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**Via Electronic Filing**

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**Subject: Public Advocates Office's Reply Comments on the Development of Guidelines for the 10-Year Undergrounding Distribution Infrastructure Plan (Undergrounding Plan)**

**Docket: 2023-Ups**

Dear Director Thomas Jacobs,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully submits the following comments on the development of guidelines for the 10-year Undergrounding Distribution Infrastructure Plan (Undergrounding Plan). Please contact Nat Skinner ([Nathaniel.Skinner@cpuc.ca.gov](mailto:Nathaniel.Skinner@cpuc.ca.gov)) or Henry Burton ([Henry.Burton@cpuc.ca.gov](mailto:Henry.Burton@cpuc.ca.gov)) with any questions relating to these comments.

We respectfully urge the Office of Energy Infrastructure Safety to adopt the recommendations discussed herein.

Respectfully submitted,

/s/ **Darryl Gruen**

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## I. INTRODUCTION

Pursuant to the Office of Energy Infrastructure Safety’s (Energy Safety) December 13, 2023 memorandum to stakeholders (December Comment Letter),<sup>1</sup> the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments about the development of guidelines to implement Senate Bill (SB) 884 (McGuire, Statutes of 2022).<sup>2</sup> Pursuant to the December Comment Letter, Cal Advocates timely filed opening comments on January 8, 2024.<sup>3, 4</sup> (References to “opening comments” herein refer to the comments that each stakeholder filed on January 8, 2024.<sup>5</sup>) Reply comments are due January 18, 2024.

SB 884 authorizes large electric utilities<sup>6</sup> (utilities) to submit ten-year plans to underground distribution lines.<sup>7</sup> The bill leaves discretion to Energy Safety and the California Public Utilities Commission (CPUC or Commission) regarding whether to approve or conditionally approve the plan.<sup>8</sup>

Cal Advocates has been engaged with Energy Safety regarding the implementation of SB 884 since December 2022. We look forward to further opportunities, beyond these

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<sup>1</sup> Energy Safety, *Memorandum to Stakeholders regarding Dates for Additional Comments for the Development of Guidelines for the 10-Year Undergrounding Distribution Infrastructure Plan (Undergrounding Plan)*, December 13, 2023, in docket 2023-UPs (December Comment Letter).

<sup>2</sup> SB 884 is codified as Public Utilities Code Section 8388.5.

<sup>3</sup> Public Advocates Office, *Development of Guidelines for the 10-Year Undergrounding Distribution Infrastructure Plan (Undergrounding Plan)*, January 8, 2024 (Cal Advocates, January Comments on Working Group Discussion).

<sup>4</sup> Energy Safety invited stakeholders to provide input in a series of working groups in October and November 2023, and file additional comments related to the working group topics on November 2, 2023. Cal Advocates participated in all working group meetings and filed the requested additional comments as well. See *Public Advocates Office’s Comments on Undergrounding Plan Guidelines*, November 2, 2023 (Cal Advocates, November 2023 Comments on Working Group Topics).

<sup>5</sup> Docket 2023-UPs.

<sup>6</sup> Many of the Public Utilities Code requirements relating to wildfires apply to “electrical corporations.” See, e.g., Public Utilities Code section 8388.5. These comments also use the more common term “utilities” to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

<sup>7</sup> Cal. Pub. Util. Code Section 8388.5(c).

<sup>8</sup> See Cal Pub. Util. Code Sections 8388.5(d)(e), and (f).

comments, to constructively engage with Energy Safety, share ideas, and develop effective policies.

## **II. PROCEDURAL ISSUES**

### **A. There should be a pre-submission completeness check.**

Cal Advocates supports Pacific Gas and Electric Company's (PG&E) recommendation that Energy Safety conduct a pre-submission completeness review.<sup>9</sup> Cal Advocates made a similar recommendation in our November 2, 2023 comments, prior to Energy Safety's working group meetings.<sup>10</sup>

### **B. Energy Safety should adopt an expedited, efficient discovery process.**

In opening comments, PG&E recommends steps to facilitate efficient and timely discovery. PG&E proposes all responses to discovery be due in five business days, subject to normal procedures for discovery extension requests.<sup>11</sup>

The Utility Reform Network (TURN) recommends that Energy Safety adopt the same three-day discovery turnaround currently required in wildfire mitigation plan reviews.<sup>12</sup> Cal Advocates has made recommendations similar to TURN's to the Commission<sup>13</sup> and Energy Safety.<sup>14</sup>

Cal Advocates agrees with TURN and PG&E. Expediting discovery responses is crucial with a constrained nine-month timeframe to review, take public comment on, and approve, 10-year undergrounding plans. To enable regulatory agencies and stakeholders to effectively review the plans, establishing an expedited discovery deadline and dispute resolution process is necessary and appropriate. We continue to recommend a default deadline of three business days (with the possibility of reasonable extension requests).

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<sup>9</sup> PG&E's opening comments at 12-13.

<sup>10</sup> *Public Advocates Office's Comments on Undergrounding Plan Guidelines*, November 2, 2023 (November 2023 Comments on Working Group Topics) at 12.

<sup>11</sup> PG&E's opening comments at 13.

<sup>12</sup> TURN's opening comments at 4.

<sup>13</sup> Public Advocates Office, *Public Advocates Office's Informal Comments on the Staff Proposal for the SB 884 Program*, September 27, 2023 at 11.

<sup>14</sup> Cal Advocates, November 2023 Comments on Working Group Topics at 11-12.

PG&E also recommends that “all parties have access to all discovery responses” and that “the discovery process for the Undergrounding Plan be coordinated between Energy Safety and the CPUC.”<sup>15</sup> Cal Advocates agrees with these recommendations, which will improve the stakeholder review process and help strengthen the evidentiary record at both agencies.

**C. Energy Safety should adopt a reasonable public comment process.**

Energy Safety should adopt TURN’s recommendations regarding the early establishment of a comment process and a minimum 120-day window for parties to develop responsive comments to an undergrounding plan.<sup>16</sup>

As an alternative approach, Energy Safety could issue a staff report first, then accept public comments on the staff report. The staff report would evaluate the utility’s undergrounding plan and include proposed orders to approve, reject, or require modifications to the plan.<sup>17</sup> Energy Safety should provide at least 30 days for stakeholders to comment on the staff report, prior to preparing a draft decision.

**D. Energy Safety should conduct an additional workshop to support engagement with telecommunications providers.**

PG&E states that it “does not support an additional Energy Safety workshop” regarding the impact of undergrounding plans on telecommunications pole attachments, “since the CPUC, not Energy Safety, is responsible for communications issues.”<sup>18</sup> PG&E also states that it “has partnered and plans to continue to partner with telecommunications providers and other potential joint trench partners to explore joint trench opportunities.”<sup>19</sup>

Cal Advocates continues to recommend that Energy Safety and the Commission foster stronger coordination between electric and telecommunications utilities. In particular:

- Energy Safety should conduct an additional workshop to discuss the impact of undergrounding on telecommunications companies that share a

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<sup>15</sup> PG&E’s opening comments at 12-13.

<sup>16</sup> TURN’s opening comments at 3-4.

<sup>17</sup> Public Utilities Code section 8388.5(d)(2).

<sup>18</sup> PG&E’s opening comments at 12.

<sup>19</sup> PG&E’s opening comments at 12.

pole that would be abandoned by the electric utility due to undergrounding.<sup>20</sup>

- Energy Safety should require utilities to capture all costs and benefits in their alternatives analyses, including impacts on telecommunications service.<sup>21</sup> Consideration of the impacts to telecommunications falls firmly within the public safety element of the undergrounding project prioritization process required by the legislation.<sup>22</sup>
- The Commission should strengthen the coordination requirements in its Staff Proposal.<sup>23</sup>

Telecommunication utilities have a requirement to ensure that their networks are resilient and able to serve their customers (especially emergency services and critical facilities) during emergencies including wildfires and Public Safety Power Shutoffs.<sup>24</sup> Any changes to shared poles that may impact the resilience of the telecommunications providers need to be considered as part of the SB 884 process. Additional analysis of telecommunication utility issues is critical in the Energy Safety aspect of SB 884 because that is where utilities will identify which projects will be performed and when. If the joint energy-telecommunications issues are not addressed by the time the plans are submitted to the Commission, then the Commission may deem the plan insufficient at that point and return it to Energy Safety for further analyses, needlessly delaying final approval of SB 884 plans.

### **III. PLAN REQUIREMENTS: DATA AND SUPPORTING ANALYSIS**

#### **A. Energy Safety should adopt the same data requirements as the Commission.**

Energy Safety (and the Commission) should adopt the data requirements developed by the Safety Policy Division of the Commission, which are included in Appendix 1 to Draft Resolution SPD-15. We agree with TURN that “these data points are all required for Energy Safety’s review and approval of the plan and that requiring the utility provide this information

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<sup>20</sup> Steve Bowen on behalf of Sonic Telecom at the December 12, 2023 working group meeting conducted by Energy Safety.

<sup>21</sup> Cal Advocates’ opening comments at 16.

<sup>22</sup> Public Utilities Code Sec. 8388.5(c)(2).

<sup>23</sup> Cal Advocates, Comments on Draft Resolution SPD-15 at 14-15.

<sup>24</sup> D.21-09-029, Decision Adopting Wireline Provide Resiliency Strategies, February 11, 2021.

from the outset will promote a more efficient review by intervenors, Energy Safety and the Commission.”<sup>25</sup>

**B. Energy Safety should check whether utilities have provided adequate data to support cost-benefit analysis.**

In opening comments, the Mussey Grade Road Alliance (MGRA) recommends that Energy Safety:

perform an ‘existence/consistency/sanity check’ to ensure that the numbers provided by the utilities are sufficiently rigorous as to provide meaningful cost/benefit analysis, even if OEIS itself makes no determination of whether the provided request is reasonable. This would benefit the process by ensuring that plans are not rejected by the CPUC once passed by OEIS merely because they do not have adequate cost information included in the plan.<sup>26</sup>

Cal Advocates agrees with this recommendation, which dovetails with PG&E’s recommendation that Energy Safety conduct a pre-submission completeness review of the undergrounding plans before the utilities submit them. Both recommendations would achieve PG&E’s stated goal to reduce or remove inconsistency between the plan that Energy Safety may approve and the plan that the Commission considers. Both recommendations also address PG&E’s stated goal to “ensure that there are no unnecessary delays” or “inadvertent omissions or errors in the submission.”<sup>27</sup>

**C. Energy Safety should augment PG&E’s proposed plan outline to support an effective evaluation of aboveground and underground alternatives.**

PG&E provides a sample outline for an undergrounding plan.<sup>28</sup> PG&E notes that the table is “high-level” and “includes the proposed sections for the plan, area(s) of SB 884 each section would address, general contents of each section, and supporting information and

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<sup>25</sup> TURN’s opening comments at 4.

<sup>26</sup> MGRA’s opening comments at 4.

<sup>27</sup> PG&E’s opening comments at 12-13.

<sup>28</sup> PG&E’s opening comments, Appendix A, Table 2.

workpapers.”<sup>29</sup> PG&E provides section contents, but states that bulleted items “would be addressed in greater detail in the Undergrounding Plan.”<sup>30</sup>

Cal Advocates appreciates the efforts of PG&E to outline plan content, which can be used as the basis for Energy Safety’s draft plan content, subject to further review and comment by stakeholders. However, Cal Advocates has identified two key areas of PG&E’s proposal that do not adequately address the requirements of the legislation.

