City of Piedmont
COUNCIL AGENDA REPORT

Date**:** April 4, 2005

From: Ann Swift, City Clerk

Subject: **Piedmont Hills Underground Assessment District - Status Report**

RECOMMENDATION

Determine whether or not the proposed Piedmont Hills Underground Assessment District has raised sufficient funds to enter into a Preliminary Reimbursement Agreement with the city and take other steps necessary to move forward.

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BACKGROUND

Since February 3, 2003, council has taken several actions regarding this district.

1. February 3 2003 - Received petitions requesting formation of an underground assessment district from residents living on a number of streets in eastern Piedmont including Sotelo, Glen Alpine, Crest, St. James and Calvert Court. Council accepted their petitions and directed that all of the properties be amalgamated into a single entity called the Piedmont Hills Underground Assessment District (PHUG).

2. June 16, 2003 - Public hearing regarding the boundaries of the district

3. November 3, 2003 – Approved preliminary boundary map and request to the City of Oakland to approve the inclusion of 31 parcels in PHUG which were located in whole or in part in Oakland. The Oakland City Council passed the requested resolution on November 16, 2004.

4. January 18, 2005 – Council received an update from the steering committee advising that they were short of funds for the Preliminary Expense Agreement and requesting that the city commit its 20A funds for preliminary engineering costs in order to assist the district.

The PHUG steering committee consists of Carl Anderson, Ted Buttner, Sid Ewing, Carl Foorman, Clifford Fried, Francoise Putting, Guy Saperstein, Marion Schwartz, and Lonnie Simonsen. The committee has advised staff that they have raised a total of $261,165 for the preliminary engineering and other expenses.

Based on information provided by the steering committee, council will need to make the following decisions.

1. Shall the boundaries of the district be reduced to eliminate any or all Oakland parcels? The steering committee members will need to report on financial participation of these properties in order for the council to make this decision.

2. Is the engineering cost developed by Harris & Associates in November of 2003 still valid? To date, Harris & Associates as expended over $56,000 on preliminary work for the district for which it has not been paid. The city will need written confirmation from Harris that the figure of $226,165 is still valid. This figure will also be impacted by the total number of parcels in the district as determined by the council.

3. Can the estimates for preliminary engineering from P.G. & E. and SBC be relied upon? The city confirmed the amounts proposed by the utilities in letters dated May 8, 2003. Given the length of time between these letters and the present actions and considering recent escalation in P.G.& E. costs on other districts, staff suggests that these numbers be confirmed in writing.

4. Will the city insist on a contingency of 5% or greater? The steering committee of the district has not included any such amount in their calculations and are requesting waiver. Contingency amounts cover unexpected developments such as the need to re-bid or re-ballot a district as has been the case with the Wildwood/Crocker district.

5. If the council insists on a contingency and, therefore, increases the total amount needed for a preliminary expense deposit, the steering committee requests that the city commit $25,000 of its 20A undergrounding funds for the project as originally promised.

20A Funds for 20B Projects

In October 2003, council authorized the use of $25,000 of the city's Rule 20A allocation to assist Central Piedmont District with its engineering costs, believing that only those allocations would be lost if the district failed. Subsequent to that meeting, the city learned that the PUC had revised its rule regarding use of 20A funds and now requires cash payment for engineering within two and one-half years from the date of service whether or not the district succeeds. (See page 11 of this report for the PUC ruling with ***BOLD CAPITALS*** for the critical point). Since the receipt of the PUC ruling, staff has required that districts include the P.G. & E. costs as part of their engineering deposit since failure to collect this money would put the city's general fund taxpayer monies at risk. PHUG has requested that council revisit this issue if council imposes a contingency for the preliminary expense agreement as described in item 5 above.

