspections has been counterproductive.

The Joint Electric Utilities state that 2013 is the first full year for the implementation of the new definition of "year," and that they filed their petition when they realized the new definition is problematic. Attached to the petition is a declaration from an officer of each Joint Electric Utility that attests to the veracity of the factual assertions in the petition.

The Joint Electric Utilities oppose SED's proposal, summarized below, to delete "minus two months" from the definition of "year" adopted by D.12-01-032, but retain "plus two months." While deleting "minus two months" is helpful, it only provides one-way flexibility. In particular, if an inspection is moved to an earlier date in the year, all future inspections must be scheduled using the new early date "plus two months." If the early date is due to a one-time reason such as good weather, the utility would be stuck with the new early date, which might not be desirable in future years.

If the Commission adopts SED's recommendation, the Joint Electric Utilities urge the Commission to extend the upper bound from "plus two months" to "plus six months." This would be consistent with the Federal Energy Regulatory Commission's (FERC) Order 777, which adopted an inspection cycle of "at least once per calendar year and no more than 18 months between inspections" for vegetation management around electric transmission lines.<sup>7</sup>

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<sup>6</sup> D.04-04-065 at 29.

<sup>7</sup> FERC Order 777. (Federal Register, Vol. 78, No. 60 (March 28, 2013) at 18817, 18821.)

In their comments on the proposed decision, the Joint Electric Utilities offer a third alternative of increasing the upper bound from “plus two months” to “plus three months.” The Joint Electric Utilities represent that adding even one month would provide needed flexibility to schedule inspections around unpredictable weather and unanticipated work load. “Plus three months” would also align the inspection schedule for electric utility facilities with the maximum inspection interval of 15 months for natural gas utility facilities. SDG&E states in its separately filed comments on the proposed decision that an upper bound of “plus three months” has the advantage of allowing SDG&E to synchronize inspection intervals with SDG&E’s financial, operational planning, and reporting systems that reflect quarterly periods.

#### **4. Responses to the Petition**

##### **4.1. The CIP Coalition**

The CIP Coalition reports that its members are experiencing the same difficulties as the Joint Electric Utilities with the definition of “year” adopted by D.12-01-032. The CIP Coalition supports the petition to modify D.12-01-032 and requests that the same relief be extended to inspections of CIP facilities.

##### **4.2. The Safety and Enforcement Division**

SED agrees that the definition of “year” adopted by D.12-01-032 adds unnecessary complexity to scheduling inspections. However, SED asserts that eliminating the definition entirely would be contrary to the goal expressed by the Commission in D.12-01-032 to “ensure consistent implementation of adopted inspection intervals.”<sup>8</sup> A better solution, according to SED, is to revise the definition of “year” by only deleting the lower bound of “minus two months.”

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<sup>8</sup> D.12-01-032 at 74.

Thus, for the Note in GO 165 at Appendix A, Table 1 (shown in D.12-01-032 at Appendix B, page B-25), the modification would look like this:

Note: For the purpose of implementing the patrol and detailed inspection intervals in Table 1 above, the term “year” is defined as 12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus ~~or minus~~ two full calendar months, not to exceed the end of the calendar year in which the next inspection is due. (Emphasis added.)

SED proposes the same modification to the definition of “year” in GO 95, Rule 80.1-A(1). Under SED’s proposal, if an annual inspection is performed in June of Year 1, the next inspection may occur anytime during the following 14 calendar months ending August 31 of Year 2.<sup>9</sup> SED avers that its modification to the definition of “year” will provide utilities with flexibility to schedule inspections sooner, if needed.

In its reply comments on the proposed decision, SED states that it does not object to the Joint Electric Utilities’ alternate recommendation to change the current upper bound from “plus two months” to “plus three months” in order to accommodate management systems that rely on quarterly periods. SED agrees with the Joint Electric Utilities that an upper bound of “plus three months” is consistent with the maximum inspection intervals of 15-months for certain natural gas facilities.

## 5. Discussion

A threshold issue is whether the Joint Electric Utilities’ petition to modify D.12-01-032 complies with Rules 16.4(b) and 16.4(d) of the Commission’s Rules of Practice and Procedure. Rule 16.4(b) states:

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<sup>9</sup> Under SED’s proposal, if an annual inspection is performed in December of Year 1, the next inspection must occur no later than December 31 of Year 2.

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The Joint Electric Utilities have satisfied Rule 16.4(b). Their petition provides justification for the requested relief and specific wording to carry out the requested modifications to D.12-01-032. All factual allegations in the petition are supported with citations to the record in this proceeding or by appropriate declarations attached to the petition.