### **1. Table 2, Section 1: Evaluation of Alternatives**

Public Utilities Code Section 8388.5(c)(4) requires the utility to perform an evaluation of comparable risk reduction between underground and aboveground<sup>31</sup> wildfire mitigation activities. Therefore, participating utilities must provide a complete set of aboveground and equivalent undergrounding projects, (i.e., analysis of the aboveground alternative(s) for each proposed underground project) so they can be verified against the risk models and independently evaluated against each other. This comparison must be performed separately (i.e., for each project) and collectively (i.e., for the plan as a whole).<sup>32</sup>

In Table 2, PG&E states that participating utilities should provide a “summary of outputs from the mitigation alternatives analyses including CBR [cost-benefit ratio] and other decision-influencing metrics, including net-benefit values.”<sup>33</sup> This summary would be inadequate to fulfill the requirements of Public Utilities Code section 8388.5(c)(4), described immediately above, because it would not support a separate comparison of risk reduction for all overhead versus underground activities at the project level. PG&E’s proposed summary would only support a collective comparison.

Energy Safety should modify PG&E’s proposed requirements by requiring a full set of aboveground projects with the same level of detail as the proposed undergrounding projects.

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<sup>29</sup> PG&E’s opening comments at 15-17 (Appendix A).

<sup>30</sup> PG&E’s opening comments at 15.

<sup>31</sup> Aboveground is the language from SB 884, which Cal Advocates understands to be synonymous with overhead.

<sup>32</sup> Public Utilities Code Sec. 8388.5(c)(4).

<sup>33</sup> PG&E’s opening comments at 16.



Additionally, the utility should provide workpapers to support the “analysis of wildfire risk reduction, public safety, cost efficiency, and reliability benefits”<sup>34</sup> for each project.

## **2. Table 2, Section 3: Site Selection and Prioritization**

PG&E’s proposal does not specify what it means by a “list of projects” in the “workpapers and supporting information column.”<sup>35</sup> To meet the requirement of Public Utilities Code section 8388.5(c)(2),<sup>36</sup> Energy Safety should define a “project” as a contiguous group of risky utility assets that will be simultaneously removed from service.<sup>37</sup> As Cal Advocates has discussed before,<sup>38</sup> a project should be defined by its wildfire risk reduction benefits, which means that the project list will include detailed information about the location of the proposed undergrounding activities, the location of the overhead line to be taken out of service, and the timing for completion of the project.

Only with accurate data on projects can Energy Safety, the independent monitors, and stakeholders verify that the utility is effectively implementing its plan. For example, if a utility proposes changes to an approved plan, it will be impossible to analyze and verify that the proposed changes would still achieve the risk reduction targets of the plan, unless the utility has provided detailed project-level information about its plan.<sup>39</sup>

## **3. Remedies: Energy Safety should set thorough submission requirements.**

Cal Advocates recommends that Energy Safety remedy the deficiencies in PG&E’s proposed plan outline. In its forthcoming guidelines, Energy Safety should specify:

- a) A robust definition of project, as described above,

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<sup>34</sup> Public Utilities Code Sec. 8388.5(c)(2).

<sup>35</sup> PG&E’s opening comments at 16.

<sup>36</sup> Public Utilities Code section 8388.5(c)(2) requires that participating utilities identify undergrounding projects that will be constructed as part of the program, including a means of prioritizing undergrounding projects based on wildfire risk reduction, public safety, cost efficiency, and reliability benefits. Sections 8388.5(c)(2), (c)(4), and (c)(6) also require such information to be provided with *project-level specificity*.

<sup>37</sup> Cal Advocates, November Comments on Working Group Topics at 3-4.

<sup>38</sup> Cal Advocates, November Comments on Working Group Topics at 3-4.

<sup>39</sup> The risk reduction targets should be based on the comparison and assessment of alternatives required as part of Public Utilities Code Sec. 8388.5(c)(4).

- b) A detailed set of submission requirements that will enable a comparison of aboveground and underground alternatives, at both the individual project and the plan-wide scales required by the legislation,<sup>40</sup> and
- c) Workpapers to support forecasted risk reduction, cost efficiencies, and reliability benefits for each project.

#### IV. CRITERIA FOR PLAN APPROVAL

##### A. Energy Safety should require utilities to prioritize projects based on risk.

In opening comments, TURN recommends that “work should be completed on a risk-prioritized basis, beginning with the highest risk work.”<sup>41</sup> Cal Advocates agrees. Utilities should select projects in the highest-risk locations in their service territory because these are the places where undergrounding is most cost-effective. This approach is consistent with the Joint Advocates’ Letter sent to Energy Safety and the Commission on April 26, 2023.<sup>42</sup> The highest-risk locations should be mitigated first, while more moderate-risk locations can be addressed in later years or with alternative technologies (which may be cheaper and quicker to deploy while providing similar risk reduction benefits).

As part of its forthcoming guidelines for SB 884 plans, Energy Safety should “develop requirements consistent with SB 884 that will ensure that any utility submitting a SB 884 plan provides adequate information to demonstrate that the utility plans ... to prioritize the completion of work based on risk.”<sup>43</sup> This means the utilities must be required to select projects in the places where wildfire risk is most severe, and to sequence projects so that the most important work is performed first. These requirements are essential to ensure that ratepayers and the public achieve the greatest feasible safety gains at reasonable costs.

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<sup>40</sup> Public Utilities Code Sec. 8388.5(c)(4).

<sup>41</sup> TURN’s opening comments at 1-2.

<sup>42</sup> Cal Advocates, The Utility Reform Network, and Mussey Grade Road Alliance, *Letter to the California Public Utilities Commission and Office of Energy Infrastructure Safety re: Implementation of Senate Bill 884 – Ten-Year Undergrounding Plans*, April 26, 2023 (Joint Advocates’ Letter) at 2.

*See also* Cal Advocates’ opening comments at 4.

<sup>43</sup> TURN’s opening comments at 1.

**B. Energy Safety should require participating utilities to carefully analyze alternatives to undergrounding.**

In opening comments, TURN recommends that utilities be required to provide a thorough comparison to alternative mitigations.<sup>44</sup> TURN argues that the analysis should be performed for each project, and the analysis should show why undergrounding is the best mitigation option for the specific location.<sup>45</sup>

Similarly, MGRA recommends that Energy Safety’s approval criteria should require transparent risk calculations, with comparisons between:

- Utility undergrounding.
- Deployment of Covered Conductor on the same segment.
- Deployment of Covered Conductor + REFCL on the same segment.
- Deployment of Covered Conductor and non-REFCL advanced technologies and mitigations (e.g., falling/downed conductor protection, electronic fault detection, etc.).<sup>46</sup>

Cal Advocates supports these recommendations and references our previous comments discussing the same topic.<sup>47</sup> Cal Advocates specifically agrees with TURN’s policy recommendation:

Energy Safety should only approve an undergrounding project if the utility can demonstrate that it is the best approach for reducing reliability [risk] and safety risk cost-effectively in a given location as compared to all alternatives and combinations of alternatives. A complete SB 884 application will include the information required for Energy Safety to make this determination.

Energy Safety’s forthcoming guidelines should require thorough, empirical, and accurate analysis of alternatives.

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<sup>44</sup> TURN’s opening comments at 3.

<sup>45</sup> TURN’s opening comments at 3.

<sup>46</sup> MGRA’s opening comments at 3-4.

<sup>47</sup> Cal Advocates’ opening comments at 13-14; *Public Advocates Office’s Comments on Draft Resolution SPD-15 and the Staff Proposal for the SB 884 Program* (Cal Advocates, Comments on Draft Resolution SPD-15), December 28, 2023 at 13-14; Cal Advocates, November 2023 Comments on Working Group Topics at 7-9; Joint Advocates’ Letter at 2 and Appendix A.

**C. Energy Safety should not adopt utility proposals to include circuits outside of the high-fire threat districts (HFTD).**

PG&E and SCE recommend that Energy Safety allow infrastructure in utility-defined high-fire risk areas to be eligible for inclusion in an SB 884 undergrounding plan.<sup>48</sup> PG&E asserts that the HFTD maps are not current given that they were approved by the Commission six years ago. Cal Advocates recognizes this concern, which is why we filed a petition for modification of several Commission decisions to update the Commission’s high threat fire district (HFTD) maps.<sup>49, 50</sup> Our petition was generally supported by the utilities<sup>51</sup> and is pending further action by the Commission. Nonetheless, Energy Safety and the Commission must adhere to the requirements of SB884, which does not allow utilities to include circuits in utility-defined high-fire risk areas in their undergrounding plans. SB 884 is clear: “only undergrounding projects located in tier 2 or 3 high fire-threat districts or rebuild areas may be considered and constructed as part of the program.”<sup>52</sup> Cal Advocates also discusses this issue in reply comments to Draft Resolution SPD-15.<sup>53</sup>

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<sup>48</sup> PG&E’s opening comments at 7-8. SCE’s opening comments at 3.

<sup>49</sup> R.15-05-006, *Public Advocates Office’s Petition for Modification of Decision (D.) 20-12-030, D.17-12-024, and D.17-01-009 in Order to Update High Threat Fire District Mapping*, April 19, 2023 (“Petition for Modification”). <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K523/506523174.PDF>

<sup>50</sup> Order Instituting Rulemaking (OIR) R.15-05-006; see also the Commission webpage “Fire-Threat Maps and Fire-Safety Rulemaking,” <https://www.cpuc.ca.gov/industries-and-topics/wildfires/fire-threat-maps-and-fire-safety-rulemaking>

<sup>51</sup> R.15-05-006, *Joint Response of Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Bear Valley Electric Service, Liberty Utilities, and PacifiCorp to the Public Advocates Office’s Petition for Modification of Decision (D.) 20-12-030, D.17-12-024, and D.17-01-009 in Order to Update High Threat Fire District Mapping*, May 19, 2023. <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M509/K292/509292035.PDF>

<sup>52</sup> PU Code section 8388.5(c)(2).

<sup>53</sup> Public Advocates Office, *Public Advocates Office’s Reply Comments on Draft Resolution SPD-15 and the Staff Proposal for the SB 884 Program* (Cal Advocates, Reply Comments on Draft Resolution SPD-15), January 11, 2024 at 11-12.

## V. UPDATES TO APPROVED PLANS

### A. Energy Safety should establish oversight and appropriate approval criteria for updates to approved SB 884 plans.

In opening comments, PG&E correctly states that an SB 884 plan should include “the process used to select and prioritize projects and a list of undergrounding projects.”<sup>54</sup> In other words, the utility will provide a list of specific projects it intends to complete and explain why they are the right set of projects.

However, PG&E proposes that the project list be non-binding. In PG&E’s view, the utility’s “framework” (that is, “its process for selecting and prioritizing underground projects”) would be the binding element of an SB 884 plan.<sup>55</sup> PG&E recommends that utilities should have unrestricted latitude to change the projects included in their SB 884 plans, provided that they follow the original selection process:

If throughout the Undergrounding Plan period all projects are selected and prioritized using the approved framework, changes to individual projects (including addition, removal, or rescheduling) should not require regulatory approval. An electric corporation should be allowed to make changes to the project list—subject to meeting risk reduction, cost recovery, or other thresholds that may be established—and provide visibility to such changes during the regular six month and annual reporting cycle without additional approvals.<sup>56</sup>

Similarly, SCE recommends that Energy Safety “permit updates to a Plan to reflect changes to risk models and evolving understanding of risk.”<sup>57</sup>

Given the long duration of SB 884 plans, Cal Advocates understands that utilities will need to “update underlying data and risk models that serve as inputs into the project selection and prioritization framework.”<sup>58</sup> This type of change is appropriate. However, there is a large difference between updating risk models and changing the actual projects included in the plan. Utilities should not be allowed to change the substance of their plans (meaning, which undergrounding projects the utility will perform, and when) without robust regulatory oversight.