If council wishes to proceed with this district, staff suggests that this matter be scheduled for May 2, 2005 or some other date which the council desires and that public notice be given to all residents within the proposed district regarding this meeting. At the meeting the council will:

1. Approve a new boundary map, if required

2. Approve a Preliminary Expense Agreement with the district based on confirmed figures as noted above

3. Approve an agreement with Harris & Associates as Engineer of Work

4. Approve an agreement with Orrick, Herrington & Sutcliffe as bond counsel

5. Pass a Resolution of Intention which will allow preliminary engineering to proceed and a benefit assessment to be developed

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3767**

June 27, 2002

R E S O L U T I O N

E-3767 - Tariff Rule 20-A and B issues: (1) Utility Advice Letters Are Denied; (2) Tariff language in Rule 20A and 20B shall be modified.

By Pacific Gas & Electric Company (PG&E) Advice Letter 2188-E filed January 10, 2002, Southern California Edison Company (Edison) Advice Letter 1593-E filed January 10, 2002, and San San Diego Gas & Electric Company (SDG&E) Advice Letter 1387-E filed January 31, 2002.

Summary

This Resolution: (1) Denies authority requested by electric utilities PG&E, SDG&E, and Edison to revise Sections A and B of Tariff Rule 20, "*Replacement of Overhead with Underground Electric Facilities*, " in compliance with Decision (D.) 01-12-009 namely to: (a) expand Rule 20A criteria to include arterial streets or major collectors; (b) allow Rule 20A funds to be used in combination with Rule 20B funds to promote more conversion projects; and (c) allow cities to mortgage Rule 20A allocations for up to five years. Also, the language in Tariff Rules 20A and 20B shall be modified.

Background

Beginning in 1967, the Commission required new electric service connections to be placed underground and funded a gradual program to convert existing overhead lines, including concomitant communication lines, to underground service. Cities and local governments, as well as other parties, have raised a number of issues regarding the current program.

On January 6, 2000, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking (R.) 00-01-005 to look into the implementation of Assembly Bill (AB) 1149. AB 1149 required the Commission to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground service. Currently, under Rule 20A, electric utility ratepayers bear most of the costs of the underground conversion.1 Rule 20A allocations are available when undergrounding is "in the public interest."

Rule 20B provides limited ratepayer funding for the cost of an equivalent overhead system, and any work on overhead facilities, but the balance of the costs, including installing cables, conduits, transformers, and structures, must be paid by the customer requesting undergrounding. Rule 20 B projects must 1) be agreed to by all property owners served by the overhead lines; 2) include both sides of the street; and 3) extend for a minimum footage. Additionally, the lines must be along public streets and roads or other locations mutually agreed upon.

On December 11, 2001, the Commission adopted D.01-12-009 to revise the rules governing the State's program to convert overhead electric and communications distribution and transmission lines to

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1 Utility shareholders bear none of the costs of underground conversion projects Cost responsibility is split between individual ratepayers and all ratepayers together, depending on how much all ratepayers will benefit from the improvement.

underground. Decision 01-12-009, among other things, expands the Rule 20A criteria, extends the use of Rule 20A allocations, allows cities to mortgage rule 20A funds for five years, requires standardized reporting from the utilities, improves communication between utilities, cities, and residents, and orders the creation of an up-dated Undergrounding Planning Guide.

PG&E filed its Advice Letter 2188-E on January 10, 2002. The revised tariff sheets of Rule 20, Sections A and B would be revised to: (1) expand the Rule 20A criteria to include arterial streets or major collector roads as defined in the Governor's Office of Planning and Research General Plan Guidelines (Section a.1.a(4), (2) allow the use of Rule 20A funds to be used in combination with Rule 20B funds for engineering/design costs (Section B.4), and (3) allow cities with a positive allocation balance to mortgage Rule 20A allocations up to a maximum of five years (Section A.2.e). For reasons similar to PG&E's, SDG&E filed Advice Letter 1387-E on January 31, 2002 and Edison filed Advice Letter 1593-E on February 13, 2002.

