

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

Order Instituting Rulemaking to Examine
Electric Utility De-energization of
Power Lines in Dangerous Conditions

Rulemaking 18-12-005
(Filed Dec. 13, 2018)

**APPLICATION FOR REHEARING OF
DECISION D.21-06-034 BY THE ACTON TOWN COUNCIL
AND THE MUSSEY GRADE ROAD ALLIANCE**

Jacqueline Ayer
On behalf of The Acton Town Council
P.O. Box 810
Acton, CA 93510
Telephone: (661) 468-7496
Email: atc@actontowncouncil.org

Diane Conklin, Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065
Telephone: (760) 787-0794
Email: dj0conklin@earthlink.net

July 29, 2021

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	THE COMMISSION ERRED IN ITS ADOPTION OF FINDING OF FACT #26	2
2.1	Prior Commission Decisions Establish the Intent of the PSPS Guidelines to Address Reasonableness, Reporting, Notification and Mitigation	3
2.2	The Commission’s Ability to Review Reasonableness has been Self-Limited	7
2.3	D.21-06-034 Errs in Leaving PSPS Public Safety Impacts Effectively Unregulated	8
2.4	D.21-06-034 Commits Legal Error by Adopting Finding of Fact #26	8
2.5	The Legal Errors Embodied in Finding of Fact #26 are Easily Remedied	11
3.0	THE COMMISSION ERRED IN REDEFINING "REASONABLENESS REVIEWS" AND RELEGATING THEM TO OPTIONAL EXERCISES	11
4.0	CONCLUSION	14

TABLE OF AUTHORITIES

Commission Rules

Rule 7.3	12
Rule 14.3	9
Rule 16.1	1

Public Utilities Code

§ 399.2	13
§ 451	1, 8, 13
§1701.5	9, 12
§ 2101	8, 9, 10

Commission Decisions

D.09-09-030	1, 2, 4, 12
D.12-04-024	1, 2, 4, 12
D.19-05-042	1, 2, 5, 6, 8, 12, 13, 14
D.20-05-051	1, 2, 6
D.21-06-014	6
D.21-06-034	1, 2, 7, 8, 11, 12, 13, 14

Other Authorities

ESRB-8	1, 2, 4, 5, 6, 12, 13, 14
--------------	---------------------------

Cases

<i>Southern California Edison v CPUC</i> 140 Cal. App. 4 th	9
<i>Roddenberry v. Roddenberry</i> (1996) 44 Cal.App.4 th 634, 651-52	11
<i>City of Huntington Beach v CPUC</i> 214 Cal. App.4 th 52	12

Pursuant to Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Acton Town Council ("ATC") and the Mussey Grade Road Alliance ("Alliance" or "MGRA") (together, "Joint Parties") respectfully submit this Application for Rehearing ("Application") of Decision D.21-06-034 issued June 29, 2021 ("Decision") in the rulemaking Proceeding R.18-12-005 examining the de-energization of power lines in dangerous conditions by Investor Owned Utilities ("IOUs"). Consistent with Rule 16.1, this Application for Rehearing has been filed within 30 days after the date the Commission issued D.21-06-034; thus, it is timely filed. The Joint Parties also requests oral argument on this Application for Rehearing. As explained below, the Decision contains legal errors which can be rectified by adopting minor modifications to key provisions.

1.0 INTRODUCTION

On December 13, 2018, the Commission opened Rulemaking Proceeding R.18-12-005, Order Instituting Rulemaking (OIR), to set forth the guidelines and rules pertaining to when an IOU exercises its authority under Public Utilities Code Section §451¹ and de-energizes power lines to prevent catastrophic wildfires caused by the IOU's infrastructure (a process referred to as Public Safety Power Shutoff or "PSPS" events). The guidelines issuing from R.18-12-005 ("Guidelines") have built on, and incorporate, prior Commission decisions and resolutions issued since 2009 that establish reasonableness, public notification, mitigation and reporting requirements on all utility de-energization events².

To date, three decisions have been issued in the three phases of Proceeding R.18-12-005 (D.19-05-042, D.20-05-051, and most recently D.21-06-034) which have set forth detailed requirements pertaining to the public notification, mitigation, and reporting aspects of utility PSPS events; however, none of the decisions issued in R.18-12-005 have substantively addressed matters pertaining to reasonableness. Notably, in Phase 1 of R.18-

¹ ESRB-8 at 2.