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<sup>54</sup> PG&E’s opening comments at 6.

<sup>55</sup> PG&E’s opening comments at 6.

<sup>56</sup> PG&E’s opening comments at 6.

<sup>57</sup> SCE’s opening comments at 3.

<sup>58</sup> PG&E’s opening comments at 6.

Like PG&E, SDG&E proposes that the utility “report these changes and updates, along with any impact they may have on the proposed Plan, during the required six-month progress reports.”<sup>59</sup> However, the semiannual progress reports are for reporting *progress* on a plan,<sup>60</sup> not changes to the plan. The semiannual progress reports have no approval mechanism and, therefore, are not an appropriate venue for substantive changes that will affect whether a utility’s proposed projects will successfully reduce risk at an appropriate cost.

Cal Advocates recommends that Energy Safety establish a review and approval process for any changes proposed by utilities that would change the selection, scope or priority of a project that is part of an approved SB 884 plan. Changes to approved plans should be:

- Infrequent and reserved for important changes,
- Justified with empirical data,
- Based upon updated risk analysis, cost analysis, new technologies, or other factors that affect the selection and prioritization of underground projects, and
- Based on new information (i.e., exogenous events occurring since the utility filed its 10-year plan; not an endogenous change).

As part of any proposal to change an approved plan, Energy Safety should require the utility to demonstrate to Energy Safety, the independent monitor, and stakeholders that risk reduction, reliability and cost containment targets would not be undermined or otherwise impaired. Utilities should adhere to the project list contained in their approved SB 884 plans until any update or revision is approved by both Energy Safety and the Commission.

Cal Advocates also addressed this issue in our opening comments.<sup>61</sup>

## VI. COMPLIANCE REQUIREMENTS

### A. **Energy Safety should adopt a reporting schedule that provides timely information and enables prompt remediation of any problems.**

In opening comments, PG&E addresses the reporting schedule for progress reports after an SB 884 plan is approved.

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<sup>59</sup> SDG&E’s opening comments at 2-3.

<sup>60</sup> Public Utilities Code Sec. 8388.5(f)(1).

<sup>61</sup> Cal Advocates’ opening comments at 9–13.

PG&E strongly supports coordination between Energy Safety and the CPUC to align reporting requirements with the goal of leveraging the same report to address requirements in multiple proceedings. This would include aligning reporting requirements for the Undergrounding Plan with related proceedings including the Wildfire Mitigation Plan (WMP) and, at least in PG&E's case, the [General Rate Case] GRC.<sup>62</sup>

Cal Advocates agrees with the spirit and intention of PG&E's comment. It is particularly important that the SB 884 reporting requirements align with the reporting requirements and time periods for GRCs, WMPs, and other relevant funding streams. Without alignment between these proceedings, it will be extremely difficult to determine whether a utility is meeting its undergrounding mileage targets, budgets, and other regulatory obligations as determined in each relevant proceeding.

To achieve alignment, it is essential that the schedule for semi-annual progress reports be based on the calendar year. This is because GRCs and WMPs are built on calendar years, with mitigation work targets and forecasted budgets by year. Therefore, in the SB 884 context, one semiannual report each year should cover the first and second quarters, while the other semiannual report should cover the third and fourth quarters of the calendar year.

PG&E's proposed schedule for progress reporting is a reasonable starting point in terms of alignment and predictability,<sup>63</sup> but it should be modified to provide for more timely information. Most importantly, the independent monitors' reports should be issued earlier in the year. If an independent monitor finds failures such as incomplete projects, shoddy work, or unsafe practices, it is important to investigate and remediate those problems as soon as possible. With a report issued by early May, the utility can go back to remediate problems that the report identifies in the previous calendar year's work, as well as prospectively correcting any similar problems that are still occurring in the current year's work. However, under PG&E's proposed schedule, the independent monitor would submit a report in October covering the previous year. Thus, if the independent monitor found a problem in January, stakeholders and the public would not learn of it until about 20 months later. We noted this concern in opening comments.<sup>64</sup>

Cal Advocates proposes the schedule in Table A below.

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<sup>62</sup> PG&E's opening comments at 10-11.

<sup>63</sup> PG&E's opening comments at 11.

<sup>64</sup> Cal Advocates' opening comments at 13.

| Table A<br>Cal Advocates' Recommended Schedule for Reporting on Undergrounding |             |                           |                     |            |
|--|-------------|---------------------------|---------------------|------------|
| Submission   | Due Date    | Period covered            | Author              | Proceeding |
| WMP Quarterly Report   | February 1  | Previous calendar year    | Utility             | WMP        |
| SB 884 Annual Progress Report  | March 1     | Previous calendar year    | Utility             | SB 884     |
| WMP Annual Compliance Report   | April 1     | Previous calendar year    | Utility             | WMP        |
| SB 884 Independent Monitor Report  | May 1       | Previous calendar year    | Independent monitor | SB 884     |
| Wildfire Mitigation Plan   | Q2          | Upcoming 1-3 years        | Utility             | WMP        |
| Annual Accountability Report for Year Prior                                    | July 1      | Previous calendar year    | PG&E                | GRC        |
| WMP Quarterly Report   | August 1    | Q1 and Q2 of current year | Utility             | WMP        |
| SB 884 Six-Month Progress Report   | September 1 | Q1 and Q2 of current year | Utility             | SB 884     |

As the table above indicates, the utility-authored semiannual progress reports should occur on March 1<sup>st</sup> and September 1<sup>st</sup> (one month earlier than PG&E proposes<sup>65</sup>). Cal Advocates' recommended dates are two months after the reporting period ends. By comparison, the utilities currently file WMP quarterly reports – covering a wide range of initiatives – just one month after each reporting period.

Next, the independent monitor's report should be submitted in May and should cover the previous calendar year. This is two months after the utility's progress report on the same period, and three months after the WMP quarterly report (which will include undergrounding, among many other initiatives.) Thus, the independent monitors will have the ability to make full use of these data sources.

However, the independent monitors should not wait for the utility semiannual reports to begin their work. Rather, the independent monitors should conduct their work throughout the year and should primarily rely on their own original analysis. As Cal Advocates discussed in

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<sup>65</sup> PG&E's opening comments at 11.



opening comments, the independent monitors should also have broad discovery authority so that they can access all the information and facilities that they need to fully understand the utility's SB 884 activities.- The utility's semiannual progress reports should serve as a secondary data source and a way to verify the independent monitor's own findings.<sup>66</sup>

## VII. CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein.

Respectfully submitted,  
/s/ **Darryl Gruen**

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January 18, 2024

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<sup>66</sup> Cal Advocates' opening comments at 13.



December 28, 2023

**VIA ELECTRONIC MAIL**

Rachel Peterson, Executive Director  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
[SB884@cpuc.ca.gov](mailto:SB884@cpuc.ca.gov)

**Subject: Public Advocates Office's Comments on Draft Resolution SPD-15 and the Staff Proposal for the SB 884 Program**

Dear Executive Director Peterson,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully submits the following comments on Draft Resolution SPD-15 for the SB 884 Program. Please contact Nathaniel Skinner ([Nathaniel.Skinner@cpuc.ca.gov](mailto:Nathaniel.Skinner@cpuc.ca.gov)), Program Manager, or Henry Burton ([Henry.Burton@cpuc.ca.gov](mailto:Henry.Burton@cpuc.ca.gov)), Program and Project Supervisor, with any questions relating to these comments.

We respectfully urge the Commission to adopt the recommendations discussed herein.

Sincerely yours,

/s/ Nathaniel Skinner  
Program Manager

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## I. INTRODUCTION

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) hereby submits these comments on Draft Resolution SPD-15, which adopts the Commission’s Staff Proposal for the Senate Bill (SB) 884 Program.

Senate Bill (SB) 884, codified as Public Utilities (PU) Code section 8388.5, went into effect on January 1, 2023. This statute directs the Commission to establish a program for long-term utility distribution undergrounding plans, and authorizes large electrical corporations (utilities) to participate in that program.<sup>1-2</sup> On September 13, 2023, the Safety Policy Division (SPD) issued a draft proposal that establishes the process and requirements for the Commission’s review of the utilities SB 884 program applications.<sup>3</sup> On September 27, 2023, Cal Advocates and other stakeholders filed informal comments on the September 2023 Draft Staff Proposal.<sup>4</sup>

On November 9, 2023, SPD served Draft Resolution SPD-15 to adopt a revised version of the Staff Proposal.<sup>5</sup> The revised Staff Proposal establishes three phases for a utility’s SB 884 program: Phase 1 covers review of the Plan by the Office of Energy Infrastructure Safety (Energy Safety); Phase 2 provides for review of the utility’s plan (in an application proceeding) by the Commission; and Phase 3 pertains to recovery of costs recorded in a balancing account and a memorandum account.<sup>6</sup>

The comment letter for Draft Resolution SPD-15 invites interested persons to file opening comments by December 28, 2023 and reply comments by January 11, 2024. Comments are limited to fifteen pages in length.<sup>7</sup>

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<sup>1</sup> Many of the Public Utilities Code requirements relating to wildfires apply to “electrical corporations.” *See, e.g.,* Public Utilities Code section 8388.5. These comments use the more common term “utilities” to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

<sup>2</sup> PU Code section 8385 and section 8388.5.

<sup>3</sup> SPD, *Staff Proposal for SB 884 Program*, September 13, 2023 (September 2023 Draft Staff Proposal).

<sup>4</sup> Cal Advocates, *Public Advocates Office’s Informal Comments on the Staff Proposal for the SB 884 Program*, September 27, 2023 (Cal Advocates comments on September 2023 Staff Proposal).

<sup>5</sup> SPD, Draft Resolution SPD-15, November 9, 2023 (Draft Resolution) and Attachment 1, *Staff Proposal for SB 884 Program*, November 9, 2023 (Staff Proposal).

<sup>6</sup> Staff Proposal at 4.

<sup>7</sup> SPD, Comment letter and Certificate of Service for SPD-15, November 9, 2023.

## **II. Adoption of an Incomplete Program**

### **A. The Commission should withdraw Draft Resolution SPD-15 until Energy Safety develops guidelines for Phase 1.**

Draft Resolution SPD-15 errs in several legal and technical respects (discussed in sections III through V of these comments). Adoption of the Staff Proposal before Energy Safety issues its guidance for Phase 1 is inconsistent with the requirements of PU Code section 8388.5(a).<sup>8</sup>

Currently, Energy Safety has not issued guidelines for SB 884 plans that utilities will submit in Phase 1. It is unlikely that Energy Safety will issue draft guidelines until after the Commission votes on Draft Resolution SPD-15.<sup>2</sup> Without guidance from Energy Safety, the Commission's Staff Proposal only addresses part of the program that the Commission is required to establish.<sup>10</sup> If the Commission were to adopt Draft Resolution SPD-15 at this point in time, it would adopt an incomplete program and risk legal error by creating misalignment between the Commission's and Energy Safety's implementations of SB 884. The Commission can avoid such a risk by delaying adoption of the draft resolution until it has had the opportunity to review Energy Safety's guidelines.

Delaying adoption of Draft Resolution SPD-15 would have no substantive effect. The Resolution and Staff Proposal will not meaningfully take effect until utilities are able to submit plans to Energy Safety. This cannot occur until Energy Safety has finalized its guidelines. Therefore, delaying adoption of the Staff Proposal will allow both agencies to coordinate appropriately without unduly burdening utilities or delaying the implementation of undergrounding projects.

