

# **APPENDIX B**

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### DECLARATION REGARDING THE PETITION TO REPEAL RULE 18 OF GENERAL ORDER 95

#### BACKGROUND

In 2009, the Commission adopted General Order (GO) 95, Rule 18. The Commission subsequently amended Rule 18 in 2012 and changed "violation" to "nonconformance." This amendment to Rule 18 introduced the concept of GO95 "nonconformance" and required utilities to prioritize and correct such "nonconformances" based on a schedule specified in the rule.

Rule 18 is flawed for many reasons. First, the rules in GO 95 are fundamentally required to be complied with at all times – they are the law and not "recommended practice".

Second, there are existing rules in GO 95, such as Rule 31.2, that require utilities to inspect their facilities frequently and thoroughly "so as to conform with these rules."

Third, previous Commission decisions have clearly ruled that a "nonconformance" and a violation are equivalent and creating a rule that allows "nonconformances" takes away the utilities' incentive to comply with the rules.

Rule 18 created a major contradiction in GO 95 itself: If a GO 95 rule is violated, then the responsible entity is in violation of the law and is subject to a penalty under the Public Utilities Code. But, Rule 18 is in conflict with that statement as it effectively allows "nonconformances" to exist as long as they are addressed by the utility. In fact, Rule 18 goes further by prescribing specific priorities and correction schedules, thereby further legitimizing "nonconformances" to exist.

***Rule 18, in effect, undermines the entirety of GO95 by allowing utilities to create "nonconformances" as long as they have plans to correct them.***

The consequences of adopting Rule 18 were severe. In essence, staff's ability to enforce the rules in GO95 has been impeded. The following sections describe examples of difficulties faced by staff in enforcing GO95 after Rule 18 was adopted.

#### **Utility/CIP Audits and Accident Investigations**

It has become common practice for utilities and Communication Infrastructure Providers (CIPs) to argue that they do not need to keep their system in compliance with GO 95 and that any violations staff finds are not technically violations if the utility/CIP has "plans" to correct them. Utility/CIP responses to staff audits and investigations dispute that the mere occurrence of a GO 95 violation is, in fact, a violation – it is only a "nonconformance" and that, as long as it has been identified and added to a database, then full compliance with the law has been achieved. In certain cases, they have gone further by stating that any "nonconformance" that has not yet been identified by them cannot be considered a violation since they have no knowledge of it. Essentially, the accountability and incentive to keep systems in compliance

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with the rules has been entirely removed by the introduction of Rule 18. Appendix A, attached to the petition, is a typical utility response to staff violation letters.

### INCIDENTS AND EXAMPLES OF HOW RULE 18 IMPEDES SED'S GO 95 ENFORCEMENT

#### Belmont Heights

One of the important functions of the Commission's safety staff is to respond to customer safety complaints and ensure that the utilities/CIPs address them. Historically, when customers brought safety problems to staff's attention, staff investigated the complaint and determined if there were safety violations. When violations were found, staff immediately requested that they be corrected and the utilities corrected them in a timely manner.

Since the introduction of Rule 18, this basic and important procedure has become increasingly difficult to follow. In cases when legitimate complaints are received from customers and GO95 safety violations are found, utilities/CIPs have refused to correct the violations citing that they are mere "nonconformances" and that they have the ultimate say in when they correct them.

For example, when the Belmont Heights community of Long Beach brought to the staff a complaint citing a high number of safety issues on Verizon's overhead facilities in their neighborhood, staff conducted an investigation. The investigation found a high number of violations concentrated in a few blocks. Staff notified Verizon of the violations and directed that they correct the violations by a specified date. Verizon's response was the following:

"... you 'direct' Verizon to correct all of these purported violations by July 18, 2014. But we are allowed to determine the timing of correcting actual nonconformances with GO 95 within the ranges allowed in Rule 18A of GO 95. We will follow the latter, but are willing to provide SED with a progress report on work performed in this area by July 18, 2014."

Rule 18 has made it impossible for staff to make utilities/CIPs comply with the rules even as a response to customer safety complaints. This has caused the public to wonder whether Commission staff really has the authority to enforce the safety rules.

#### Citation OII

In the Commission's ongoing effort to create a citation program for electric utilities (R.14-05-013), Rule 18 has been brought up by electric utilities again in an attempt to convince the Commission that a "nonconformance" should not be subject to a citation if the "nonconformance" is "scheduled to be addressed" per Rule 18.

Although it is clear that violations are subject to a penalty in the Public Utilities Code and that the Commission has repeatedly ruled that a violation and a "nonconformance" are the same thing, utilities

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are using Rule 18's conflict with the rest of the GO 95 to their advantage. Their whole argument rests on the premise that Rule 18 allows "nonconformances" to exist.

### Verizon/Frontier Decision

Rule 18 has caused so much confusion that its effects can even be seen in Commission decisions. In Commission Decision 15-12-005 in the Verizon/Frontier merger case, the Commission ordered Verizon to fulfill its continuing obligations prior to closing of the transfer. Part of the obligations are compliance with GO95 requirements.

What is interesting about the list of obligations is that it contains two distinct items: One requires Verizon to comply with Commission orders (including GO 95 requirements) and another requires that Verizon repair (only) Category 1 and Category 2 non-conformances.

This distinction implies that the decision authors do not see a "nonconformance" that has been identified by a utility/CIP as a violation and that compliance with GO 95 requirements does not imply correcting all "nonconformances", which is problematic.

### CONCLUSION/RECOMMENDATION

Rule 18 has made enforcing GO 95 impossible. It has introduced a conflict in the rules and has rendered the entire general order ineffective. I recommend that Rule 18 be deleted from GO 95.

I hereby declare that the above statement is true to the best of my knowledge and belief under the penalty of perjury

Executed May 6, 2016 in Los Angeles, California.

/s/ Raffy Stepanian

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Raffy Stepanian