Notice

Notice of PG&E's Advice Letter 2188-E, Edison's Advice Letter 1593-E, and SDG&E's Advice Letter 1387-E was made by publication in the Commission's Daily Calendar on January 14, 2002, January 14, 2002, and February 4, 2002, respectively. PG&E, Edison, and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

Protests

PG&E's Advice Letter 2188-E, Edison's Advice Letter 1593-E, and SDG&E's Advice Letter 1387-E were all protested.

With respect to PG&E's AL 2188-E:
On January 29, 2002, the 19th Street Neighbors, through their representative Utility Design, Inc., (UDI) filed a timely protest of PG&E's advice letter. The protest was that AL 2188-E does not provide the flexibility in the use of Rule 20A funds for Rule 20 B projects, as mandated by D.01-12-009. UDI states, "*Advice Filing 2188-E fails to implement the Commission's directive. The Filing provides new Rule 20B.4 allowing PG&E to fund engineering studies on Rule 20B projects. However, a close reading of new Rule 20B.4 indicates that no funding is provided. Instead, the new Rule states only that PG&E will perform engineering studies. New Rule 20B.4 states: "'[I]n the event the project is not approved to proceed within one year of PG&E's delivery of such engineering/design study…"' This is no change from PG&E's current practice. This language fails to provide the flexibility intended by D.01-12-009 and prohibits cities and county access to Rule 20A allocations to fund 20B projects as D.01-12-009 so directs. Indeed, given the delays cities and counties already experience in waiting for PG&E to deliver engineering work, new Rule 20B.4 does not provide any assistance in promoting 20B projects."* In order to properly implement D.01-12-009, UDI requests that new Rule 20B.4 be redrafted to include language stating that conversion projects may be performed by PG&E or by a third party registered engineer retained by the city or county. The other change they would like redrafted is that the requesting city or county shall reimburse PG&E for the costs it advanced for such engineering/design study within 90 days of a demand by PG&E.

On January 30, 2002, Ms. Margit Roos-Collins made a timely protest of PG&E's advice letter. Ms. Roos-Collins stated in her letter that PG&E's proposed changes to Rule 20 are incomplete in providing the service impacts sought by Commission's D. 01-12-009. Specifically, Ms. Roos-Collins states that she believes Rule 20A monies should be divided between projects and there should be changes made to Rule 20B reimbursement formulas. In D. 01-12-009, on page 20, in Sections VI.A.2a, the Commission's recommendations regarding increased leverage of 20A and 20B funds included the following suggestions for allowing Rule 20A funds to be used in combination with Rule 20B funds:

1) Rule 20A funds could be used to seed Rule 20B projects;
2) Utility-owned streetlights and transformers could be underground;
3) The amount of money apportioned among all affected homeowners could be reduced; and
4) Low-income property owners could be subsidized.

Ms. Roos-Collins claims that PG&E's AL 2188-E partially addresses the first of these recommendations, by proposing to allow the engineering/design study for type 20B projects to be advanced from a city's 20A funds. However, this protest claims the Commission's recommendations went further.

On January 30, 2002, Grueneich Resource Advocates (Grueneich), on behalf of The City of Oakland (0akland), protested PG&E's AL 2188-E. Grueneich claims in its protest letter that AL 2188-E does not

comply with D. 01-12-009, and if adopted in its current form would create new obstacles for local governments attempting to convert overhead utility lines to underground. Grueneich also provides suggested language changes for the three areas it believes are not in compliance with D.01-12-009. These three areas are: (a) the proposed tariff imposes unauthorized requirements on local governments; (b) the proposed tariff makes it difficult to mortgage funds by inserting an unauthorized requirement; and (c) the proposed tariff language limits the ability of local governing agencies to leverage Rule 20A and 20B funds.