Cal Advocates recommends that the Commission withdraw Draft Resolution SPD-15 and reissue it when Energy Safety issues its guidelines for SB 884 Plans. While the draft guidelines are in development, CPUC and Energy Safety staff can jointly consider the issues already identified and any new issues identified by stakeholders and staff. Following Energy Safety's issuance of draft guidelines on the Plans, stakeholders should be given the opportunity to review and comment on both Energy Safety's and the Commission's guidelines as a whole. This will ensure alignment between the two phases of the SB 884 program and minimize future conflicts that could otherwise arise during the expedited review periods at each agency.

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<sup>8</sup> “*The commission shall establish an expedited utility distribution infrastructure undergrounding program consistent with this section.*” PU Code section 8388.5(a) (emphasis added).

<sup>2</sup> Energy Safety held a series of working groups between November 7, 2023 and December 12, 2023 to solicit proposals from utilities and stakeholders on various aspects of the forthcoming guidelines. Stakeholders have a further chance to file opening and reply comments on these workshops by January 18, 2024. Draft Resolution SPD-15 is on the agenda for the voting meeting on January 25, 2024.

<sup>10</sup> PU Code section 8388.5(a).

### III. Cost Recovery Process

#### A. **The proposed cost recovery mechanisms are at odds with the Commission’s statutory obligation to ensure just and reasonable rates.**

The Staff Proposal states that, once a utility’s SB 884 application is conditionally approved in Phase 2, the utility “will establish a one-way balancing account to recover costs from rates up to an authorized target cap.”<sup>11</sup> Costs recorded to the balancing account would be subject to the following conditions:<sup>12</sup> a cap on the total amount spent in each year; a minimum average cost-benefit ratio (CBR); and a cap on the average unit cost of undergrounding. If the utility incurs costs in excess of the total annual cap, it will record such excess costs in a memorandum account and seek recovery through a series of Phase 3 applications.<sup>13</sup>

Draft Resolution SPD-15 asserts that this proposed cost recovery mechanism will: (1) provide “regulatory certainty” through “clear standards of review,” (2) safeguard ratepayers by ensuring costs are just and reasonable, and (3) allow utilities to recover costs “without undue delays.”<sup>14</sup> These claims are erroneous.

First, the Staff Proposal says the Commission may approve a balancing account for each of the 10 years covered by the plan if certain conditions are met.<sup>15</sup> However, Draft Resolution SPD-15 and the Staff Proposal do not provide for any review of the costs recorded in the balancing account to determine whether the recorded costs are just and reasonable.<sup>16, 17</sup> This does not comport with PU Code Section 8388.5(e)(6), which requires the commission to “authorize recovery of recorded costs that are *determined to be just and reasonable.*”<sup>18</sup> The Staff Proposal is also inconsistent with

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<sup>11</sup> Staff Proposal at 4.

<sup>12</sup> Staff Proposal at 10.

<sup>13</sup> Staff Proposal at 4. The Staff Proposal is silent on how utilities will record costs in the event that costs do not exceed the annual cap, but fail to meet either the unit cost cap or the minimum CBR conditions.

<sup>14</sup> Draft Resolution SPD-15 at 6-10.

<sup>15</sup> Draft Resolution SPD-15 at 2; Staff Proposal at 10.

<sup>16</sup> Draft Resolution SPD-15 at 2, 4-5, and 7. Draft Resolution SPD-15 refers to authorizing the utility to use a balancing account, but makes no mention of reviewing costs after they are recorded in the account. (“The large electrical corporation will establish a one-way balancing account to recover costs from rates up to an authorized target cap”). The Draft Resolution appears to state that once costs are recorded in the balancing account, cost recovery will be approved automatically without further scrutiny. (“One-way balancing accounts allow participating large electrical corporations to recover the costs of undergrounding without undue delays once infrastructure is used and useful.”)

<sup>17</sup> Staff Proposal at 10-12. The Staff Proposal contains a section on review of costs recorded in memorandum accounts, but contains no mention of review of costs recorded in balancing accounts.

<sup>18</sup> PU Code section 8388.5(e)(6) (emphasis added).

Commission precedent, where the Commission holds a proceeding to assess whether a balancing account is merited and whether recovery of costs in that account is just and reasonable.<sup>19</sup>

Second, the Staff Proposal provides for excess costs to be recorded in a memorandum account each year and for the Commission to determine, through an application proceeding, whether such recorded costs are just and reasonable.<sup>20</sup> This accounting method would allow utilities to circumvent any cost caps established as part of the conditional approval decision (Phase 2), as well as other cost requirements established by the Commission in Phase 2.<sup>21</sup> Approval of such an accounting method would allow utilities to spend unlimited amounts on their undergrounding programs and seek recovery afterwards. Not only does this approach fail to protect ratepayers from excessive costs, it also fails to comport with SB 884. PU Code section 8388.5(e)(1) requires the utility to request the Commission’s conditional approval for a plan’s forecasted costs – not an unlimited amount of spending. PU Code section 8388.5(e)(1) also requires the utility to show how cost targets are expected to decline over time.<sup>22</sup> This language establishes a presumption that additional costs are presumptively unreasonable (since the approved plan is reasonable) and indicates a legislative intent that costs (such as undergrounding) should be constrained and carefully managed to protect ratepayers.

**1. The Staff Proposal’s balancing account lacks sufficient Commission review to meet legal requirements.**

The Staff Proposal states that the costs recorded in the balancing account must meet certain conditions established in Phase 2, including cost caps and a minimum average CBR.<sup>23</sup> However, the Staff Proposal does not specify how or whether the Commission will review the balancing account.<sup>24</sup> Specifically, the Staff Proposal does not set forth what a utility must do to demonstrate that the costs

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<sup>19</sup> D.12-12-029, Conclusion of Law 1: “Remaining applicants have not met their burden of demonstrating that they had addressed all factual and legal issues necessary to justify the proposed balancing account, and that the proposed rates would be just and reasonable.”

*See also*, D.19-03-025: “Finally, this decision grants Applicants the authority to modify the Safety Enhancement Expense Balancing Accounts and the Safety Enhancement Capital Cost Balancing Accounts authorized by the Commission in D.14-06-007; and create new one-way balancing accounts to record costs for Phase 2 projects.”

<sup>20</sup> Staff Proposal at 11.

<sup>21</sup> PU Code sections 8388.5(e)(1)(A), 8388.5(e)(1)(B), and 8388.5(e)(1)(C).

<sup>22</sup> PU Code sections 8388.5(e)(1) and 8388.5(e)(1)(C).

<sup>23</sup> Staff Proposal at 10.

<sup>24</sup> Draft Resolution SPD-15 at 2 states, “the Commission may approve cost recovery in a one-way balancing account for each of the 10 years covered by the plan. The conditions for recovering costs via the one-way balancing account will include those contained in the attached Staff Proposal.” The Staff Proposal contains a section on review of costs recorded in memorandum accounts (at 10-12), but contains no mention of review of costs recorded in balancing accounts.



recorded in the balancing account are just and reasonable, either on a prospective or retrospective basis.

Even if applicants provide such a prima facie showing of justness and reasonableness, Cal Advocates previously noted that there will likely be material disputed facts regarding recorded costs, including:<sup>25</sup>

- Factual disagreements about the CBRs reported by the utility. CBRs rely on estimated benefits, which themselves rely on a number of assumptions, such as the extent to which undergrounding mitigates ignition risk<sup>26</sup> and the extent to which undergrounding reduces the need for power shutoffs.<sup>27</sup>
- Factual disagreements about recorded costs. With billions of dollars at stake, there will be questions about whether the utility’s accounts have been properly audited to eliminate accounting errors, double-counting, non-incremental costs, and other mistakes.

The Staff Proposal does not state whether the Commission will review a utility’s recorded costs and CBRs in sufficient detail to allay these concerns, nor does it state whether stakeholders will be afforded sufficient access and time to perform an independent review.

The Commission’s obligations under PU Code sections 451, 454, and 8388.5 demand strict scrutiny of the costs recorded in the balancing account in order to protect ratepayers from unjust and unreasonable rate increases.<sup>28</sup> The Staff Proposal’s omission of the process for review and scrutiny of recorded costs fails to give force and meaning to these statutory obligations. Adoption of SPD-15 without remediation of these issues would therefore constitute a legal error.

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<sup>25</sup> Cal Advocates comments on September 2023 Staff Proposal at 3.

<sup>26</sup> Energy Safety raised concerns with PG&E’s estimate for undergrounding effectiveness in its 2023-2025 Wildfire Mitigation Plan. *See, Energy Safety, Office of Energy Infrastructure Safety Issuance of Revision Notice for Pacific Gas and Electric Company’s 2023-2025 Wildfire Mitigation Plan*, June 22, 2023 at 16.

<sup>27</sup> PG&E has stated that segments that have been undergrounded may still experience outages if upstream segments have not been sufficiently hardened. *See PG&E’s response to data request CalAdvocates-PGE-2023WMP-14, question 16, April 17, 2023.*

<sup>28</sup> “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.” PU Code section 451.

“Except as provided in section 455, a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.” PU Code section 454(a).

“The commission shall ... authorize recovery of recorded costs that are determined to be just and reasonable.” PU Code section 8388.5(e)6.

To remediate this legal error, Cal Advocates proposes an appropriate mechanism in Section III.C of these comments. Cal Advocates' proposed mechanism applies robust scrutiny to recorded costs while maintaining the stated aims of Draft Resolution SPD-15 to ensure regulatory certainty, ratepayer protection, and efficient recovery of costs.<sup>29</sup>

**B. The Commission should not allow utilities to record costs in excess of the caps approved in a Phase 2 decision.**

The Staff Proposal states that, if a utility incurs costs that exceed the total annual cost cap for the balancing account, it shall record such excess costs in a memorandum account.<sup>30</sup> The utility may then seek recovery of those costs in a Phase 3 application.<sup>31</sup> This process authorizes utilities to record costs far in excess of the conditionally approved caps, with no upper limit. This circumvents the conditional approval in Phase 2 and fails to give any meaningful force to the cost caps.

In addition, the Staff Proposal states that the Commission "will closely scrutinize" costs booked to the memorandum account to "protect ratepayers from unexpected and inefficient cost overruns."<sup>32</sup> However, the Staff Proposal does not describe in any detail the methods the Commission will use to "closely scrutinize" costs. Review of memorandum accounts can be complicated and contentious. Without robust scrutiny, the establishment of a memorandum account for cost overruns effectively amounts to a blank check to the utilities. Ratepayers will shoulder the burden of this blank check through increased rates for decades to come.

The statute requires utilities to demonstrate how costs will decline over time,<sup>33</sup> states that costs will be only conditionally approved,<sup>34</sup> and specifies that only costs that the Commission determines to be just and reasonable will be recovered.<sup>35</sup> The proposed memorandum account for cost overruns allows costs to substantially increase year over year, circumvents the conditional approval in Phase 2, and does not include a robust just and reasonableness review. Draft Resolution SPD-15 does not meet the requirements of the statute and therefore commits legal error.

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<sup>29</sup> Draft Resolution SPD-15 at 6-10.

<sup>30</sup> Staff Proposal at 11.

<sup>31</sup> Staff Proposal at 11.

<sup>32</sup> Staff Proposal at 11. It should be noted that costs in excess of forecasted and conditionally approved caps are unexpected by definition.

<sup>33</sup> PU Code section 8388.5(e)(1)(C).

<sup>34</sup> PU Code section 8388.5(e)(1).