Rule 16.4(d) states:

[A] petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may... issue a summary denial of the petition.

The Joint Electric Utilities explain that they could not file their petition to modify D.12-01-032 within one year of the decision because it took time to gain experience with the definition of "year" adopted by the decision. They filed their petition as soon as they realized the definition needed to be modified. Based on this explanation, we find the Joint Electric Utilities have justified why they could not file their petition within one year of the effective date of D.12-01-032.

We next consider the merits of the Joint Electric Utilities' petition to modify the definition of year adopted by D.12-01-032. To reiterate, D.12-01-032 defines the term "year" as "12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus or minus two calendar months, not to exceed the end of the calendar year the next inspection is due."<sup>10</sup> The petition to modify, together with the Joint Electric Utilities' comments on the proposed decision, presents the following three options for modifying the definition of "year":

**Alternative 1:** Eliminate the definition of "year" adopted by D.12-01-032. This option would allow utilities to perform patrol inspections and detailed inspections anytime during the calendar year in which an inspection is due, rather than during a prescribed timeframe within the calendar year as required by D.12-01-032. This is the Joint Electric Utilities' preferred alternative.

**Alternative 2:** Eliminate the lower bound of "minus two months" and extend the upper bound from "plus two months" to "plus six months."

**Alternative 3:** Eliminate the lower bound of "minus two months" and extend the upper bound from "plus two months" to "plus three months." This is the Joint Electric Utilities' fallback alternative if neither of the two previous alternatives is adopted.

The CIP Coalition supports the first two alternatives, and did not express a position on the third alternative. SED opposes the first two alternatives, and has no objection to the third alternative.

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<sup>10</sup> D.12-01-032 at 74 - 75, COL 12 at 170, and Appendix B at B-15 and B-25.

In assessing each alternative, the standard we will use is whether the proposed modification to the definition of “year” adopted by D.12-01-032 would adversely affect public safety. We begin our analysis with the Joint Electric Utilities’ Alternative 1. The following table shows the effect that eliminating the definition of “year” would have on the maximum allowed inspection intervals for overhead facilities in high fire-threat areas of Southern California:

<b>Maximum Allowed Time Between Inspections of Overhead Facilities in High Fire-Threat Areas of Southern California</b>		
	<b>Patrol Inspections</b>	<b>Detailed Inspections</b>
<b>D.12-01-032</b>	15 months	63 months
<b>Joint Electric Utilities’ Alternative 1</b>	24 months	72 months
<b>Difference</b>	9 months	9 months

The above table shows that eliminating the definition of “year” would extend inspection intervals by up to nine months. The table assumes that an annual patrol inspection is performed on January 1 of Year 1. Under the definition of “year” adopted by D.12-01-032, the next patrol inspection must occur no later than March 31 of Year 2, for a maximum inspection interval of 15 months. In contrast, under the calendar-year approach requested by the Joint Electric Utilities, the next patrol inspection must occur no later than December 31 of Year 2, for a maximum inspection interval of 24 months.<sup>11</sup>

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<sup>11</sup> If the inspectors remain in the area, they could perform another inspection on January 1 of Year 3, for a difference of one day, and then perform the next inspection on December 31 of Year 4, for a difference of two years. Thus, the calendar-year approach permits an “annual” inspection to occur at two-year intervals indefinitely.

The Joint Electric Utilities' request to extend inspection intervals by up to nine months would increase the risk that a fire hazard might not be detected and remediated prior to a Santa Ana windstorm or other event that could trigger a power-line fire. Although we cannot quantify the increased risk based on the record of this proceeding, we are not willing to assume the increase is negligible and justifies longer inspection intervals.<sup>12</sup> The need for strong fire-prevention measures is demonstrated by the events of October 2007 when Santa Ana winds in Southern California caused power lines to ignite wildfires at multiple locations. Together, these power-line fires burned more than 334 square miles and caused immense devastation and disruption, including the largest evacuation in California's history.<sup>13</sup> In order to prevent catastrophic power-line fires from occurring again, it is essential that overhead facilities be inspected regularly to ensure they are maintained in proper condition to withstand recurring Santa Ana windstorms.<sup>14</sup>

We disagree with the Joint Electric Utilities that calendar-year inspection intervals are appropriate because the Commission held in D.04-04-065 that such intervals do not "compromise the goals of system safety and reliability."<sup>15</sup> Unlike today's decision, the Commission in D.04-04-065 did not have information regarding the number of power-line fires that occur every year and

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<sup>12</sup> The Joint Electric Utilities assert that extending inspections intervals will not affect public safety, but they provided no data to support their assertion.