On February 6, 2002, PG&E replied to the protest comments by Grueneich Resources Advocates on behalf of the City of Oakland. PG&E responded to each of the three areas of concern. For the first area of concern PG&E states, "*PG&E is not dictating to local governments. Each city and county in California is required to have an approved General Plan including a circulation plan for the development of its community. A required component of these plans is the classification of streets and roads in accordance with the system set forth by the United States Department of Transportation. Neither the proposed PG&E tariff nor the Commission decision impose this requirement. The requirement that cities and counties prepare and adopt traffic and circulation plans as part of their General Plans already exists. Indeed, the City of Oakland already has a circulation plan which includes a map showing arterial, major collector and other (e.g., local) streets. However, to avoid future controversies about what streets meet the public interest requirement of Rule 20A – for the sake of consistency and equity throughout PG&E's service territory – PG&E intends to use the designations of arterial and major collector streets as set forth in the adopted General Plan. The tariff therefore is not imposing unauthorized requirements; it simply provides for consistency between adopted General Plans and proposed public interest undergrounding projects."*

Concerning the second issue PG&E states*, "The goal of the five-year mortgage rule is to allow cities to accelerate work on large projects. If there is no provision in the tariff to require "a positive allocation balance" before cities can borrow more funds, cities that currently have a negative balance in their account could borrow forward and remain in debt to the ratepayer forever. The rule proposed by PG&E is fair and definitive. It allows the cities to mortgage forward for five years without placing undue strain on ratepayer funding. However, like a regular mortgage, once you borrow, you must start paying back. The "positive balance" requirement does not unduly restrict undergrounding Rule 20A projects. Rather, it requires that each project include at least one dollar of actual allocation instead of using all borrowed funds."*

Concerning the third issue, PG&E states, *"On the one hand, it is unreasonable to expect PG&E ratepayers to act as the "'bank"' for the cities' and counties' multiple engineering studies without expectation of being reimbursed in a timely fashion. The additional time requested by Oakland would increase costs to PG&E and its ratepayers. Moreover, changes brought about by Proposition 218, notably postcard ballots, have resulted in a streamlined process for establishing an assessment district and for issuing bonds to finance undergrounding projects. Nevertheless, PG&E understands and appreciates Oakland's concern and will revise the tariff language to provide 18 months for project approval prior to requesting reimbursement for engineering study costs, in the event the project does not receive approval. For these reasons, PG&E respectfully requests that the Commission approve Advice 2188-E, with the following modification to Rule 20B(4): ""'In the event the project is not approved to proceed within 18 months of PG&E's delivery of such engineering/design study, the requesting city or county shall reimburse PG&E for its cost of such engineering design study within 90 days of a demand by PG&E."'"*

On February 6, 2002, the City of San Francisco filed late comments to PG&E's AL 2188-E. The City of San Francisco stated that PG&E has proposed tariff language permitting a city to mortgage Rule 20 funds for up to five years, but has conditioned a city's ability to do so on PG&E's determination *"that additional participation on a project is warranted and resources are available."* San Francisco requests that the Commission modify PG&E's AL 2188-E to remove the condition on a city's ability to mortgage funds. The City of San Francisco also states that it submits its support for the issues raised in the City of Oakland's protest of AL 2188-E.

On March 7, 2002, PG&E replied to the protest comments filed by the City of San Francisco. PG&E stated in its response that the purpose of its proposed tariff language is not to condition a city's ability to mortgage funds, provided the city has a positive allocation balance. PG&E states that the purpose of the proposed language is no different than the Commission approved language already established in PG&E's Rule 20. PG&E believes that the City of San Francisco is merely attempting to obtain unfettered discretion to use general ratepayer funds for its own unscrutinized purposes. PG&E responded to the other issues raised by the City of San Francisco protest in the same manner it replied to the same issues raised by the City of Oakland's protest letter dated January 30, 2002.