² Prior Commission decisions include D.09-09-030, D.12-04-024, and Resolution ESRB-8.

12-005, the Commission established that it was "imperative" that the Commission review each de-energization event for reasonableness³ and it established that the issue of reasonableness of utility PSPS events would be taken up in Phase 2⁴.

The Phase 2 scope initially included the consideration of reasonableness review criteria for utility PSPS events⁵, but in the wake of the extensive wildfire events that occurred in the Fall of 2019 despite unprecedented PSPS events in which more than 2 million customers were de-energized, the Commission suspended the scope of Phase 2 "In order to refocus the direction of the proceeding to address the pressing issues before us"⁶. As a result, the Phase 2 decision (D.20-05-042) focused on notification and reporting and left unaddressed the critical reasonableness requirements that were established by D.09-09-030, D.12-04-024, and Resolution ESRB-8 to ensure utilities provide electrical service that is both reliable and safe.

In adopting D.21-06-034, the Commission has again chosen not to develop reasonableness review criteria and thereby address the omission of reasonableness from the Phase 2 decision. The omission of reasonableness criteria can be addressed in future phases of Proceeding R.18-12-005 or in a subsequent rulemaking, but due to legal errors in the present decision, set forth below, this will require modifications to D.21-06-034.

2.0 THE COMMISSION ERRED IN ITS ADOPTION OF FINDING OF FACT #26.

In D.21-06-034, the Commission adopted Finding of Fact #26, which states:

"The PSPS guidelines and rules, *as a whole*, are intended to provide direction to IOUs for how to mitigate the impacts of proactive de-energization on customers." (emphasis added)

³ D.19-05-042 at 106.

⁴ D.19-05-042 Conclusion of Law #43.

⁵ Assigned Commissioner's Phase 2 Scoping Memo and Ruling Issued August 14, 2019 in Proceeding R.18-12-005 at 9.

⁶ Administrative Law Judge's Ruling Advising Parties of Upcoming Amended Scoping Memo in Rulemaking 18-12-005 issued November 1, 2019 at 2.

This finding restricts the intent of the PSPS Guidelines to merely directing utilities on how to mitigate PSPS impacts. While doing so, it omits critical elements of Guideline intent that were established by prior Commission decisions including the intent to ensure PSPS events are reasonable, they enhance public safety, and are only used as a measure of last resort. Consequently, Finding of Fact #26 completely changes the fundamental scope and intent of the PSPS Guidelines and thus represents a significant departure from prior Commission decisions that were carefully crafted over the last decade to protect the public through robust proceedings that ensured due process rights for all parties.

While the Guidelines and rules direct IOUs how to mitigate the impacts of shutting off the power on customers, inclusion of the phrase “as a whole” implies a limitation on the consideration of questions of reasonableness, public safety, and whether shutoff was used as a last resort no longer apply. The Oxford English dictionary defines “as a whole” to mean “As a single unit and not as separate parts; in general.” Finding of Fact #26 appears to express an intent to define the scope of PSPS guidelines as encompassing only mitigation activities. Other matters that the Commission has previously identified as critical to power shutoff regulation, such as the determination of whether PSPS events increase public safety or are being executed as a last resort or whether power shutoff decisions are “reasonable” are subordinated to the electrical utilities merely making shutoff more palatable. This interpretation is a major deviation from the precedent set by prior decisions and would leave critical areas of public safety unregulated in a manner that conflicts with the Commission’s obligation to ensure that IOUs provide safe and reliable electrical power to customers.

2.1 Prior Commission Decisions Establish the Intent of the PSPS Guidelines to Address Reasonableness, Reporting, Notification and Mitigation.

Over the last 10+ years, the Commission has issued several decisions that establish that the intent of the Guidelines is to set forth policies pertaining to reasonableness, reporting, notification and impact mitigation. All of these decisions have sections that are effectively “reversed” by D.21-06-0134.

D.09-09-030

D.09-09-030 was the first Commission decision regarding the appropriateness of PSPS as a wildfire mitigation tool. By denying SDG&E's application to shut off power at thresholds below the GO 95 wind loading criteria (which SDG&E interpreted as 56 mph), the Commission established that questions of power shutoff criteria were within its purview. It established that: "Any decision by SDG&E to shut off power under its existing statutory authority may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities"⁷. D.09-09-030 also established the principle that a utility's power shutoff program must "improve public safety overall"⁸.

