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August 8, 2024

Nathan Sarina
Program and Project Supervisor
Safety and Enforcement Division, Wildfire Safety and Enforcement Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Dear Mr. Sarina:

This letter responds to your July 9, 2024 Notice of Violation (NOV) regarding the Fairview Fire, which began on September 5, 2022 in Hemet, in Riverside County. The NOV alleges SCE committed four violations of General Order (GO) 95 related to the Span between poles 220029S and 220028S:

- 1) a violation of GO 95, Rule 31.1, from June 2, 2020 to September 5, 2022, for two conductors (Phase 1A conductor and Phase 1B conductor) sagging below “the maximum limit” specified in SCE’s internal construction manual,
- 2) a violation of GO 95, Rule 31.1 for failing “to detect, identify, and correct the excessive sag” during eight inspections of poles 220029S and 220028S between May 11, 2021 and February 23, 2022,
- 3) a violation of GO 95, Rule 37, Table 1, Case 5 for not maintaining the required minimum vertical clearance of the Phase 1B conductor above ground on September 8, 2022, and
- 4) a violation of GO 95, Rule 38 for not maintaining the required minimum vertical clearance of the Phase 1A and Phase 1B conductors above a Frontier Communications messenger cable on September 8, 2022.

The NOV also asserts SCE violated GO 95, Rule 19 and the Public Utilities Code (PUC), Section 316 (Violations 5 and 6, respectively) for not timely responding to the Safety Enforcement Division’s (SED) first set of data requests on the Fairview Fire (DR01). SCE will respond first to these latter allegations to apologize and underscore our commitment to full cooperation with SED. SCE acknowledges and sincerely regrets the impact on SED’s team caused by the delays in providing responses to DR01. SCE takes its obligation to respond to SED’s Data Requests seriously¹ and assures the Commission that the unfortunate delays in

¹ See SCE’s July 10, 2023 letter in response to SED’s “Notice of Inclusion of Violations in Fairview Fire Investigation” explaining the circumstances leading to the delay in providing responses. SCE is not resubmitting that letter here but respectfully requests that SCE’s fuller response be part of any posted record in this matter.

responding were neither intentional nor the result of lack of respect for the Commission or its investigation. With the unique and atypical circumstances that led to the delay for Fairview DR01 behind us, SCE is pleased to confirm that it has since met the original deadline for all subsequent SED Wildfire Data Requests. SCE is dedicated to continually improving upon our internal processes for responding to Data Requests and is open to feedback that will continue to foster a constructive and positive working relationship with SED.

SCE's responses to the other alleged violations are below. As a threshold matter, SCE notes that it is not aware of any evidence, and has no reason to believe, that the vertical clearance distances measured on September 8, 2022 (Violations 4 and 5) existed prior to the Fairview Fire.

Violations of GO 95, Rule 31.1 (Violations 1 and 2)

The alleged violations of GO 95, Rule 31.1 are based on a misunderstanding of SCE's internal standards. SCE's standards do not provide maximum allowable sags that must be met in the field.

SCE's Distribution Overhead Construction Standards (DOH), CO 140, is a design standard that specifies conductor "Stringing Sag" values to ensure compliance with design tensions and GO 95-required safety factors for conductors. Typically, the greater the sag, the lower the design tension. Thus, the Stringing Sag values in the DOH are *minimum* values that will ensure the design tension is not exceeded. DOH, CO 140 also specifies "Final Sag" values. Final Sags are not maximum sag values that must be met in the field. Rather, Final Sags are used by SCE planners in design calculations to ensure correct pole height and other design requirements are met. The sag on an installed conductor that exceeds the Final Sag value in the DOH, CO 140 does not violate SCE's internal standards provided the conductor complies with GO 95 minimum clearances.

Further, the DOH Final Sag value cited in the NOV – 9 feet 10 inches (9.833 inches) – is incorrect because it does not account for the elevation change between poles 220029S and 220028S. Adjusting for the elevation change, the correct Final Sag value under DOH, CO 140 is at least 10 feet 5 inches (10.4 feet).² SCE acknowledges that the 9 feet 10 inches sag value cited in the NOV, as well as the reference to the sag value as a "maximum," was provided by SCE in response to data requests from SED. This imprecise language was in error and SCE will submit supplemental data requests correcting these responses.

Finally, SCE notes that it requires inspectors to identify "excessive sag" during overhead detailed inspections and enhanced overhead inspections. The actual sag values of the Span on June 2,

² The elevation change requires calculating a Final Sag for an equivalent span length of 515 feet. The longest span length in CO 140 is 500 feet, with a Final Sag of 10 feet 5 inches.