<sup>35</sup> PU Code section 8388.5(e)(6).

**C. The Commission should modify the Staff Proposal to protect ratepayers.**

SB 884 requires that the Commission establish a cost-recovery structure that requires utilities to achieve meaningful and timely reductions in wildfire risk at just and reasonable costs to ratepayers. This is consistent with the Commission’s obligation to protect ratepayers by authorizing only those costs that are deemed just and reasonable.<sup>36</sup> Below, Cal Advocates proposes an alternative cost recovery mechanism that will protect ratepayers and allow utilities to achieve meaningful and timely reductions in wildfire risk without undue burden.

**1. The Commission should review all recorded costs through application proceedings.**

The Commission should direct participating utilities to record *all* costs of their SB 884 plans in a memorandum account. To comport with the requirements of SB 884, the Commission should place firm conditions on the costs eligible to be recorded and should cap the total amount that a utility can record in the memorandum account each year. The Commission should then require utilities to seek recovery of costs by filing applications in Phase 3.<sup>37</sup>

An application proceeding provides an appropriate venue for the Commission to review all recorded costs to ensure they are just and reasonable, before authorizing recovery. This process complies with the requirement of SB 884 that the Commission only “authorize recovery of recorded costs that are determined to be just and reasonable.”<sup>38</sup>

**2. The Commission should adopt an expedited review process for Phase 3 applications.**

To meet the stated goals in Draft Resolution SPD-15 of safeguarding ratepayers while allowing utilities to recover costs “without undue delays,”<sup>39</sup> Cal Advocates proposes the following requirements for Phase 3 applications, on a timeframe similar to a catastrophic wildfire proceeding:<sup>40</sup>

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<sup>36</sup> “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.” PU Code section 451.

“The commission shall ... authorize recovery of recorded costs that are determined to be just and reasonable.” PU Code section 8388.5(e)(6).

<sup>37</sup> Staff Proposal at 10-12.

<sup>38</sup> PU Code section 8388.5(e)(6).

<sup>39</sup> Draft Resolution SPD-15 at 6-10.

<sup>40</sup> PU Code section 1701.8.

- Costs recorded in the memorandum account shall conform to the total annual cost cap, average unit cost cap, and average minimum CBR adopted in a Phase 2 Decision.
- If incurred costs meet some but not all of these three conditions, the utility shall exclude (from its cost-recovery request) the portion of costs necessary to bring the recorded costs into compliance with all three conditions.
- A Phase 3 application for recovery of costs recorded in the memorandum account shall be approved or denied within ten months. This timeframe balances efficiency with effective oversight.
- It is presumed that evidentiary hearings will be unnecessary unless substantive concerns are raised in the first two months of the proceeding. If so, the Phase 3 application timeline may be extended by three months to allow for hearings.
- To facilitate the accelerated schedule, during the Phase 3 application period, all parties must respond to discovery requests within five business days.<sup>41</sup>
- A utility may file no more than one Phase 3 application each calendar year.<sup>42</sup>

**3. The Commission should adopt an expedited process for petitions for modification to adjust cost caps and CBR minimums.**

Cal Advocates recognizes that a ten-year plan carries significant uncertainty. To account for the inherent uncertainties of this timeframe, the utilities can file a petition for modification (PFM) of the Phase 2 decision to request adjustments to the cost caps and CBR thresholds. Such a PFM should clearly discuss the need to modify the Phase 2 decision, consistent with the requirements of Rule 16.4.<sup>43</sup> This process, which already is afforded any party pursuant to the Commission’s existing rules, will allow the Commission and stakeholders the opportunity to review the utility’s updated forecasts and ensure the requested costs are just and reasonable on an *ex ante* basis, prior to the utility incurring the costs. This would provide utilities the flexibility needed to adapt to changing circumstances while maintaining robust ratepayer protections.

Cal Advocates proposes that the following stipulations shall apply to SB 884 PFMs:

- The Commission should approve or deny the PFM within six months.

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<sup>41</sup> Staff Proposal at 4.

<sup>42</sup> Staff Proposal at 11.

<sup>43</sup> California Public Utilities Commission, *Rules of Practice and Procedure* modified May 1, 2021 at 90.

- Once a utility’s cost caps and/or CBR thresholds are revised, they should not be changed again for a minimum of 12 months.
- In the petition, the petitioner must provide all facts and evidence necessary to substantiate its request. Otherwise, the Commission should reject the PFM without prejudice.
- Within 45 days of filing,<sup>44</sup> the assigned administrative law judge (ALJ) should convene a pre-hearing conference, issue questions for parties to address in initial comments, or both.
- The assigned ALJ should issue a schedule that calls for party comments or testimony approximately three months after filing, with reply comments or rebuttal testimony one month thereafter. This provides a reasonable amount of time for party discovery and analysis of the request.
- To facilitate the expedited schedule, during the review of a PFM, parties shall respond to discovery requests within five business days.<sup>45</sup>

**4. Cal Advocates’ proposal is reasonable and ensures robust ratepayer protection without placing an undue burden on utilities.**

Cal Advocates’ proposed cost recovery structure would ensure the Commission meets its statutory obligations to ensure just and reasonable rates. Additionally, this approach would give force and meaning to the stated intents of Draft Resolution SPD-15 while not imposing an undue burden on utilities. At its core, Cal Advocates’ proposal provides for:<sup>46</sup>

- *Expedited Review:*
  - Cal Advocates’ proposed approach sets clear expectations for the timeline of a cost recovery application and allows for timely recovery of incurred costs.
  - This approach also allows for an expedited review of PFMs if modifications to the Phase 2 Decision are needed to address uncertainties throughout the ten-year plan.
- *Regulatory Certainty:*
  - Cal Advocates’ proposed approach establishes transparent conditions and clear timelines under which costs may be recovered and strict, transparent conditions that incurred costs must meet for recovery.
  - The expedited PFM process allows utilities to address uncertainty without sacrificing ratepayer protections.

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<sup>44</sup> Rule 16.4(f) of the Rules of Practice and Procedure provides 30 days for responses to a PFM and allows 10 days for replies.

<sup>45</sup> Staff Proposal at 4.

<sup>46</sup> Draft Resolution SPD-15 at 6-10.

- *Ratepayer Protection:*
  - Cal Advocates’ proposed approach subjects all SB 884 costs to public review and regulatory oversight to ensure costs are just and reasonable.
  - The strict cost caps and CBR minimums protect ratepayers from unexpected rate increases that could result from uncapped cost overruns, while allowing utilities flexibility through the accelerated PFM process.

Cal Advocates’ proposal alleviates the legal and procedural flaws of the Staff Proposal. The Commission should modify the Staff Proposal to adopt our recommended cost recovery approach.

**IV. The Commission and Energy Safety should coordinate their actions in order to successfully achieve the goals of SB 884.**

The Staff Proposal makes clear throughout that Energy Safety and the Commission have defined roles and responsibilities as specified in SB 884. The Staff Proposal discusses these roles, lays out the sequential nature of the agency interaction with a utility’s Plan, and acknowledges that the two agencies expect to coordinate on the following items:<sup>47</sup>

- Project Data Requirements,<sup>48</sup>
- Alignment of Progress Report requirements,<sup>49</sup> and
- Procedures for considering a large electrical corporation’s request to change elements of its Plan.<sup>50</sup>

The coordination areas identified in the Staff Proposal are by no means an exhaustive list of material issues that must be resolved for a utility to craft a Plan that “substantially increase[s] electrical reliability by reducing the use of public safety power shutoffs, enhanced powerline safety settings, de-energization events, and any other outage programs, and substantially reduce[s] the risk of wildfire,”<sup>51</sup> subject to approval by Energy Safety and a favorable decision from the Commission.

**A. The Commission and Energy Safety should develop a common set of terms and definitions.**

In addition to the three areas discussed above that the Staff Proposal identified for future coordination with Energy Safety, Cal Advocates recommends that the two agencies also coordinate on the following:

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<sup>47</sup> See footnotes 14, 16, and 22 of the Staff Proposal.

<sup>48</sup> Staff Proposal at 9 and Appendix 1.

<sup>49</sup> Staff Proposal at 13.

<sup>50</sup> Staff Proposal at 13.

<sup>51</sup> PU Code section 8388.5(d)(2).

- Define “project”<sup>52</sup> and other standardized terms (e.g., when to refer to an underground mile versus an overhead mile),
- Develop cost efficiency metrics,<sup>53</sup>
- Determine which elements to include in the Plan that will affect the application, such as data about proposed projects, project timelines, analysis of alternatives, and cost forecasts.

Commission staff should collaborate with Energy Safety to develop an appendix of definitions that are fundamental to SB 884 Plans. In addition to a common set of terms and definitions, a common understanding of metrics and elements in a Plan will provide clarity and promote efficiency for applicants and reviewers.

**B. The Commission and Energy Safety should coordinate to avoid backwards incompatibility.**

Although the Staff Proposal addresses potential “changes to the plan”<sup>54</sup> and the expectation of future coordination, the Commission and Energy Safety need to determine what will happen if the Commission directs the utility to modify its Plan after it has been approved by Energy Safety. During Phase 1, Energy Safety will review and approve a utility’s Plan.<sup>55</sup> During Phase 2, the Commission will review the plan and its costs through an application proceeding.<sup>56</sup> As part of Phase 2, the Commission could order a utility to substantively modify its application in a way that requires modification of the Plan previously approved by Energy Safety.<sup>57</sup>

The guidance documents developed by each agency should describe a transparent and public process that each agency will follow if this occurs. Because the statute requires an expedited,

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<sup>52</sup> Cal Advocates outlined three key principles that should be used to define a project: 1) a project is a contiguous group of comparably high-risk assets that are to be mitigated simultaneously; 2) Risk reduction benefit should be estimated at the scale of the assets to be removed from service; 3) The project should be traceable through all stages of the project lifecycle. See discussion in *Public Advocates Office’s Comments on Undergrounding Plan Guidelines*, filed in docket 2023-UPs, November 2, 2023 at 3-7. Available at <https://efiling.energysafety.ca.gov/eFiling/Getfile.aspx?fileid=55915&shareable=true>

<sup>53</sup> Cal Advocates encourages both the Commission and Energy Safety to adopt the cost-benefit ratio (CBR) as the definition of “cost efficiency.” The CBR was adopted by the Commission in Decision (D.) 22-12-027 in Rulemaking (R.) 20-07-013, Ordering Paragraph 1 and Appendix A. See discussion in *Public Advocates Office’s Reply Comments on the Draft Decision Approving Pacific Gas and Electric Company’s 2023-2025 Wildfire Mitigation Plan*, December 14, 2023 at 4-6.

<sup>54</sup> Staff Proposal at 13.

<sup>55</sup> Staff Proposal at 4; PU Code section 8388.5(d).

<sup>56</sup> Staff Proposal at 4; PU Code section 8388.5(e).

<sup>57</sup> “Before approving the application, the commission may require the large electrical corporation to modify or modify and resubmit the application.” PU Code section 8388.5(e)(5).

nine-month review in each phase, every effort must be made by both agencies to ensure that they are reviewing similar information to promote efficiency and to avoid confusion.