<sup>13</sup> D.12-01-032 at 5 – 6.

<sup>14</sup> Incongruously, SDG&E states that it would "not permit inspection intervals for facilities located in fire-threatened areas to approach anything close to twenty-four months" (SDG&E comments on the proposed decision at 2, Footnote 5), yet SDG&E opposes the current rule that prevents a 24-month inspection interval.

<sup>15</sup> D.04-04-065 at 29.

did not foresee the catastrophic power-line fires in October 2007. We now know that there are many power-line fires every year. PG&E alone experiences approximately 75 vegetation-related fires annually.<sup>16</sup> The significant number of power-line fires that occur annually, and the potentially catastrophic consequences of such fires, lead us to conclude that calendar-year inspection intervals do not adequately protect system safety and reliability.

For the preceding reasons, we decline to adopt the Joint Electric Utilities' Alternative 1. We next consider the Joint Electric Utilities' Alternative 2 proposal to modify the definition of "year" by eliminating the lower bound of "minus two months" and replacing the upper bound of "plus two months" with "plus six months." Extending the upper bound from "plus two months" to "plus six months" would be an increase of 300%. An increase of this magnitude would not be prudent, in our judgment. The further the upper bound is pushed, the less likely fire hazards will be detected and remediated prior to a Santa Ana windstorm or other event that could trigger a power-line fire.

The Joint Electric Utilities argue that an upper bound of "plus six months" is appropriate because it is consistent with the inspection interval for vegetation management around electric transmission lines that was recently adopted by FERC.<sup>17</sup> We disagree for the following reasons. First, the purpose of the FERC

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<sup>16</sup> D.12-01-032 at 133. We also noted in D.12-01-032 that (i) CIP facilities located near power lines, if not installed and maintained properly, could contact power lines and ignite a fire, and (ii) improperly installed and maintained CIP facilities are not rare. (D.12-01-032 at 71 - 72.)

<sup>17</sup> FERC Order 777 at paragraphs 2, 14, and 151.

inspection interval is to prevent vegetation-related outages.<sup>18</sup> It is not specifically intended to prevent catastrophic power-line fires. Second, the FERC inspection interval is a nationwide, one-size-fits-all standard. FERC did not consider factors that are specific to California such as recurring Santa Ana windstorms. Finally, the FERC inspection interval is a minimum standard.<sup>19</sup> FERC requires more frequent inspections, if appropriate. That is the case here. The catastrophic power-line fires of October 2007 and the record of this proceeding demonstrate that a shorter inspection interval is warranted.

We next consider the Joint Electric Utilities' Alternative 3 proposal to eliminate the lower bound of "minus two months" and replace the upper bound of "plus two months" with "plus three months." SED supports the elimination of the lower bound and has no objection to an upper bound of "plus three months." The proposal, if adopted, would apply to both electric utilities and CIPs.

There is no dispute that deleting the lower bound of "minus two months" retains all the public-safety benefits of the inspection intervals under the definition of "year" adopted by D.12-01-032 while providing more flexibility to schedule inspections compared to D.12-01-032. Accordingly, we adopt this element of the Alternative 3 proposal.

However, there are tradeoffs to extending the upper bound to "plus three months" versus keeping the existing upper bound of "plus two months." On the one hand, extending the upper bound increases the risk that fire hazards will go undetected and uncorrected, thereby increasing the risk to public safety. On the other hand, keeping the upper bound of "plus two months" can increase

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<sup>18</sup> FERC Order 777 at paragraphs 3, 7, 21, 22, 27, and 30.

<sup>19</sup> FERC Order 777 at paragraphs 22 and 29.

the risk to public safety in certain situations. For example, the Joint Electric Utilities point out that in years when snows are light, they may be able to begin inspections in high fire-threat mountainous areas as early as January or February, with a corresponding acceleration in the detection and remediation of fire hazards. And because the fire season in mountainous areas will usually start earlier and last longer in years when there is light snow, public safety is enhanced if utilities can start their inspections earlier in the year. But if there is heavy snow the following year, it may be impractical, if not impossible, to inspect facilities in high fire-threat mountainous areas until May or June. In that case, the utility would be in violation of the “plus two months” inspection interval. Thus, there is a strong disincentive for utilities to accelerate inspections in years when snow is light, even if doing so enhances public safety.