D.12-04-024

D. 12-04-024 provided additional guidance on SDGE's authority to proactively shut off power. Specifically, it finalized policies addressing reporting, reasonableness, notification, and mitigation of impacts that SDGE's de-energization events were required to meet. Notably, the guidance provided by D.12-04-024 broadly addressed critical public safety issues pertaining to SDGE's PSPS events and whether they were "reasonable" and was not limited merely to directives to SDGE regarding how it can reduce PSPS impacts. D.12-04-024 established a "last-resort" criterion: "SDG&E should shut off power only as a last resort, and only when SDG&E is convinced there is a significant risk that strong Santa Ana winds will topple power lines onto flammable vegetation"⁹. It also established that the utility "will have the burden of demonstrating that its decision to shut off power was necessary to protect public safety"¹⁰.

ESRB-8

ESRB-8 is the foundation for all PSPS Guidelines and it establishes fundamental PSPS policies that define the following threefold intent of the PSPS Guidelines:

⁷ D.09-09-030 at 62.

⁸ Id at 57.

⁹ D.12-04-024 at 30.

¹⁰ Idem.

1. Identify post-event reporting requirements [ESRB-8 at 3 and 5].
2. Establish mitigation measures that the utilities must implement to address the impacts of their power shutoff events, including notification, "cooling centers", and other measures [ESRB-8 at 4 and 6].
3. Establish parameters that are used to assess each de-energization event for reasonableness to confirm that the power shut off was executed only as a last resort, for good reason, and it increased public safety [ESRB-8 at 4 and 5].

The plain language of Resolution ESRB-8 demonstrates that the intent of the PSPS Guidelines extends well beyond merely directing utilities on how to mitigate PSPS impacts.

D.19-05-042

D.19-05-042 affirms the intent and "policy purpose" of the PSPS guidelines that were established by ESRB-8 and it strengthens the three-fold intent of the PSPS guidelines by:

1. Affirming and expanding the reporting purposes by establishing new reporting requirements [at A22-A25].
2. Affirming and expanding the mitigation purpose by clarifying notification requirements [at A7-A21], establishing backup generation considerations [at A12], and requiring the deployment of, and reporting on, measures (such as sectionalization) used to reduce the scope of shutoff events [at A23].
3. Affirming and expanding the reasonableness purposes by establishing that all power shutoff events will be reviewed for reasonableness pursuant to ESRB-8 [at A22, A25] to confirm whether proactive de-energization was used only as a last resort measure by reviewing the utilities' justification for using PSPS rather than other measures [at A1] and by requiring utilities to provide their decision criteria [at A22] and explain how they determined that the benefits of de-energization outweighed the public safety risks it posed [at A24].

It also commits the Commission to "explore whether to approve the reasonableness of de-energization events through a formal Commission proceeding"¹¹ and establishes as a Conclusion of Law that reasonableness guidelines should be developed to assess utility de-energization events¹². In other words, D.19-05-042 concludes *as a matter of law* that reasonableness guidelines should be developed.

¹¹ D.19-05-042 at 106-107.

¹² Conclusion of Law #43 states "SED should assist the Commission, in Phase 2 of this proceeding, to develop reasonableness guidelines for assessing de-energization events."

D.20-05-051

D.20-05-051 affirms that the Commission's rules and guidelines regarding power shutoff establish requirements for reasonableness, notification, mitigation and reporting [at 5 and 7]. It expands on the guidelines previously adopted in in Resolution ESRB-8 and D.19-05-042 [at 2, 3, 10]. D.20-05-051 further established that the PSPS guidelines are intended to provide transparency and insight into the reasoning behind the calling of every de-energization event [at 71] and it concludes as a matter of law that a utility must explain why each de-energization event was in fact a last resort option by articulating all the quantitative and qualitative factors it considered in calling, sustaining, and curtailing each de-energization event.¹³ Nothing in D.20-05-051 suggests that the intent of the Guidelines is merely to mitigate PSPS impacts; to the contrary, it expands the intent of the Guidelines to address the need for full transparency in all utility PSPS decisions so that the public can confirm for itself that each PSPS event was truly initiated in the interest of public safety and only as a last resort.