With respect to Edison's AL 1593-E:
On February 25, 2002, Los Angeles County and the cities of Santa Fe Springs and Yucaipa (collectively called the "County") protested Edison's AL 1593-E. The issues protested included: 1) unwarranted self-granted discretion by Edison over use of mortgage provision; 2) unauthorized positive allocation balance requirement would restrict mortgage use; and 3) suggested modifications to the proposed model tariff rule.

On March 4, 2002, Edison replied to the protest comments by Los Angeles County and the cities of Santa Fe Springs and Yucaipa (collectively called the "County"). Edison believes that the County's protest reflects a failure to understand not only the history of Rule 20A mortgaging, but also the very nature of utility capital spending itself. Edison believes that mortgaging should be discretionary with utilities, not a matter of right for local governments, and states that nothing in D.01-12-009 says otherwise. Edison feels that such discretion is necessary because capital expenditures are authorized in gross amounts in General Rate Case authorized rates. Edison feels utilities must have flexibility as to exactly when and where they spend those capital dollars because system needs cannot always be projected with precision and unforeseen circumstances – such as mass disasters – can always present a need to reallocate capital dollars to maintain or restore essential and basic system operations – clearly a much higher priority than the aesthetics of Rule 20A. Edison is also opposed to the County's objection to Edison's proposed requirement that any local government wishing to mortgage (exceed its accrued allocations) should have a positive allocation balance because the utilities and the Commission have tried in D.01-12-009 to make manageable incremental changes to the program consistent with sound operation of the essential enterprise of providing safe and reliable utility service to customers.

With respect to SDG&E's AL 1387-E:
On February 19, 2002, the 19th Street Neighbors, through their representative Utility Design, Inc., (UDI) protested SDG&E's AL 1387-E. UDI's protest was similar to and provided the same arguments as their protest to PG&E's Advice Letter 2188-E, discussed above.

On February 26, 2002, SDG&E replied to the protest comments by UDI on behalf of the 19th Street Neighbors. On the issue concerning the Commission's intent to give cities and counties as much flexibility as possible in financing Rule 20B projects, SDG&E states, *"UDI mistakenly believes that by providing flexibility under Rule 20A to help seed Rule 20B projects, that the Commission intended that the utilities forfeit control over administration of the Rule 20 program. SDG&E contends that this is simply not true. The utilities, not the cities or counties, still have responsibility for the overall control and administration of the Rule 20 program since they are collecting these funds on behalf of all ratepayers. Therefore, it is the utilities that decide whether or not to outsource the engineering studies. Furthermore, in the final decision (D.01-12-009), the Commission indicated that the issue of incentives and competitive bidding (outsourcing) would be explored in Phase 2. Hence, UDI's comments are outside the scope of this phase of the proceeding and all parties will be afforded an opportunity to be heard on whether outsourcing to third parties is appropriate or not during Phase 2 when it is scheduled."*

On the issue of UDI contending that funds (versus allocations) in D.01-12-009 are critical and that flexibility can only be accomplished through the loan of "real money" to cities and counties for use on Rule 20B projects, SDG&E states, *"Again, UDI is confusing "allocations" with the "real money." Clearly, the Rule 20B.4 language states that it is the intent to collect the costs for the engineering/design costs from the Rule 20B project owners who receive the benefit of the Rule 20B projects. If the Rule 20B project doesn't move forward within one year, then these costs will be subtracted against the cities or counties allocations, and do not represent real dollars from the cities/counties coffers as UDI's suggests."*

On February 25, 2002, Los Angeles County and the cities of Santa Fe Springs and Yucaipa (collectively called the "County") protested Edison's AL 1593-E. The issues protested included: 1) unwarranted self-granted discretion by Edison over use of mortgage provision; 2) unauthorized positive allocation balance requirement would restrict mortgage use; and 3) suggested modifications to the proposed model tariff rule.

Discussion

Underground conversion has been undertaken by the electric and telephone companies under the jurisdiction of the Commission. PG&E's Conversion Tariff, Rule 20, is the vehicle for the implementation of the underground conversion programs. Rule 20 dictates three levels, A, B, and C, of ratepayer funding for the projects.