**C. The Commission and Energy Safety should leverage the Memorandum of Understanding to support the objectives of SB 884.**

Energy Safety and the Commission developed a Memorandum of Understanding (MOU) to coordinate their actions related to “wildfire management and electric infrastructure safety, including, but not limited to, the sharing of information.”<sup>58</sup> The MOU’s list of shared priorities supports establishing a collaborative working group of agency staff and decision makers to homogenize the Phase 1 and Phase 2 guidelines. The MOU’s stated goals include working together to develop consistent policies regarding utility wildfire mitigation; assisting one another in addressing “public safety risks associated with energy infrastructure;” collaborating to assist the Commission in fulfilling its obligations regarding reasonable costs; and collaborating to assist Energy Safety in fulfilling its obligations regarding wildfire safety.<sup>59</sup>

SB 884 plans are likely to commit massive amounts of ratepayer funds, which may easily surpass all other wildfire mitigation strategies combined. Closer coordination between the two agencies in aligning their elements of the SB 884 plans is likely to yield benefits to all stakeholders, including faster and more complete Plan development by utilities, speedy and thorough review by the agencies, and more transparent Plans subject to intervenor and public review. Cal Advocates recommends that the Commission and Energy Safety leverage the MOU to support the objectives of SB 884.<sup>60</sup>

**V. Additional comments**

**A. The Commission and Energy Safety should allow stakeholders as well as utilities to request changes to a utility’s approved SB 884 Plan.**

The Staff Proposal states that procedures governing utility-requested changes to the plan “will be determined by the Commission in coordination with Energy Safety in a subsequent process.”<sup>61</sup> Cal Advocates supports the development of coordinated guidelines to govern utility-requested changes

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<sup>58</sup> *Memorandum of Understanding between the California Public Utilities Commission and the Office of Energy Infrastructure Safety*, July 12, 2021 (MOU) at 1, available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-policy-division/documents/20210712-cpucoeis-mousigned.pdf>

<sup>59</sup> MOU at 1-2.

<sup>60</sup> *Memorandum of Understanding between the California Public Utilities Commission and the Office of Energy Infrastructure Safety*, July 12, 2021 (MOU) at 1, available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-policy-division/documents/20210712-cpucoeis-mousigned.pdf>

<sup>61</sup> Staff Proposal at 13.



to the approved plan.<sup>62</sup> To ensure the updates conform to statutory intent and do not impose unjust or unreasonable costs on ratepayers, the update process should be public, with opportunities for stakeholders to perform discovery and file comments. For regulatory efficiency, the Commission and Energy Safety should consider requiring utilities to update their plans through a PFM, utilizing the guidelines we propose in section III.C of these comments. The Commission and Energy Safety should also allow other parties to use the same process. This will provide a venue for the Commission to revisit the conditional approval if, for example, a utility consistently fails to meet its mileage targets or new technologies become preferable to undergrounding for cost-efficient and swift wildfire mitigation.

**B. The Commission should require utilities to employ reasonable and comparable assumptions in their analyses of alternative mitigations.**

PU Code Section 8388.5(c)(4) states that a utility’s SB 884 plan shall include “a comparison of undergrounding versus aboveground hardening of electrical infrastructure and wildfire mitigation for achieving comparable risk reduction, or any other alternative mitigation strategy.”<sup>63</sup> To address this requirement, the Staff Proposal requires utilities to provide “the forecasted CBRs across all projects ... for alternative wildfire mitigation hardening methods considered, in place of undergrounding.”<sup>64</sup>

However, the Staff Proposal does not require that utilities calculate these alternate CBRs using similar assumptions to those used for undergrounding. This omission is a legal and technical error because it does not provide for a valid and reasonable comparison between undergrounding and the alternatives.

As Cal Advocates previously noted, utilities have in the past used assumptions that do not lead to a fair and accurate comparison of the alternatives. In its 2023-2025 Wildfire Mitigation Plan (WMP), PG&E’s comparison of overhead and underground system hardening assumed that the unit cost of undergrounding would decrease over time, while the unit cost of covered conductor would increase over time.<sup>65</sup> These assumptions arose from the utility’s plan to increase undergrounding

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<sup>62</sup> See discussion in Cal Advocates comments on September 2023 Staff Proposal at 14-15.

<sup>63</sup> PU Code section 8388.5(c)(4).

<sup>64</sup> Staff Proposal at 8, application requirement #9.

<sup>65</sup> See discussion in *Comments of the Public Advocates Office on the 2023 to 2025 Wildfire Mitigation Plans of the Large Investor-Owned Utilities*, May 26, 2023 at 15.

mileage and to decrease covered conductor mileage.<sup>66</sup> In other words, PG&E pre-determined its preferred mitigation strategy, used that strategy to influence its unit cost calculations, and then used those calculations to justify its pre-determined choice of mitigation measure.

In the situation described above, PG&E did not use reasonable and comparable assumptions to evaluate alternative mitigations to undergrounding. If a utility were to take a similar approach in an SB 884 application, it would artificially decrease the estimated CBR of alternative mitigations, leading to approval of undergrounding for locations that (with a fair comparison) would be better suited to cheaper and faster wildfire mitigation methods.

The Staff Proposal should be modified to require utilities to use reasonable and comparable assumptions in their calculations of CBRs for both undergrounding and alternative mitigations. Failure to do so could result in flawed, misleading analyses that would be technically flawed and also would not meet the statutory intent of PU Code Section 8388.5(c)(4).<sup>67</sup> It would therefore constitute both a technical and legal error.

**C. The Commission should improve the Staff Proposal’s requirements regarding impacts on telecommunications utilities.**

The Staff Proposal contains several useful provisions that require electric utilities to describe how their SB 884 plans will affect telecommunications providers. For example, the Staff Proposal states that applications must address coordination with telecommunications providers on the ownership or use of poles affected by proposed undergrounding projects.<sup>68</sup>

However, the Commission should revise the Staff Proposal to improve these requirements. First, the Commission should require participating electric utilities to provide a copy of the SB 884 application to each telecommunications utility that has equipment on poles where undergrounding is planned. Second, the Commission should require participating electric utilities to describe in detail how it will address the affected shared poles (including who will own and maintain the poles if the

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<sup>66</sup> In response to data request CalAdvocates-PGE-2023WMP-09, April 7, 2023, question 13, attachment 1, PG&E provided calculations supporting its estimated risk-spend efficiencies (RSE). The RSEs in this document cannot be directly compared, since PG&E’s forecast unit cost for overhead system hardening in this attachment ranges from \$1.56 million per mile to \$1.67 million per mile, nearly double PG&E’s *actual* unit cost in 2022 of \$0.83 million per mile (PG&E, *2023-2025 Wildfire Mitigation Plan R1*, April 6, 2023, Table PG&E-22-11-3 at 903).

Per PG&E’s response to data request CalAdvocates-PGE-2023WMP-22, May 5, 2023, question 4, these increased costs are due to “an assumed loss of economies of scale” related to its planned reduction in overhead hardening miles.

<sup>67</sup> PU Code section 8388.5(c)(4).

<sup>68</sup> Staff Proposal at 9-10, application requirements 12 and 17.

existing communications infrastructure is not placed underground). Third, if an electric utility transfers ownership of poles to a telecommunications utility, the Commission should require the electric utility to remove those poles from its rate base (to eliminate any further depreciation costs to electric customers). This will ensure that utility ratepayers are not charged for depreciation of the same assets from both the electric and telecommunication utilities.

## VI. CONCLUSION

Cal Advocates respectfully requests that the Commission adopt the recommendations discussed herein.

Respectfully submitted,

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December 28, 2023

cc: Koko Tomassian, Safety Policy Division  
Fred Hanes, Safety Policy Division  
SB 884 Service List  
Caroline Thomas Jacobs, Office of Energy Infrastructure Safety  
Kristin Ralff Douglas, Office of Energy Infrastructure Safety



January 11, 2024

**VIA ELECTRONIC FILING**

Rachel Peterson, Executive Director  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
[SB884@cpuc.ca.gov](mailto:SB884@cpuc.ca.gov)

**Subject: Public Advocates Office's Reply Comments on Draft Resolution SPD-15 and the Staff Proposal for the SB 884 Program.**

Dear Executive Director Peterson,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully submits the following reply comments on Draft Resolution SPD-15 for the SB 884 Program. Please contact Holly Wehrman ([Holly.Wehrman@cpuc.ca.gov](mailto:Holly.Wehrman@cpuc.ca.gov)), Senior Utilities Engineer, Henry Burton ([Henry.Burton@cpuc.ca.gov](mailto:Henry.Burton@cpuc.ca.gov)), Program and Project Supervisor, or myself with any questions relating to these comments.

We respectfully urge the Commission to adopt the recommendations discussed herein.

Sincerely yours,

/s/ Nathaniel Skinner  
Program Manager, Safety Branch

cc: Koko Tomassian, Safety Policy Division  
Fred Hanes, Safety Policy Division  
SB 884 Service List –  
[https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-policy-division/documents/sb-884---notification-list-updated-1\\_8\\_2024.xlsx](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-policy-division/documents/sb-884---notification-list-updated-1_8_2024.xlsx)  
Service Lists for A.21-06-021, A.22-05-016, and A.23-05-010  
Caroline Thomas Jacobs, Office of Energy Infrastructure Safety  
Kristin Ralff Douglas, Office of Energy Infrastructure Safety

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## I. INTRODUCTION

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) hereby submits these reply comments on Draft Resolution SPD-15, which adopts the Commission’s Staff Proposal for the Senate Bill (SB) 884 Program.

SB 884, codified as Public Utilities (PU) Code section 8388.5, went into effect on January 1, 2023. This statute directs the Commission to establish a program for long-term utility distribution undergrounding plans and authorizes large electrical corporations (utilities) to participate in that program.<sup>1,2</sup> On November 9, 2023, the Safety Policy Division (SPD) served Draft Resolution SPD-15 to adopt a Staff Proposal that establishes the process and requirements for the Commission’s review of the utilities’ SB 884 program applications.<sup>3</sup>

On December 28, 2023, Cal Advocates and other stakeholders filed opening comments on Draft Resolution SPD-15 and the Staff Proposal.<sup>4</sup> Draft Resolution SPD-15 invites interested persons to file reply comments by January 11, 2024.

## II. DISCUSSION

### A. **The Commission should clarify the requirements regarding the annual unit cost caps and cost-benefit ratio thresholds.**

Both Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) correctly note a discrepancy between the language in the Staff

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<sup>1</sup> Many of the Public Utilities Code sections relating to wildfires apply to “electrical corporations.” *See, e.g.*, Public Utilities Code section 8388.5. These comments use the more common term “utilities” to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

<sup>2</sup> PU Code section 8385 and section 8388.5.

<sup>3</sup> SPD, Draft Resolution SPD-15, November 9, 2023 (Draft Resolution) and Attachment 1, *Staff Proposal for SB 884 Program*, November 9, 2023 (Staff Proposal).

<sup>4</sup> Cal Advocates, *Public Advocates Office’s Comments on Draft Resolution SPD-15 and the Staff Proposal for the SB 884 Program*, December 28, 2023 (Cal Advocates’ opening comments).

Proposal and in Draft Resolution SPD-15.<sup>5</sup> The Staff Proposal states that the unit cost cap and cost-benefit ratio (CBR) threshold apply to the *average* recorded unit cost and CBR, whereas Draft Resolution SPD-15 states CBR and unit cost cap apply to each project.<sup>6</sup> PG&E and SDG&E state that these conditions should apply to the average recorded values, rather than on a per-project basis.<sup>7</sup>

**1. The Commission should clarify that the unit cost cap applies to the average for a given year.**

Cal Advocates agrees that the unit cost cap should apply to the average unit cost, rather than the unit cost of each project. This interpretation allows utilities some flexibility to underground high-risk lines in difficult and costly locations, while constraining overall costs to protect ratepayers. The Commission should modify the language in Draft Resolution SPD-15 to clarify that the unit cost cap applies to the average unit cost of all projects completed in a given year.