Summary of Prior Commission Decisions

Previous Commission Decisions (discussed above) clearly establish that the intent of the Guidelines extends well beyond merely "providing direction" to utilities regarding how to mitigate PSPS impacts; the Guidelines are also intended to ensure that power shutoff events enhance public safety, are used only as a last resort, and are reasonable.

Importantly, this multi-layered intent of the Guidelines remains extant and applicable to all shutoff events. This intent is not lessened by the utilities consistent and persistent refusal to comply with the Guidelines¹⁴. And, though the Commission has heretofore chosen to not address the reasonableness intentions of the Guidelines by declining to undertake any

¹³ Conclusion of Law #40 states "The electric IOUs' post event reports should include a thorough and detailed description of the quantitative and qualitative factors it considered in calling, sustaining, or curtailing each de-energization event (including information regarding why the de-energization event was a last resort option) and a specification of what factors must be present for the de-energization event to be concluded".

¹⁴ In D.21-06-014, the Commission found Southern California Edison (SCE), Pacific Gas & Electric (PGE), and San Diego Gas & Electric (SDGE) failed to comply with adopted PSPS Guidelines during PSPS events in the Fall of 2019 [See Finding of Fact #14,20, 26, 29, 31, 35, 36, 38, 39, 40, 42, 43, 50, 53, 54, 56, 57, etc.].

reasonableness review of any PSPS event since at least 2019 it has clearly indicated that it expects utilities to comply with all Guideline provisions and that the goal of public safety is undiminished and paramount.

2.2 The Commission’s Ability to Review Reasonableness has been Self-Limited.

Applicants appreciate that the Commission considered intervenors’ concerns and incorporated changes in the final decision, concluding: “While the Commission has not to date undertaken a review of the reasonableness of a utility’s decision to call a PSPS event, the Commission can do so at any time”¹⁵. Although this statement confirms that the Commission is responsible for reasonableness reviews, other portions of the Decision severely restrict what “reasonableness” means. Specifically, the Decision states that “the Commission did express an intent to consider whether to develop 'reasonableness criteria' in this proceeding. In this context, however, 'reasonableness' is more appropriately understood as the reasonableness of an IOU’s PSPS implementation efforts”¹⁶

So, while the Commission has confirmed its authority to review the reasonableness of past shut-off decisions by the IOUs, it has at the same time precluded the development of any standards or guidelines by which the reasonableness of IOU behavior might be judged because Finding of Fact #26 limits the scope of current and future development of standards to solely issues dealing with mitigation.

The development of crucial guidelines and requirements regarding what constitutes due diligence on the part of the IOUs with regard to reliance on alternatives, development of wind speed and weather thresholds, and weighing public safety risks are excluded from the regulatory framework by Finding of Fact #26 because these considerations are not part of utility mitigations. This limitation will hobble development of additional guidelines addressing reasonableness and public safety in future phases or proceedings and will severely limit the scope and power of any future Commission reasonableness review.

¹⁵ D.21-06-034 at 23.

¹⁶ Id at 24.

2.3 D.21-06-034 Errs in Leaving PSPS Public Safety Impacts Effectively Unregulated.

The Commission, by not conducting regular reasonableness reviews and by restricting the scope of any future PSPS regulation to mitigation, has abused its broad discretion under Public Utilities Code § 2101, which tasks the Commission with enforcing public utilities law. As the Alliance stated in its Comments on the Proposed Decision: “By choosing to regulate only the downstream impacts and mitigations of power shutoff, and by refusing to regulate power shutoff processes or criteria, the Proposed Decision would entirely cede the definition of what ‘safety’ is (as per § 451) to the utilities, in violation of the Commission’s obligations under Public Utilities Code § 2101. The Commission itself has the responsibility under § 2101 to determine how utilities are to operate safely under § 451, and as explained in D.20-12-015 the Commission has the discretion to determine how this is done”¹⁷.

While applicants are pleased that the final version of D.21-06-034 at least recognizes that reasonability reviews deal with public safety and are under the Commission’s purview, the fact that none have been conducted for any shutoff in 2019, 2020, or 2021 and given the new language in D.21-06-034 that restricts PSPS guidelines to addressing only impact mitigations which potentially prevents any new "guard rails" on utility behavior and thereby renders utility power shutoffs effectively unregulated. This is an abuse of the discretion the Commission allots itself in D.20-12-015 in interpreting its obligations under Public Utilities Code § 2101.