We conclude that, on balance, the public interest is better served by extending the upper bound to “plus three months.” This will enhance public safety in certain situations for the reasons described previously. It also provides utilities with additional operational flexibility to manage their inspections, which should help to hold down the cost of inspections. Furthermore, as SDG&E notes, an upper bound of “plus three months” would align inspection intervals with the utilities’ internal management systems that reflect quarterly periods, which should help make inspections more efficient and effective. Finally, an upper bound of “plus three months” is consistent with the 15-month inspection interval in GO 112-E, Section 143.1, for detecting natural gas leaks:

Leakage Surveys and Procedures –A gas detector survey must be conducted in business districts and in the vicinity of schools, hospitals and churches, including tests of the atmosphere in gas, electric, telephone, sewer and water system manholes... **at intervals not exceeding 15 months, but at least once each calendar year.** (Emphasis added.)

We are not aware of the utilities experiencing significant difficulties associated with the 15-month inspection interval for detecting gas leaks.<sup>20</sup> Nor are we aware of any significant risk to public safety from a 15-month interval for detecting gas leaks compared to a hypothetical 14-month inspection interval.<sup>21</sup>

The revised definition of “year” adopted by today’s decision, and the conforming changes to GO 95 and GO 165, are shown in Appendix A and Appendix B of today’s decision.<sup>22</sup> We emphasize that the revised definition of “year” does not prevent electric utilities or CIPs from inspecting their facilities more often than required by GO 95 and GO 165.

We recognize that the revised definition of “year” adopted by today’s decision is less flexible than the calendar-year approach advocated by the Joint Electric Utilities and the CIP Coalition, potentially resulting in higher costs compared to the calendar-year approach.<sup>23</sup> Although there is no estimate of the

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<sup>20</sup> See also GO 112-E, Section 143.2, which requires inspections of natural gas valves “at intervals not exceeding 15 months, but at least once each calendar year.” SED notes in its reply comments on the proposed decision at 4, Footnote 10, that many federal regulations regarding the inspection of natural gas facilities require 15-month inspection intervals, including Code of Federal Regulation Title 49, Part 192, Section 705 (Transmission Patrolling); Section 706 (Transmission Leak surveys); Section 721 (Distribution Patrols); Section 739 (Pressure Limiting and Regulating Stations Inspections); and Section 745 (Valve Maintenance, Transmission Lines).

<sup>21</sup> Since the upper bound of “plus three months” cannot exceed the end of the calendar year in when the next patrol or detailed inspection is due, the extra time provided by “plus three months” is not relevant to inspection intervals that start in November or December compared to “plus two months.”

<sup>22</sup> The revised definition of “year” adopted by today’s decision applies only to patrol and detailed inspection intervals. It does not apply to intrusive inspection intervals.

<sup>23</sup> The revised definition of “year” adopted by today’s decision should be less costly to implement than the definition adopted by D.12-01-032 because the revised definition provides more flexibility to schedule inspections than D.12-01-032.

potentially higher costs, we conclude the higher costs, if any, will be more than offset by the public safety benefits from the reduced risk of catastrophic power-line fires under the revised definition of “year” adopted by today’s decision compared to the calendar-year approach.

As a final matter, we anticipate that it may be necessary to temporarily suspend inspections in areas where a catastrophic event has occurred, such as a major earthquake, a large scale wildfire, or a tsunami that inundates coastal communities. In these situations, electric utilities and CIPs will need to shift resources to repair damaged facilities and restore service. So that companies may focus on disaster recovery, we will authorize electric utilities and CIPs to extend inspection intervals by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a catastrophic event. The extension period shall commence on the day that an emergency or a disaster is declared, whichever is earlier. Any investor-owned electric utility or CIP that seeks to postpone inspections shall file a Tier 1 compliance advice letter as soon as practical that states where inspections are being postponed and for how long.<sup>24</sup>

In their comments on the proposed decision, the Joint Electric Utilities request that the Commission allow calendar-year inspection intervals for underground, pad-mounted, and streetlight facilities. They argue that such facilities are outside the scope of this proceeding and do not pose a wildfire risk.

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<sup>24</sup> Although a temporary extension of inspection intervals increases risks to public safety, there is an even greater risk to public health, safety, and welfare from damaged utility facilities and disrupted utility services caused by a catastrophe.