**2. The Commission should establish both an average CBR threshold and a per-project CBR threshold.**

With respect to the cost-benefit ratio (CBR) metric, there are reasonable arguments for both an average threshold and a per-project threshold. An average CBR threshold would allow utilities some flexibility to carry out projects that would address substantial risk, even if such projects were in difficult and costly terrain. On the other hand, a per-project CBR threshold would ensure that utilities focus on the locations and projects that most efficiently reduce wildfire risks. The Commission should discourage utilities from including lower-efficiency projects in their undergrounding plans, because these projects would unduly burden ratepayers while providing less overall risk reduction than offered by alternate mitigations.

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<sup>5</sup> PG&E, *Pacific Gas and Electric Company's Comments on Draft Resolution SPD-15*, December 28 (PG&E's opening comments) at 3-4.

<sup>6</sup> PG&E's opening comments at 3-4; Staff Proposal at 10; Draft Resolution SPD-15 at 9.

<sup>7</sup> PG&E's opening comments at 4; SDG&E, *SDG&E Comments on Draft Resolution SPD-15*, December 28, 2023 (SDG&E's opening comments) at 2.



To make the best use of the CBR metric, the Commission should modify the Staff Proposal and Draft Resolution SPD-15 to establish both a CBR threshold that all projects must meet, and an average CBR threshold that projects completed within a given year must meet. The per-project CBR threshold should be less stringent than the annual average CBR threshold, and should act as a floor on the acceptable cost efficiency of proposed undergrounding projects. The per project CBR threshold should make sure that, at a minimum, the values of benefits each project are commensurate with the costs of that project. If not, then such a project should have an explanation as to why a valid exception should apply.

To assess compliance with the per-project CBR threshold, the Commission should examine the individual CBRs for all projects completed within a calendar year and for which the utility is requesting cost recovery. If a project falls below the per-project CBR threshold, the Commission should deny cost recovery for a portion of the costs of that project such that the remaining costs meet the per-project CBR threshold.<sup>8</sup>

Following the assessment of the per-project CBR threshold, the Commission should sum the remaining costs of all projects completed within a calendar year and for which the utility is requesting cost recovery, and divide that sum by the sum of the estimated benefits of the projects. If the resulting value falls below the average CBR threshold, the Commission should deny cost recovery for a portion of the total costs such that the remaining costs meet the average CBR threshold.<sup>2</sup>

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<sup>8</sup> For example, consider a theoretical project with estimated benefits of \$4.0 million and a cost of \$4.5 million. The actual CBR for this theoretical project would be 0.89. If the per-project CBR threshold was set at 1.0, then \$0.5 million of the project costs would be denied such that the remaining CBR would meet the minimum CBR threshold (\$4 million in benefits divided by \$4 million in adjusted costs).

<sup>2</sup> For example, consider a set of two theoretical projects: one with estimated benefits of \$4.0 million and a cost of \$4.5 million; the other with estimated benefits of \$5.0 million and a cost of \$2.8 million. Assume the per-project CBR threshold is set at 1.0 and the average CBR threshold is set at 1.5. To meet the per-project CBR threshold, \$0.5 million of the costs for the first project would be denied. The second project already complies with the per-project threshold, so no adjustments would be made.

The average CBR for the project set would then be 1.3 (\$9 million in total estimated benefits and \$6.8 million in adjusted total costs). To meet the average CBR threshold, an additional \$0.8 million would be denied, leaving \$9 million in benefits and \$6 million in remaining costs that would be eligible for recovery.

**B. The Commission should clarify that unit cost calculations will be based on the cost of completed projects.**

PG&E and SDG&E state that it is unclear if only completed project costs are considered as part of the unit cost cap evaluation, or if the unit cost cap evaluation considers costs recorded in a specific year regardless of whether the project is completed in that year.<sup>10</sup> PG&E recommends that project costs be included in the average unit cost calculation only in the year the project is completed.<sup>11</sup>

Cal Advocates agrees that all project costs should be considered and recovered in the year the project is completed. Actual unit cost can only be calculated once all project costs are known. Furthermore, the Staff Proposal clearly states that a utility may only recover costs for a project once the project is used and useful.<sup>12</sup> A reasonable and transparent approach to the evaluation of the unit cost caps would be to apply the unit cost cap for a given year to the projects that a utility has completed in that year, and for which it is requesting cost recovery. The Commission should modify the language in the Staff Proposal and Draft Resolution SPD-15 to clarify that the average unit cost calculations will be based on completed projects: the calculation will use the entire cost of each project in the year that the project is completed.

**C. The Commission should require utilities to credit forecast operational cost-savings to customers or omit them from estimated cost-benefit ratios.**

Utilities have claimed in recent years that undergrounding will lead to savings in vegetation management and operational costs over the lifetime of the asset.<sup>13</sup> The Staff

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<sup>10</sup> PG&E's opening comments at 4, SDG&E's opening comments at 2-3.

<sup>11</sup> PG&E's opening comments at 4.

<sup>12</sup> Staff Proposal at 4.

<sup>13</sup> See, e.g., PG&E, *2023-2024 Wildfire Mitigation Plan R3*, September 27, 2023 at 400: "Additional benefits of undergrounding include improved reliability, reducing PSPS and EPSS outages, fewer emergency restoration activities during winter storms, and less need for vegetation management activities."

Proposal requires utilities to forecast these estimated cost savings over the life of the undergrounding plan.<sup>14</sup>

The Utility Reform Network (TURN) correctly notes that neither the Staff Proposal nor Draft Resolution SPD-15 require utilities to propose a mechanism to ensure that ratepayers will receive the benefits of these forecasted cost savings.<sup>15</sup> TURN recommends that the Commission require a phase 2 application to include a methodology by which the Commission can ensure that claimed cost savings will be reflected in rates.<sup>16</sup> California Farm Bureau Federation (CFBF) makes a similar recommendation.<sup>17</sup>

Cal Advocates agrees with TURN and CFBF and adds that it is unclear at this point whether utilities plan to include these estimated operational savings in their CBR calculations, which would increase the estimated CBR for undergrounding. Because these cost savings are currently speculative, it is inappropriate to include them in CBR calculations unless the utility provides substantial quantitative data to support the proposed operational cost savings, and commits to returning the estimated cost savings as a credit to ratepayers.

The Commission should modify the Staff Proposal and Draft Resolution SPD-15 to state that utilities may not include speculative operational savings in estimated CBRs for undergrounding unless the utility can provide evidence to support its inclusion. Furthermore, if a utility includes such savings in its estimated CBRs, the Commission should require the utility to return the cost savings to ratepayers via a Commission-approved mechanism. To do this, a utility should forecast the operational cost savings for the lifetime of the project and calculate the present value of those savings. When the project is complete and its capital costs go into rates, the utility should be required to

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<sup>14</sup> Staff Proposal at 7.

<sup>15</sup> TURN, *Comments of the Utility Reform Network (TURN) on Draft Resolution Spd-15 Implementing SB 884*, December 28, 2023 (TURN's opening comments) at 13-14.

<sup>16</sup> TURN's opening comments at 14.

<sup>17</sup> CFBF, *Opening Comments on Draft Resolution SPD-15*, December 28, 2023 (CFBF's opening comments) at 4.

include a credit for the present value of forecasted operational savings in the annual electric true-up advice letter. This approach will hold utilities accountable for their predictions and ensure that the predicted customer savings are achievable, and ensure the utilities do not improve their undergrounding CBRs based on speculation.

**D. The Commission should reinstate the consequences section of the Staff Proposal.**

Both TURN and CFBF recommend that the Commission reinstate the “Consequences for Failure to Satisfy Conditions of Approval” section that was present in the first draft of the Staff Proposal but removed from the current draft.<sup>18</sup> Cal Advocates supports this recommendation, and proposes modifications to align those consequences with our proposed cost recovery mechanism.<sup>19</sup>

Under our proposal, utilities would record all SB 884 costs to a memorandum account and request recovery of the recorded costs in an expedited application. Only costs that meet the total annual cost cap, the average unit cost cap, and the CBR thresholds established in the decision on a phase 2 application would be eligible for cost recovery.<sup>20</sup> To establish an efficient and transparent method for review of recorded costs, the Commission should reinstate the consequences section of the original Staff Proposal, and update it to align with our proposed cost recovery mechanism.

The draft Staff Proposal’s consequences section stated three times that “cost recovery will be denied for as many projects as necessary” to bring the total cost, unit cost, and average CBR in alignment with the conditions set in the decision on a phase 2 application.<sup>21</sup> It would be complicated for the Commission to determine which projects to remove from cost recovery in this manner. To simplify matters, the Commission should use aggregate rather than project-specific costs. That is, the Commission should sum the total costs of all projects for which the utility is requesting cost recovery, and the

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<sup>18</sup> TURN’s opening comments at 12; CFBF’s opening comments at 4-5.

<sup>19</sup> See, Cal Advocates’ opening comments at 7-10.

<sup>20</sup> Cal Advocates’ opening comments at 7-10.

<sup>21</sup> SPD, Staff Proposal for SB 884 Program, September 13, 2023 at 12.

total estimated benefit of such projects. A portion of the total cost figure can then be removed such that the total annual cost, average unit cost, and CBR threshold<sup>22</sup> conditions are met. Those removed costs would be ineligible for cost recovery.

This proposed method for recording and reviewing costs is reasonable. As CFBF correctly notes, the SB 884 program is voluntary.<sup>23</sup> If a utility's SB 884 application is approved, it will be guaranteed cost recovery of billions of dollars incurred over ten years, subject only to verification that such costs meet the conditions set in a decision on the phase 2 application. Such an expansive cost recovery authorization should be justly balanced with strict protections for ratepayers. Denial of cost recovery for costs that do not meet the conditions of approval is a reasonable way to protect ratepayers without burdening utilities through extended litigation in future cost recovery proceedings.

**E. The Commission should establish a process for utilities to request cost recovery of abandoned projects, subject to reasonableness review.**

Both PG&E and SDG&E request that the Commission allow utilities to record costs for projects that it begins but does not complete.<sup>24</sup> Cal Advocates does not object to utilities recording abandoned project costs in the memorandum account (consistent with our proposed alternate cost recovery method<sup>25</sup>), subject to reasonableness review.

**F. The Commission should calculate average unit costs over a single year rather than a longer time horizon.**

PG&E proposes that the unit cost cap be calculated on a rolling three-year basis to address possible concerns of skewed averages in the case of a high-cost project completed in late December and a low-cost project completed in early January.<sup>26</sup>

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<sup>22</sup> This should include both the average CBR threshold and the per-project CBR threshold, as discussed in section II.A of these comments.

<sup>23</sup> CFBF's opening comments at 1.

<sup>24</sup> PG&E's opening comments at 7; SDG&E's opening comments at 3.

<sup>25</sup> Cal Advocates' opening comments at 7-8.

<sup>26</sup> PG&E's opening comments at 3.

Southern California Edison Company (SCE) similarly proposes measuring the average unit cost over a longer time horizon than one year.<sup>27</sup>

The Commission should reject these recommendations for two reasons. Firstly, PU Code section 8388.5(e)(1) requires a utility to show how cost targets are expected to decline over time.<sup>28</sup> PG&E's own forecasts have shown an approximately five percent year-over-year reduction in undergrounding unit costs through 2026.<sup>29</sup> PG&E's proposal to average unit costs over three years would make it difficult for the Commission to assess whether average unit costs are truly declining at the pace the utility claims. Furthermore, it would allow PG&E to construct projects with a low unit cost in year one, and projects with a high unit cost in year three, and still meet the average unit cost caps. This would be contrary to the intent of SB 884 - that unit costs decline throughout the ten years of the plan.