2.4 D.21-06-034 Commits Legal Error by Adopting Finding of Fact #26.

Based on the information presented above, applicants conclude that Finding of Fact #26 embodies the following specific legal errors:

1. Finding of Fact #26 that the PSPS Guidelines are intended "on the whole" to direct utilities on how to mitigate PSPS impacts reverses prior Commission Decisions. it contradicts Conclusion of Law #43 adopted in D.19-05-042 and it is inconsistent with page 24 of D.21-06-034 which states that the PSPS guidelines "are intended to enable

¹⁷ "Mussey Grade Road Alliance Comments on Proposed Decision" filed in Proceeding R.18-12-005 on June 9, 2021 at 8.

Commission review of whether such [utility PSPS] implementation efforts were reasonable". There is no basis in fact or Commission precedent for the Commission's conclusion that the Guidelines were merely intended to regulate utility PSPS mitigations. Therefore, Finding of Fact #26 is not supported by substantial evidence. The purpose of substantial evidence review is to uncover "irrational findings and thus preclude the risk of affirming a finding that should be disaffirmed as a matter of law" [*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651-52]]. And, pursuant to §1757, the Courts will overturn Commission Decisions when findings are not supported by substantial evidence; accordingly, Finding of Fact #26 will not withstand judicial review.

2. Finding of Fact #26 makes fundamental modifications to prior Commission decisions pertaining to the intent of the PSPS Guidelines without giving stakeholders the opportunity to comment on these changes or their consequences. This is because Finding of Fact #26 did not materialize until the Proposed Decision was issued which was well after all briefing opportunities were closed. Because the critical matters addressed by FOF #26 were not included in the Scoping Memo, stakeholders never had the opportunity to weigh the merits of the fundamental changes that are wrought by FOF #26. Importantly, the Commission cannot claim that stakeholders were afforded the opportunity to address matters raised by Finding of Fact #26 or discuss whether the "intent" of PSPS Guidelines should be fundamentally re-written in their comments on the PD. This is because Commission Rule 14.3(c) limits the scope of comments on proposed decisions to only factual, technical, and legal errors; comments that do not address factual, technical, or legal errors (such as those addressing the merits of a Finding of Fact or what PSPS Guidelines are "intended" to do) are always ignored and accorded no weight.
3. Finding of Fact #26 therefore violates Public Utilities Code §1701.5 for making substantive determinations on issues not set forth in the Scoping Memo mandated by §1701.5(b)
4. Finding of Fact #26 violates Public Utilities Code § 2101 requiring the Commission to ensure that utilities comply with Public Utilities Codes. The Commission exceeds the limits of its broad discretion in interpreting § 2101 by placing certain decisions and actions affecting safety, health, and convenience under utility control and eliminating any mechanism for development of standards, guidelines, or criteria by which the reasonableness of these decisions and actions may be judged.

Additionally, the Commission must abide by its own rules in a manner that is consistent with due process. Failure to follow its own rules in adopting a particular decision constitutes a failure to proceed as required by law (*Southern California Edison v CPUC* 140

Cal. App. 4th). The legal errors described above likewise involve failures by the Commission to abide by its governing regulations.

Taken together, these procedural errors on the part of the Commission substantially prejudiced the non-utility parties in this proceeding by denying them the opportunity to brief the issue of whether the intent of PSPS Guidelines should be restricted to merely directing utilities on how to mitigate PSPS impacts.

Applicants were prevented from addressing the broad legal implications of the significant and foundational changes wrought by Finding of Fact #26 which (among other things) removes the basis for developing standards by which the Commission will either ensure that PSPS events are reasonable or confirm that they are executed only as a last resort and in a manner that increases public safety. The latter is particularly important, because the Commission has been provided with abundant evidence that past PSPS events have substantially reduced public safety, resulted in wildfires, and placed thousands of Californians directly in harms way¹⁸. Finally, Finding of Fact #26 may be interpreted as ruling that the determination of reasonableness, or whether utilities use PSPS as a last resort, is not under the scope of Commission regulation; this essentially leaves critical issues of safety, health, and convenience to the discretion of utilities and outside the regulatory sphere. While the Commission has broad latitude to interpret its enforcement responsibilities under Public Utilities Code §2101, it exceeds the boundaries of reasonable discretion for the Commission to completely abrogate those responsibilities and defer entirely to the opinion of utilities regarding whether power shutoff events are executed as a last resort and in a manner that increased public safety.