2020 were 10.5 feet and 11.1 feet for the Phase 1A and Phase 1B conductors, respectively. Thus, the actual sag exceeded the corrected Final Sag of 10.4 feet by about 1 inch (.1 feet) on the Phase 1A conductor and about 8 inches (.7 feet) on the Phase 1B conductor, amounts that are not “excessive,” especially when considering the fact that the sag was measured over a 487-foot span and there were no measured GO 95, Rule 37 clearance violations over the Span on June 2, 2020.

Given the apparent misunderstanding of SCE’s internal standards for ensuring adequate sag and given that there was no excessive sag such as to cause a clearance violation or any unsafe condition, there is no factual or foundational basis for alleged Violations 1 and 2.

Violations of GO 95, Rule 37 and GO 95, Rule 38 (Violations 3 and 4)

The NOV alleges that LiDAR measurements taken September 8, 2022, three days after the start of the Fairview Fire, show the Phase 1B line in the Span was in violation of the minimum ground clearance requirement of GO 95, Rule 37 and that the Phase 1A and Phase 1B conductors were both in violation of GO 95, Rule 38 because they were less than the required minimum vertical distance from a Frontier Communications messenger cable. As noted above, SCE is not aware of any evidence, and has no reason to believe, that the clearances measured on September 8, 2022 existed prior to the Fairview fire. SCE’s inspections prior to September 8, 2022 did not identify excessive sag on the Phase 1A or Phase 1B conductor.

“Pancaking” of Violations in the NOV

SCE objects to the NOV’s assertion of multiple violations for the same alleged conduct. Specifically, SCE objects to the NOV’s assertion that conductors sagging below “the maximum limit” from June 2, 2020 to September 5, 2022 constituted two violations: a violation of GO 95, Rule 31.1 “for failing to maintain the maximum sag limits” (Violation 1) and a violation of GO 95, Rule 31.1 for SCE’s failure “to detect, identify, and correct the excessive sag” (Violation 2).³ This pancaking of GO 95, Rule 31.1 violations is improper under the plain language of Rule 31.1, which applies only to “particulars *not specified in General Order 95.*”⁴ As explained above, SCE’s DOH sag standards ensure compliance with GO 95’s safety factors and minimum clearances (a conductor that complies with the GO 95 safety factors and minimum clearances also complies with SCE’s DOH sag standards). It is improper to subject SCE to administrative penalties under Rule 31.1 for conduct that is directly addressed in other rules of GO 95.⁵

³ As noted above, SCE objects to both Violation 1 and 2 because they are based on an incorrect understanding of acceptable sag levels under SCE’s internal standards, so neither alleged violation is substantively viable.

⁴ *Emphasis* added.

⁵ For the same reason, SCE objects to the assertion that its delayed response to SED’s first set of data requests constituted two violations: a violation of GO 95, Rule 19 for “hinder[ing] and delay[ing] SED’s ability to investigate the Fairview Fire” (Violation 5) and a violation of PUC Section 316 “for failing to cooperate fully with the Commission in its investigation” (Violation 6).

The Commission has recognized that subjecting a utility to two administrative penalties, one under Rule 31.1 and one under another provision of GO 95, for the same conduct is “arguably unfair.”⁶ Double penalties violate a utility’s due process because the utility is not on notice that conduct could subject it to penalties in excess of the amounts set forth in the Public Utilities Code for a single violation.

The NOV Does Not Support its Implication that the Violations “Resulted” in the Fairview Fire

The NOV implies that the alleged GO 95 violations “resulted in a fire... that burned approximately 28,098 acres in a Tier 3 High Fire Threat District (HFTD)” and caused other damage to life and property. SCE is not aware of the connection between the alleged clearance violations and the start of the fire, as the excessive sag appeared only after the fire and it is not known if the post-fire clearance conditions measured three days after ignition were a result of fire suppression or other post-fire activity. If there were to be a future enforcement action, SED would bear the burden of proving that its proposed penalties should be enhanced on the basis that the alleged violation caused the fire. The NOV does not allege any facts indicating that the alleged GO 95 violations caused the Fairview Fire.

SCE Will Ensure Compliance with GO 95 Prior to Re-energizing the Span

SCE has not installed new conductors or energized the Span since the Fairview Fire. Prior to energizing the Span, SCE will ensure all GO 95 requirements are met.

Conclusion

SCE appreciates the opportunity to respond to the NOV. Please do not hesitate to contact me if you have any questions about this response.

Sincerely,



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⁶ R.01-10-001 Appendix A, Workshop Report, at A-29.

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