Under Rule 20A, the utility ratepayers bear most of the costs of the undergrounding conversion. Rule 20A funds are only available when undergrounding is "in the public interest" for one of the following reasons:

a. Such undergrounding will avoid or eliminate an unusual heavy concentration of overhead facilities;
b. The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic; and
c. The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public.

Rule 20B provides limited ratepayer funding equal to the cost of an equivalent overhead system, and any work on overhead facilities, but the balance of the installation costs, including cables, conduits, transformers, and structures, must be paid by the customer requesting undergrounding. Rule 20 B projects must 1) be agreed to by all property owners served by the overhead lines; 2) include both sides of the street; and 3) extend for a minimum footage. Additionally, the lines must be along public streets and roads or other locations mutually agreed upon.

D.01-12-009 revises the rules governing the State's program to convert overhead electric and communications distribution lines to underground. In brief, this order expands Rule 20A criteria; extends the use of Rule 20A funds; allows cities to mortgage 20A funds for five years; requires standardized reporting from the utilities; improves communication between utilities and residents; and orders the creation of an updated Undergrounding Planning Guide.

The utilities state that their interpretations of D.01-12-009 are reasonable in filing their tariff language in Advice Letters 2188-E, 1387-E, and 1593-E. However, the Commission does not believe the tariff language in these advice letters complies with the intent of D.01-12-009, and if adopted in their current form would create new obstacles for local governments attempting to convert overhead utility lines to underground.

First, the proposed tariff imposes unauthorized requirements on local governments. D.01-12-009, at page 21, expands the definition of public interest criteria to be used in determining underground utility districts to include arterial streets or major collectors:

> "It makes sense to allow for the application of Rule 20A funds for arterial streets or major collectors as defined in the Governor's Office of Planning and Research (OPR) Guidelines used by cities and counties as a reference tool for drafting General Plans. "

The utilities take this requirement much further than authorized by the Commission. For example, PG&E's proposed Rule 20A(1)(a)(4) states:

> "The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines and identified in the mandatory circulation element of the city or county general plan pursuant to the California Government Code."

PG&E's interpretation would be dictating to local governments how they must develop their General Plans if they wish to use Rule 20A funds. This proposed requirement limits the ability of cities and counties to complete underground conversion projects, and contrary to the Commission's stated goal of *"…creating expanded options for cities to define public interest projects…*" Nothing in D.01-12-009 authorizes the utilities to add the General Plan consistency requirement. Therefore, the Commission believes this section should be modified as follows:

> *The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines.*

Secondly, the utilities' proposed tariff makes it difficult to mortgage funds by inserting an unauthorized requirement. D.01-12-009 allows cities to mortgage their Rule 20A allotments for a total of five years, whether the funds are retroactive or prospective. It does not place restrictions on the status of a city's allocation balance. However, the proposed tariff places an unauthorized restriction on local governing agencies by requiring that the city or county have a positive allocation balance. This additional requirement will further hinder local governing agencies in their planning activities for underground conversions, and effectively negate the longer mortgage period granted in D.01-12-009. Therefore, the Commission believes this section of the tariff Rule 20A(2)(e) should be modified as follows:

> *Upon request by a city or county, the amounts allocated may be exceeded for each city or county by an amount up to a maximum five years' allocation at then-current levels where (the utility) establishes that participation on a project is warranted and resources are available.*