We decline to adopt this recommendation for the reasons stated in SED's reply comments on the proposed decision. First, the recommendation does not identify any technical or legal error in the proposed decision and, therefore, may be summarily rejected pursuant to Rule 14.3(c) of the Commission's Rules of Practice and Procedure (Rule). Second, the proper means to challenge inspection cycles as beyond the scope of this proceeding was to file an application for rehearing of D.12-01-032, not a petition for modification. The deadline to file an application for rehearing has long passed pursuant to Rule 16.1(a). Finally, while underground, pad-mounted, and streetlight facilities may pose less of a wildfire risk, there are still fire hazards associated with these facilities. For example, SED has investigated several explosions and fires in underground facilities. An explosion or fire during a Santa Ana windstorm would pose a serious risk to public safety.<sup>25</sup>

## **6. Implementation**

The adopted modifications to GO 95 and GO 165 are shown in Appendix A and Appendix B of today's decision. These modifications are effective immediately. SED shall revise GO 95 and GO 165 to incorporate these modifications and publish the amended GOs on the Commission's website within 30 days from the issuance date shown on the first page of today's

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<sup>25</sup> We are not persuaded that the inspection intervals adopted by D.12-01-032, as modified by today's decision, are unduly burdensome with respect to underground, pad-mounted, and streetlight facilities. As the Joint Electric Utilities note in their comments on the proposed decision at page 5, in "some cases, the same personnel perform both overhead and underground patrols/inspections for a utility." This suggests that establishing the same inspection intervals for overhead and underground facilities may provide inspection synergies in areas where both types of facilities are located.

decision. The adopted modifications include (i) replacing the placeholder “Decision 13-XX-YYY” in Appendices A and B with the decision number for today’s decision; (ii) replacing the placeholder “[Month and Day]” in Appendices A and B with the date of today’s decision; and (iii) correcting a typographical error in GO 165.<sup>26</sup>

## 7. California Environmental Quality Act (CEQA)

CEQA applies to any project that has the potential to cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment unless the project is exempt from CEQA by statute or regulation.<sup>27</sup> The Commission is the lead agency under CEQA with respect to the modified inspection intervals adopted by today’s decision.

We find the modified inspection intervals are exempt from CEQA pursuant to one or more the following statutory exemptions or categorical exemptions in the CEQA guidelines:

- The modified regulation allows for the operation, repair, or maintenance of existing electric utility and CIP facilities, and involves negligible or no expansion of an existing authorized use. (14 Cal. Code Regs., Section 15301(b).)
- The modified regulation allows for the restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, and involves negligible or no expansion of an existing authorized use. (14 Cal. Code Regs., Section 15301(d).)

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<sup>26</sup> The typographical correction is the addition of a colon in the first sentence under Table 1, immediately after the word “counties” and before the word “Imperial.”

<sup>27</sup> California Public Resources Code Section (Pub. Res. Code §) 21000 et seq., and 14 California Code of Regulations (14 Cal. Code Regs.) Section 15378.

- The modified regulation allows for the maintenance of existing landscaping and native growth, and involves negligible or no expansion of an existing authorized use. (14 Cal. Code Regs., Section 15301(h).)
- The modified regulation will not have a potentially significant impact on the environment and is therefore not a “project” as defined by in Pub. Res. Code § 21065 and 14 Cal. Code Regs., Section 15378(a).
- The modified regulation continues provisions that were adopted in D.12-01-032, or which are very similar to those adopted in D.12-01-032, wherein it was determined that CEQA did not apply to the adopted provisions. (D.12-01-032 at 156 - 158 and Conclusion of Law 26 at 173.)

## **8. Need for Hearing**

Public Utilities Code Section (Pub. Util. Code §) 1708.5(f) provides that “the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.” The regulation amended by today’s decision was adopted by D.12-01-032 without an evidentiary hearing. Consequently, there is no need for an evidentiary hearing pursuant to Pub. Util. Code § 1708.5(f).

## **9. Comments on the Proposed Decision**

The proposed decision was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on June 13, 2013, by the CIP Coalition, SDG&E, and jointly by Bear Valley, California Pacific Electric Company, PacifiCorp, PG&E, and SCE. Reply

comments were filed on June 18, 2013, by SED. The following changes were made in response to the comments and reply comments:

- The upper bound for the definition of “year” is extended from “plus two months” to “plus three months.”
- The title, summary, and ordering paragraphs of today’s decision are revised to state that the petition to modify is granted. Previously, the proposed decision stated that the petition was granted in part and denied in part.
- The types of catastrophic events that may trigger the postponement of inspections is expanded to include all catastrophes for which there has been a declaration of an emergency or a disaster by the President and/or Governor.
- Additional content is added to the Tier 1 advice letter.
- GO 95 and GO 165 are revised to clarify that the term “year” for intrusive inspections of wood poles is defined as a calendar year, consistent with Footnotes 4 and 23 of today’s decision.
- GO 95 and GO 165 are revised to clarify that the completion of an inspection starts a new inspection interval.
- Comments critical of the proposed decision are addressed, where appropriate.
- Non-substantive changes are incorporated to improve the clarity and brevity of the decision.