¹⁸ As explained in the ATC's Opening Comments filed March 19, 2021 in Proceeding R.18-12-005, SCE's PSPS Events in the Fall of 2019 exposed the rural residents of North Los Angeles County to great public safety risk. Specifically, SCE's PSPS events actually resulted in wildfires, and one of these fires (The "Tick Fire") forced the evacuation of 40,000 people. The PSPS events eliminated all communication platforms in the areas, so residents did not receive mandatory evacuation orders. Residents who learned of the evacuation orders from friends and family were forced to flee in terror in pitch blackness in the middle of the night – see pages 14-15 and FN 20.

2.5 The Legal Errors Embodied in Finding of Fact #26 are Easily Remedied.

The Applicants respectfully request that the Commission adopt our proposed change to Finding of Fact #26 in order to remedy the errors stated herein.

p. 157 – Finding of Fact 26 - Original:

The PSPS guidelines and rules, as a whole, are intended to provide direction to IOUs for how to mitigate the impacts of proactive de-energization on customers.

Redline:

The PSPS guidelines and rules, ~~as a whole~~, are intended to provide direction to IOUs for how to mitigate the impacts of proactive de-energization on customers, to provide guidance on the balancing of risks and benefits of de-energization, and to establish criteria for reasonableness.

Final:

The PSPS guidelines and rules are intended to provide direction to IOUs for how to mitigate the impacts of proactive de-energization on customers, to provide guidance on the balancing of risks and benefits of de-energization, and to establish criteria for reasonableness.

3.0 THE COMMISSION ERRED IN REDEFINING "REASONABLENESS REVIEWS" AND RELEGATING THEM TO OPTIONAL EXERCISES.

The scoping memo establishes that the Phase 3 issues that would be addressed are "to consider whether existing de-energization guidelines should be further updated" or "whether new guidelines should be adopted"¹⁹ and it explicitly set forth a document titled "Phase 3 Staff Proposal" and directed parties to submit opening and reply comments that specifically address the "Phase 3 Staff Proposal". The "Phase 3 Staff Proposal" does not mention reasonableness reviews and gave no hint that the Phase 3 Decision would make fundamental changes to prior Commission decisions addressing reasonableness reviews²⁰. Yet, D.21-06-034 does make fundamental changes to prior Commission decisions because it re-casts "Reasonableness Reviews" as "Compliance Reviews" that merely assess whether

¹⁹ Assigned Commissioner's Phase 3 Scoping Memo and Ruling issued February 19, 2021 in Proceeding R.18-12-005 at 2-3.

²⁰ Several parties commented that the Phase 3 scope was limited and omitted "reasonableness reviews. [See Reply Comments filed on March 29, 2021 by SCE at 2 and by SDGE at 14].

a utility reasonably implemented its PSPS activities²¹; this constitutes a significant departure from prior Commission decisions wherein reasonableness reviews were intended to assess whether a utility's decision to de-energize was "reasonable".

D.21-06-034 completely re-writes every aspect of the reasonableness review process that was established by D.09-09-030, D.12-04-024, ESRB-8 and D.19-04-042 by directing it away from considering whether a utility's decision to shutoff power was "reasonable" and instead relegating to a pro-forma review of whether a utility complied with PSPS notification, mitigation, and reporting guidelines. Furthermore, D.21-06-034 completely reverses the fundamental premise adopted by ESRB-8 and reenforced by D.19-05-042 that it is "imperative" that the Commission "assess the reasonableness of all electric IOU de-energization events in order to ensure that the power shut off is executed only as a last resort and for a good reason"²²; This is because D.21-06-034 establishes that reasonableness reviews are not mandatory, rather they are merely optional exercises that the Commission can choose to undertake or ignore²³. By establishing reasonableness reviews as optional exercises, D.21-06-034:

1. Makes fundamental modifications to prior Commission decisions (including, but not limited to, ESRB-8 and D.19-05-042) without giving stakeholders the opportunity to comment on the significant changes and their consequences.
2. Impermissibly expanded the scope of the Phase 3 proceeding established by Rule 7.3 after all briefing opportunities were closed to the substantial detriment of parties that have long advocated for reasonableness reviews to be undertaken after every PSPS event [*City of Huntington Beach v CPUC* 214 Cal. App.4th]
3. Violated Public Utilities Code §1701.5 for making substantive determinations on issues not set forth in the Scoping Memo mandated by §1701.5(b).