Additionally, the proposed tariff language limits the ability of local governing agencies to leverage Rule 20A and 20B funds. D.01-12-009 allows local governing agencies to use Rule 20A funds to seed Rule 20B projects, for example by funding the required initial engineering study for Rule 20B projects, with a requirement that the funds be reimbursed if the underground conversion project goes forward. The decision does not place any time constraints on when such reimbursement must be completed. In the proposed tariff

language, the utilities arbitrarily place a limit of one year on this reimbursement. This requirement does not comport with the realities of what is required when local governing agencies establish underground utility districts. After the engineering/design study is received, the city or county must adhere to its public hearing process to establish the underground utility district, which includes meeting with property owners in the proposed district; holding an election for the assessment district; and issuing bonds to finance the project. The utility will be reimbursed from the proceeds of the bond issue. Despite best intentions, it is not always possible to complete all these tasks within one year. The Commission believes this section of the tariff, Rule 20B(4) should be modified as follows:

> *In the event the project is not approved to proceed within two and one-half years of the utility's delivery of such engineering/design study, the requesting city or county shall reimburse the utility for its cost of such engineering design study within 90 days of a demand by the utility.*

Comments

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on May 10, 2002. Comments were due on May 31, 2002; reply comments were due on June 10, 2002.

Comments were filed by PG&E on May 31, 2002 opposing the draft resolution. Grueneich Resource Advocates, on behalf of the City of Oakland, filed comments on May 31, 2002 supporting the draft resolution.

The directions contained in the request for comments on the draft resolution state, *"Comments shall focus on factual, legal, or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted. Replies in comments…shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties."*

All comments reargue positions previously stated and are accorded no weight, except as acknowledged in the following paragraphs.

PG&E's comments are directed in two areas: public interest criteria and mortgaging allocations. First, with regard to public interest criteria, PG&E believes that it is legal error to eliminate the general plan consistency requirement for the proposed tariff in proposed Rule 20A(1)(a)(4). PG&E states that by eliminating the reference to the general plan, the proposed Rule 20A undergrounding projects need not be consistent with that city's or county's adopted general plan. Second, with regard to mortgaging allocations, PG&E believes the Commission's tariff language allowing for five years' allocation amounts without requiring a positive balance constitutes a technical error. PG&E believes this would set up a condition where cities and counties could propose projects beyond their means without any provision for timely repayment.

Grueneich and Associates, on behalf of the City of Oakland, filed comments on May 31, 2002 recommending the Commission adopt the draft resolution as prepared.

Findings

1. This Commission Resolution denies giving authority to the three major public utilities to revise Sections A and B of Tariff Rule 20, "*Replacement of Overhead with Underground Electric Facilities*," with the text given in their respective advice letters.

2. This Commission finds that Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company should file advice letters within one month of the effective date of this Order revising Sections A and B of Tariff Rule 20 in accordance with the italicized portions of the Discussion section in this resolution, as follows:

   - Rule 20A(1)(a)(4) should state, *"The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines."*
   - Rule 20A(2)(e) should state, *Upon request by a city or county, the amounts allocated may be exceeded for each city or county by an amount up to a maximum of five years' allocation at then-current levels where (the utility) establishes that participation on a project is warranted and resources are available."*
   - ***RULE 20B(4) SHOULD STATE, IN THE EVENT THE PROJECT IS NOT APPROVED TO PROCEED WITHIN TWO AND ONE-HALF YEARS OF THE UTILITY'S DELIVERY OF SUCH ENGINEERING/DESIGN STUDY, THE REQUESTING CITY OR COUNTY SHALL REIMBURSE THE UTILITY FOR ITS COST OF SUCH ENGINEERING DESIGN STUDY WITHIN 90 DAYS OF A DEMAND BY THE UTILITY."***

Therefore it is ordered that:

1. The requests of Pacific Gas and Electric Company, (Advice Letter 2188-E, filed January 10, 2002), Southern California Edison Company (Advice Letter 1593-E filed January 10, 2002) and San Diego Gas and Electric Company (Advice Letter 1387-E filed January 31, 2002), are all denied.

2. These aforementioned utilities should each file an advice letter to revise its tariff Rule 20 as stated in the Finding 2 of this resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 27, 2002; the following Commissioners voting favorably thereon:

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WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD

GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners