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

Order Instituting Investigation into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit in California.	Investigation 17-06-027
And Related Matter.	Rulemaking 17-06-028

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING PARTY  
COMMENTS ON RIGHT OF WAY RULES**

**Summary**

This *Ruling requests* party comments on Right of Way rules.

**1. Background**

In this proceeding, the Commission stated that it will consider the question of utility pole, conduit, and Rights-of-Way (ROW) access issues.<sup>1</sup> The Order Instituting Investigation (OIR) phase of this proceeding is addressing proposed amendments to the Commission's ROW rules, safety issues, competitive issues, municipal and smart grid issues, and joint pole association or joint pole committee issues.<sup>2</sup> One of the specific areas of inquiry concerns whether the

<sup>1</sup> Investigation (I.)17-06-027/Rulemaking (R.)17-06-028 OII/OIR at 41.

<sup>2</sup> I.17.06-027/R.17-06-028 *Assigned Commissioner's Scoping Memo and Ruling* (August 8, 2018), at 11.

Northern California Joint Pole Association (NCJPA) and Southern California Joint Pole Committee (SCJPC) “...have policies, membership rules, or other standards in effect that operate to exclude new members or make access to poles onerous or even impossible.”<sup>3</sup> The Commission wishes to obtain additional information concerning the operation of the Commission’s ROW rules, including the extent to which the rules create different rights and obligations for joint owners and attachers, and to understand the effect of NCJPA and SCJPC policies and practices on the utility pole ecosystem in California.

In addition, the Commission wishes to obtain information regarding the regulatory treatment by rate-regulated utility pole owners for revenues they receive from the sale of interests in poles and the lease of space for attachments to solely-owned or jointly-owned poles, and the calculation of their cost basis for poles which were replaced or reinforced at the expense of a 3<sup>rd</sup> party attacher.

## **2. Discussion**

Accordingly, I invite all parties to comment on the following questions. For questions 9-11, each rate-regulated utility pole owner should comment on its own treatment of costs, revenues and rates.

1. Do the NCJPA and SCJPC pole agreements and associated documents determine the terms of the purchase and sale of utility assets?
2. Are the terms of such pole-related transactions subject to the Commission’s jurisdiction?
3. Should the Commission require Investor Owned Utilities and Local Exchange Companies to submit (before implementation) for Commission review and approval, under Pub. Util. Code § 851, the agreements, forms, procedures, and handbooks which concern the

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<sup>3</sup> I.17-06-027/R.17-06-028 at 43.

- transfer, sale, lease, assignment, mortgage, or encumbrance of utility-owned poles?
4. Should utility pole owners be permitted to condition the sale of interest in poles to communications providers on the purchasers' agreement to purchase the entire communications space?
  5. Should utility pole owners be permitted to condition the sale of interest in poles in the communications space on the purchasers' adopting the duty to administer attachments by others in the communications space?
  6. If NCJPA and/or SCJPC agreements contain terms pertaining to any of the issues below, should the same terms apply to joint owners and attachers?
    - a. A 45-day attachment approval deadline;
    - b. A 60-day pole replacement timeline;
    - c. The ability to refuse rearrangement of facilities on a pole;
    - d. Advance notice of all pole attachment requests on occupied poles; and
    - e. The requirement to provide 48 hours advance notice of routine maintenance and repair.
  7. With respect to the advance notice of pole attachment requests, are joint pole owners other than the entity which administers the communications space receiving advance notice of attachment requests in the communications space? Does this notice confer a competitive advantage if similar notice is not provided to other joint pole owners and attachers?
  8. With respect to 48-hours' notice of routine maintenance and repair, are joint pole owners required to provide advance notice of routine maintenance and repair to joint pole owners or attachers? Are attachers required to provide such notice to joint pole owners or attachers? Does the 48-hours' notice requirement advance utility pole safety?

9. Describe how rate-regulated utilities who own poles account for revenues they receive from the sale of interests in poles and the lease of space for attachments to solely-owned or jointly-owned poles in their General Rate Cases and in any other proceedings or filings with the Commission.
10. Are revenues received by rate-regulated utilities who own poles from the sale of interests in poles and the lease of space for attachments to solely-owned or jointly-owned poles shared between ratepayers and shareholders? If so, on what basis, and how is such revenue sharing reported to the Commission?
11. How are the costs paid by 3<sup>rd</sup>-party attachers accounted for in determining the default statutory pole attachment rate?

**IT IS RULED that:**

1. Parties wishing to file and serve opening comments shall do so by June 10, 2019.
2. Parties wishing to file and serve reply comments shall do so by June 24, 2019.

Dated May 10, 2019, at San Francisco, California.

/s/ ROBERT M. MASON III  
Robert M. Mason III  
Administrative Law Judge