²¹ D.21-06-034 states "we clarify here that SED's role is to review past de-energization events to determine whether utilities complied with the PSPS guidelines and rules. For these reasons, going forward, we will refer to SED's review as a 'compliance review' rather than a reasonableness review. Such determination of compliance will factor into any consideration by the Commission, at our discretion, of whether a utility's PSPS implementation efforts were reasonable."

²² ESRB -8 clarifies it is important that the Commission rely on appropriate factors "to assess the reasonableness of all electric IOU de-energization events in order to ensure that the power shut off is executed only as a last resort and for a good reason" at 4.

²³ D.21-06-034 states at 23 "While the Commission has not to date undertaken a review of the reasonableness of a utility's decision to call a PSPS event, the Commission can do so at any time."

Taken together this constitutes an abuse of discretion and due process which substantially prejudiced parties by denying them the opportunity to brief the issues of 1) Replacing the reasonableness reviews established by prior Commission decisions with "compliance reviews" that ignore whether a utility's decision to shutoff power was reasonable and instead merely address whether PSPS guidelines were reasonably implemented after the power was shut off; and 2) Whether reasonableness reviews should be relegated to discretionary exercises without any acknowledgment that circumstances may occur that warrant such reviews and without guidance on what those circumstances are. Parties were unable to explore or address the broad legal implications of the changes wrought by D.21-06-034 or the manner in which it eliminated the only regulatory backstop that ensures PSPS decisions comply with both §451 and §399.2²⁴.

The legal errors embodied in the changes that D.21-06-034 makes to the scope, extent, and purpose of the "reasonableness reviews" established by prior Commission Decision can be remedied by making the following changes to page 23 and adding a new finding of fact:

Recommended Changes to Page 23 of D.21-06-034:

Original:

"While the Commission has not to date undertaken a review of the reasonableness of a utility's decision to call a PSPS event it can do so at any time."

Redlined:

"While the Commission has not to date undertaken a review of the reasonableness of a utility's decision to call a PSPS event **it can do so at any time there may arise certain circumstances in which such reasonableness reviews are warranted, consistent with ESRB-8 and D.19-05-042. These circumstances should be explored in a future phase of this proceeding or in a subsequent proceeding.**"

²⁴ As the ATC pointed out "Compliance is never Discretionary" and reasonableness reviews are essential to "confirming that PSPS is used only as a last resort, and ensuring that the significant public safety risks posed by de-energization events are outweighed by a clear public safety benefit" [ATC Comments on Proposed Decision Filed June 10, 2021 in Proceeding R.18-12-005 at 11-12].

Final:

“While the Commission has not to date undertaken a review of the reasonableness of a utility’s decision to call a PSPS event there may arise certain circumstances in which such reasonableness reviews are warranted, consistent with ESRB-8 and D.19-05-042. These circumstances should be explored in a future phase of this proceeding or in a subsequent proceeding.”

New Finding of Fact:

While the Commission has not to date undertaken a review of the reasonableness of a utility’s decision to call a PSPS event, it is recognized that there may arise certain circumstances in which such reasonableness reviews are warranted. These circumstances should be explored in a future phase of this proceeding or in a subsequent proceeding.

CONCLUSION

D.21-06-034 issued in Phase 3 of Proceeding R.18-12-005 contains significant legal errors. However, these errors are easily remedied by modifying D.21-06-034 as set forth herein. Therefore, Joint Parties urge the Commission to grant this Application for Rehearing and adopt the recommended revisions.

Respectfully submitted this 29th day of July, 2021;

/S/ Jacqueline Ayer
Jacqueline Ayer
On behalf of The Acton Town Council
P.O. Box 810
Acton, CA 93510
(661) 468-7496
atc@actontowncouncil.org

By: /S/ Diane Conklin
Diane Conklin
Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065
(760) 787 – 0794
dj0conklin@earthlink.net