#### **10. Assignment of the Proceeding**

Michel Peter Florio is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge for this proceeding.

**Findings of Fact**

1. Electric utility facilities can become a fire hazard if they are not inspected regularly and maintained in good condition.
2. Streetlights and aerial communications facilities in close proximity to overhead power lines can become a fire hazard if they are not inspected regularly and maintained in good condition.
3. To ensure consistent implementation of prescribed inspection intervals, D.12-01-032 defined the term “year” for inspection purposes as “12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus or minus two calendar months, not to exceed the end of the calendar year the next inspection is due.”
4. The Joint Electric Utilities’ petition to modify D.12-01-032 seeks to eliminate the definition of “year” adopted by the decision. Granting the petition would extend intervals for patrol inspections and detailed inspections by up to nine months. Extending the allowed inspection intervals would increase the risk that fire hazards might go undetected and un-remediated prior to an event that could trigger a power-line fire, such as a Santa Ana windstorm.
5. SED’s proposed modification of D.12-01-032 deletes the lower bound of “minus two months” from the definition of “year.” SED’s proposal provides electric utilities and CIPs with more flexibility to schedule inspections without extending the allowed inspection intervals.
6. SED’s proposed modification of D.12-01-032 does not have an adverse effect on public safety. The proposed modification will result in the same or lower costs for electric utilities and CIPs compared to D.12-01-032.

7. The Joint Electric Utilities' Alternative 2 proposal to modify the definition of "year" adopted by D.12-01-032 by replacing the upper bound for inspection intervals of "plus two months" with "plus six months" would, if adopted, increase the risk that fire hazards might go undetected and un-remediated prior to an event that could trigger a power-line fire, such as a Santa Ana windstorm.

8. The Joint Electric Utilities' Alternative 3 proposal to replace the upper bound of "plus two months" with "plus three months" will enhance public safety in certain situations; provide utilities with additional operational flexibility to manage their inspections and thereby hold down the cost of inspections; align inspection intervals with the utilities' internal management systems that reflect quarterly periods, which should help make inspections more efficient and effective; and align electric utilities' inspection intervals for electric facilities with the inspection intervals for detecting natural gas leaks near certain public areas, which should make inspections more efficient and thereby help to reduce costs.

9. Disruptions to public utility service caused by a catastrophic event such as a major earthquake pose a high risk to public health, safety, and welfare. When a catastrophic event occurs, the resources that electric utilities and CIPs normally use to inspect their facilities may need to be redeployed to repair damaged facilities and restore service.

### **Conclusions of Law**

1. It is in the public interest to adopt the following modifications to the definition of "year" contained in D.12-01-032 and codified in GO 95 and GO 165 for the reasons set forth in the body of today's decision and the Findings of Fact: (i) eliminate the lower bound of "minus two months;" and (ii) extend the upper bound of "plus two months" to "plus three months."

2. The Joint Electric Utilities' petition to modify D.12-01-032, with their Alternative 3 proposal to extend the upper bound of inspection intervals from "plus two months" to "plus three months," should be granted.

3. Electric utilities and CIPs should be allowed to extend the inspection intervals for patrol inspections and detailed inspections set forth in GO 95 and GO 165, as modified by today's decision, in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a major earthquake or other catastrophe.

4. The Commission is the lead agency under CEQA with respect to the amended regulation adopted by today's decision.

5. The modified definition of "year" adopted by today's decision is exempt from CEQA pursuant to one or more of the statutory exemptions and categorical exemptions identified in the body of today's decision.

6. Pub. Util. Code § 1708.5(f) provides that the Commission may amend a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except if the regulation being amended was adopted after an evidentiary hearing, in which case the parties to the original proceeding retain any right to an evidentiary hearing accorded by § 1708. Because the provisions in GO 95 and GO 165 that are amended by today's decision were originally adopted by D.12-01-032 without an evidentiary hearing, there is no need under Pub. Util. Code § 1708.5(f) to hold an evidentiary hearing.

7. The following order should be effective immediately so the modified definition of "year" adopted by the order may go into effect promptly.

**O R D E R****IT IS ORDERED** that:

1. General Order (GO) 95 and GO 165 are modified to (i) incorporate the revised definition of “year” set forth in Appendices A and B of today’s decision, and (ii) correct a typographical error in GO 165. These modifications to GO 95 and GO 165 are effective immediately.
2. The Commission’s Safety and Enforcement Division shall revise General Order (GO) 95 and GO 165 to incorporate the modifications shown in Appendices A and B of today’s decision and publish the modified GOs on the Commission’s website within 30 days from the issuance date shown on the first page of today’s decision.
3. Entities that own or operate overhead electric supply lines, overhead communications lines, and associated facilities may postpone the completion of patrol inspections and detailed inspections of such lines and facilities by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a catastrophe. Any investor-owned electric utility or communications infrastructure provider that seeks to defer inspections shall file a Tier 1 compliance advice letter as soon as practical following the catastrophe that includes a description of the event, the specific areas where inspections will be postponed, the duration of the postponement, and the declaration(s) of the emergency and/or disaster. The duration shall not exceed six months from the date that an emergency is declared or the date that a disaster declared, whichever is earlier.

4. The Joint Electric Utilities' petition to modify Decision 12-01-032, with their alternate proposal to extend the upper bound of inspection intervals from "plus two months" to "plus three months," is granted.

5. Rulemaking 08-11-005 remains open to address all issue within the scope of Phase 3 of this proceeding.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Appendix A: Redline Revisions to General Order  
(GO) 95 and GO 165**

The adopted revisions to GO 95 and GO 165 are shown below in redline form (i.e., with strikeout and underline).

**General Order (GO) 95, Rule 80.1-A(1) and 80.1-B**  
**Adopted Revisions Shown with Strikethrough and Underline**

**GO 95 at Page viii:**

Change list – The following is a list of Decisions and Resolutions which authorize statewide general changes to this Order, applicable to all operators of overhead lines.		
Decision of Resolution No.	Effective Date	Rules Herein Revised, Deleted or Added
<u>Decision 13-XX-YYY</u>	<u>[Month and Day], 2013</u>	<u>80.1-A(1)</u>
<u>Decision 13-XX-YYY</u>	<u>[Month and Day], 2013</u>	<u>80.1-B</u>

**GO 95 at Page VIII-10:**

For the purpose of implementing the patrol and detailed inspection intervals in the above Table in the high fire-threat areas of the state, the term “year” is defined as 12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus ~~or minus two~~ three full calendar months, not to exceed the end of the calendar year in which the next inspection is due. A required inspection may be completed any time before the expiration of the associated inspection interval using this definition of “year,” but not after. The completion of an inspection starts a new inspection interval that must be completed within the prescribed timeframe using this definition of “year.” However, inspection intervals may be extended by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a major earthquake or other catastrophe using the procedure set forth in Decision 13-XX-YYY issued in Rulemaking 08-11-005. The extension shall not exceed six months from the date that an emergency is declared or the date that a disaster is declared, whichever is earlier.

**GO 95 at Page VIII-13, New Final Paragraph for Rule 80.1-B:**

For wood pole intrusive inspections, the term “year” is defined as a calendar year.

**General Order (GO) 165, Table 1, Note (1)**  
**Adopted Revisions Shown with Strikethrough and Underline**

**GO 165 at Page 1:**

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Adopted March 31, 1997

Effective March 1, 1997

(D.97-03-070 in I.95-02-015 and R.96-11-004)

Amended August 20, 2009 by D.09-08-029 in R.08-11-005

Amended January 12, 2012 by D.12-01-032 in R.08-11-005

Amended [Month and Day], 2013 by D.13-XX-YYY in R.08-11-005

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**GO 165 at Page 4:**

- (1) Patrol inspections in rural areas shall be increased to once per year in Extreme and Very High Fire Threat Zones in the following counties: Imperial, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura. Extreme and Very High Fire Threat Zones are designated on the Fire and Resource Assessment Program (FRAP) Map prepared by the California Department of Forestry and Fire Protection or the modified FRAP Map prepared by San Diego Gas & Electric Company (SDG&E) and adopted by Decision 12-01-032 in Phase 2 of Rulemaking 08-11-005. The fire-threat map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

Note: This General Order does not apply to cathodic protection systems associated with natural gas facilities.

Note: For the purpose of implementing the patrol and detailed inspection intervals in Table 1 above, the term "year" is defined as 12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus ~~or~~ ~~minus two~~ three full calendar months, not to exceed the end of the calendar year in which the next inspection is due. A required inspection may be completed any time before the expiration of the associated inspection interval using this definition of "year," but not after. The completion of an inspection starts a new inspection interval that must be completed within the prescribed timeframe using this definition of "year." However, inspection intervals may be extended by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a major earthquake or other catastrophe using the procedure set forth in Decision 13-XX-YYY issued in Rulemaking 08-11-005. The extension shall not exceed six

months from the date that an emergency is declared or the date that a disaster is declared, whichever is earlier.

Note: For wood pole intrusive inspections, the term “year” is defined as a calendar year.

**(END OF APPENDIX A)**

**Appendix B: Revised General Order (GO) 95 and GO 165**

The parts of GO 95 and GO 165 that are revised by today's decision are shown below in their final form.

**General Order (GO) 95, Rule 80.1-A(1) and 80.1-B  
Adopted Rule in Final Form**

**GO 95 at Page viii:**

Change list— The following is a list of Decisions and Resolutions which authorize statewide general changes to this Order, applicable to all operators of overhead lines.		
<b>Decision of Resolution No.</b>	<b>Effective Date</b>	<b>Rules Herein Revised, Deleted or Added</b>
Decision 13-XX-YYY	[Month and Day], 2013	80.1-A(1)
Decision 13-XX-YYY	[Month and Day], 2013	80.1-B

**GO 95 at Page VIII-10:**

For the purpose of implementing the patrol and detailed inspection intervals in the above Table in the high fire-threat areas of the state, the term “year” is defined as 12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus three full calendar months, not to exceed the end of the calendar year in which the next inspection is due. A required inspection may be completed any time before the expiration of the associated inspection interval using this definition of “year,” but not after. The completion of an inspection starts a new inspection interval that must be completed within the prescribed timeframe using this definition of “year.” However, inspection intervals may be extended by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a major earthquake or other catastrophe using the procedure set forth in Decision 13-XX-YYY issued in Rulemaking 08-11-005. The extension shall not exceed six months from the date that an emergency is declared or the date that a disaster is declared, whichever is earlier.

**GO 95 at Page VIII-13, New Final Paragraph for Rule 80.1-B:**

For wood pole intrusive inspections, the term “year” is defined as a calendar year.

**General Order (GO) 165, Table 1, Note (1)****Adopted Rule in Final Form****GO 165 at Page 1:**


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 Adopted March 31, 1997

Effective March 1, 1997

(D.97-03-070 in I.95-02-015 and R.96-11-004)

Amended August 20, 2009 by D.09-08-029 in R.08-11-005

Amended January 12, 2012 by D.12-01-032 in R.08-11-005

Amended [Month and Day], 2013 by D.13-XX-YYY in R.08-11-005

**GO 165 at Page 4:**

- (1) Patrol inspections in rural areas shall be increased to once per year in Extreme and Very High Fire Threat Zones in the following counties: Imperial, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura. Extreme and Very High Fire Threat Zones are designated on the Fire and Resource Assessment Program (FRAP) Map prepared by the California Department of Forestry and Fire Protection or the modified FRAP Map prepared by San Diego Gas & Electric Company (SDG&E) and adopted by Decision 12-01-032 in Phase 2 of Rulemaking 08-11-005. The fire-threat map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

Note: This General Order does not apply to cathodic protection systems associated with natural gas facilities.

Note: For the purpose of implementing the patrol and detailed inspection intervals in Table 1 above, the term "year" is defined as 12 consecutive calendar months starting the first full calendar month after an inspection is performed, plus three full calendar months, not to exceed the end of the calendar year in which the next inspection is due. A required inspection may be completed any time before the expiration of the associated inspection interval using this definition of "year," but not after. The completion of an inspection starts a new inspection interval that must be completed within the prescribed timeframe using this definition of "year." However, inspection intervals may be extended by up to six months in areas where the Governor of California or the President of the United States has declared an emergency or a disaster following a major earthquake or other catastrophe using the procedure set forth in Decision 13-XX-YYY issued in Rulemaking 08-11-005. The extension shall not exceed six months from the date

that an emergency is declared or the date that a disaster is declared, whichever is earlier.

Note: For wood pole intrusive inspections, the term “year” is defined as a calendar year.

**(END OF APPENDIX B)**