Secondly, PG&E is likely to construct several hundred miles each year under SB 884.<sup>30</sup> This volume of miles will minimize the effect of the annual averaging problem that PG&E describes.<sup>31</sup> Historically, PG&E's wildfire mitigation undergrounding projects have been 5.4 miles or shorter. This means that any single project should have little effect on the annual average.<sup>32</sup> The difference in average unit cost associated with completing a high-cost project in December and a low-cost project in January will therefore likely be minimal.

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<sup>27</sup> SCE, *Southern California Edison Company's Opening Comments on Draft Resolution SPD-15*, December 28, 2023 (SCE's opening comments) at 3.

<sup>28</sup> PU Code sections 8388.5(e)(1) and 8388.5(e)(1)(C).

<sup>29</sup> PG&E, A.21-06-021, *Pacific Gas and Electric Company's (U39M) Reply Brief*, December 9, 2022 (PG&E's GRC reply brief) at 362.

<sup>30</sup> Per PG&E's GRC reply brief at 353, as of December 9, 2022, PG&E forecasted 415 miles of undergrounding in 2024, 527 miles in 2025, and 750 miles in 2026.

<sup>31</sup> Per PG&E's responses to data requests CalAdvocates-PGE-2022WMP-17, question 10, March 29, 2022 and CalAdvocates-PGE-2023WMP-06, question 11, March 29, 2023, the longest undergrounding project PG&E completed between 2021 and 2022 was 5.4 miles. This is roughly one percent of the mileage PG&E plans to complete in 2025, which suggests that a single project will have only a small effect on the average unit cost for projects completed in that year.

<sup>32</sup> *Ibid.*

The Commission should reject PG&E's and SCE's requests to calculate the average unit cost over longer time horizons than a single year. In addition to the reasons articulated above, the utilities are positing a problem that is merely speculative. If, while implementing its plan, PG&E or another utility provides quantitative data to show that the problem exists (i.e., that calculating average unit costs over a single year yields unreasonable results), then the Commission can address the issue at that time. The utility should file a petition for modification (PFM), utilizing the accelerated PFM process we proposed in our opening comments.<sup>33</sup>

**G. The Commission should require utilities to provide a list of all undergrounding projects, regardless of funding source, to limit the possibility of gaming or double cost recovery.**

The Staff Proposal includes a provision to discourage double-dipping or venue shopping, by requiring applicant utilities to identify when they are seeking authorization for costs that the Commission has previously denied. While it does not go far enough to create transparency and enable accurate cost analysis,<sup>34</sup> this requirement provides an important ratepayer protection.

PG&E recommends that the Commission remove the requirement to distinguish between forecast costs already approved by the Commission, forecast costs for which the Commission previously denied a request for recovery, and forecast costs that have not yet been the subject of a request for recovery.<sup>35</sup>

Utilities can receive funding for undergrounding through multiple venues, with their general rate case (GRC) being the primary such venue. PG&E notes that the funding for undergrounding in its GRC refers only to a number of miles and not to specific projects, while SB 884 will fund specific projects.<sup>36</sup> According to PG&E, it

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<sup>33</sup> Cal Advocates' opening comments at 8-9.

<sup>34</sup> See discussion in Cal Advocates, *Public Advocates Office's Informal Comments on the Staff Proposal for the SB 884 Program*, September 27, 2023 at 10.

<sup>35</sup> PG&E's opening comments at 10-11.

<sup>36</sup> PG&E's opening comments at 11.

would therefore “not be possible to identify forecasted projects costs included in a Phase 2 Application for which the Commission previously denied a request for recovery.”<sup>37</sup> Rather than propose a means to address this concern while maintaining a reasonable method for preventing double cost recovery, PG&E proposes to gut the ratepayer protections. PG&E recommends the Commission remove the entire requirement to compare SB 884 plan forecasts to other proceedings.<sup>38</sup>

The Commission should reject PG&E’s recommendation. PG&E (and all utilities) should be capable of determining which projects it will complete during the GRC-funded period, and to differentiate between the projects requested as part of SB 884, and the projects it expects to fund as a result of the GRC decision. For example, PG&E has already provided a detailed list containing 2,100 miles of proposed undergrounding projects as part of its 2023-2025 WMP.<sup>39, 40</sup> This list was identified prior to the most recent GRC decision that approved 1,230 miles of undergrounding projects.<sup>41</sup> PG&E should be prioritizing which projects to take forward under the GRC decision and those that may be part of an SB 884 undergrounding plan.<sup>42</sup>

The Commission, therefore, should modify the Staff Proposal to require utilities to include a complete list of *all* undergrounding projects it currently plans to complete, including those approved through a venue other than an SB 884 application. This list should note the approved or requested funding source for each project and be updated annually throughout the duration of the undergrounding plan.<sup>43</sup>

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<sup>37</sup> PG&E’s opening comments at 11.

<sup>38</sup> PG&E’s opening comments at 11.

<sup>39</sup> PG&E, *2023-2025 Wildfire Mitigation Plan*, March 27, 2023 at 346.

<sup>40</sup> PG&E provided its 2023-2026 undergrounding workplan as confidential attachment “2023-03-27\_PGE\_2023\_WMP\_R0\_Appendix D ACI PG&E-22-16\_Atch01\_CONF.xlsx” to its 2023-2025 Wildfire Mitigation Plan, March 27, 2023.

<sup>41</sup> D.23-11-069 at 273, November 17, 2023.

<sup>42</sup> If PG&E is not doing this work, it risks confusion and uncertainty in the funding of projects.

<sup>43</sup> See discussion in Cal Advocates, *Public Advocates Office’s Informal Comments on the Staff Proposal for the SB 884 Program*, September 27, 2023 at 10.



This complete project list would: a) provide the Commission, Office of Energy Infrastructure Safety, and stakeholders a transparent view into which projects are to be funded and approved under various proceedings, b) prevent a utility from seeking double recovery either intentionally or inadvertently, and c) ensure that projects are not moved between funding streams to render meaningless the cost caps in each proceeding or decision.<sup>44</sup>

**H. The Commission should not allow utilities to include miles outside the high fire-threat districts (HFTD) in SB 884 undergrounding plans.**

PG&E and SDG&E both request that the Commission modify the Draft Resolution to allow utilities to include miles outside the high fire-threat districts (HFTD) in their undergrounding plans.<sup>45</sup> Contrary to this request, the plain language of the statute directs that “only undergrounding projects located in tier 2 or 3 high fire-threat districts or rebuild areas may be considered and constructed as part of the program.”<sup>46</sup>

Fortunately, utilities have multiple venues to address the wildfire risks of lines that are not within the HFTDs or that need to be rebuilt. . A utility could request funding through its GRC to perform undergrounding outside the HFTDs. A utility could also file a PFM to request that the Commission modify the HFTD designations to better align with the utility’s understanding of high-risk locations. Indeed, in April 2023, Cal Advocates filed a Petition for Modification that requests the Commission update high fire threat district mapping.<sup>47</sup>

The Commission must comply with the law and not adopt utility requests to allow undergrounding mileage outside the HFTDs and rebuild areas. The Commission should, however, revisit the HFTD designations to ensure they reflect the most current

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<sup>44</sup> For example, if the costs for an SB 884 project were to exceed projections, a utility might want to remove that project from its SB 884 plan and instead fund it through its GRC.

<sup>45</sup> PG&E’s opening comments at 12; SDG&E’s opening comments at 3-4.

<sup>46</sup> PU Code section 8388.5(c)(2).

<sup>47</sup> See R.15-05-006, *Public Advocates Office’s Petition for Modification of Decision (D.)20-12-030, D.17-12-024 and D.17-01-009 In Order to Update High Threat Fire District Mapping*, April 19, 2023.

understanding of wildfire risk.<sup>48</sup> Additionally, the Commission should commit to promptly considering and resolving any PFMs that would modify the HFTD designations.

**I. The Commission should require utilities to provide geospatial data on all poles which communications companies lease from, or jointly own with, the electric companies.**

PG&E recommends that the Commission modify the requirement for utilities to provide geospatial data for poles shared with communications companies, so that the requirement would only apply to poles where lease agreements have been digitized.<sup>49</sup> PG&E does not state what percentage of its lease agreements have been digitized, nor provide any other information that would allow the Commission to evaluate the reasonableness of this request.

It is reasonable for the Commission to require data on all poles that are shared with communications companies, particularly as those companies have noted that removal of such poles by the electric company in the course of undergrounding could impose substantial difficulties for communications companies.<sup>50</sup> The Commission should evaluate the additional costs these difficulties could impose on communications companies, which may then be passed to consumers as an incremental and indirect cost impact of electric undergrounding.<sup>51</sup> It is impossible for the Commission to effectively

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<sup>48</sup> Cal Advocates, *Public Advocates Office's Petition for Modification of Decision (D.) 20-12-030, D.17-12-024 and D.17-01-009 in Order to Update High Threat Fire District Mapping*, April 19, 2023, in docket R.15-05-006.

<sup>49</sup> "Not all lease agreements are digitized, and GIS data can only be provided where digitized lease agreements are available." PG&E's opening comments at 11-12.

<sup>50</sup> "If an IOU removes its poles as part of an undergrounding project, some communications providers may face the prospect of having to either underground their overhead facilities at the same time as the IOU or discontinue service in that area. Moreover, certain communications equipment, such as Wi-Fi devices, cellular radios, and antennas that provide hotspots and wireless broadband, cannot operate below ground." Opening comments from AT&T California; the California Broadband and Video Association; Crown Castle Fiber, LLC; and Sonic Telecom, LLC (collectively, Communications Providers), December 28, 2023 at 1-2.

<sup>51</sup> Discussed further in section II.J of these comments.

evaluate this potential impact of SB 884 plans on ratepayers without complete information regarding shared poles.

The Commission should not adopt PG&E’s recommendation to require information on shared poles only “where available.” PG&E should have such information available, and should already be working on digitizing these records where it has not already done so. This is doubly so since PG&E is well aware of how its deficient recordkeeping practices contributed to the San Bruno disaster.<sup>52</sup> The Commission should modify Draft Resolution SPD-15 to clarify that the utilities are required to maintain data on lease agreements in an appropriate format to allow full compliance with the application requirements established in the Staff Proposal.

**J. The Commission should require electric utilities and communications providers to file sufficient information in a phase 2 application for the Commission to consider the total cost of undergrounding plans to consumers.**

A coalition of communications providers<sup>53</sup> requested that the Commission modify Draft Resolution SPD-15 to expressly consider the costs that would be incurred by parties other than electric utilities, including communications providers, as a result of SB 884 undergrounding plans.<sup>54</sup> They further requested that electric utilities be required to provide detailed information for each project, such as shapefiles.<sup>55</sup> Cal Advocates agrees with the communications providers that electric utilities should include more detailed information regarding their undergrounding projects, including shapefiles.<sup>56</sup> As it relates to costs incurred by communications providers, it is unclear how that information will be utilized in the Commission’s decision-making during its review of a phase 2 application.

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<sup>52</sup> See Commission D.15-04-024, Appendix C, Table of Violations for Investigation 11-02-016, (Recordkeeping OII).

<sup>53</sup> Opening comments from AT&T California; the California Broadband and Video Association; Crown Castle Fiber, LLC; and Sonic Telecom, LLC (collectively, Communications Providers), December 28, 2023.

<sup>54</sup> Opening comments from Communications Providers, December 28, 2023 at 2.

<sup>55</sup> Opening comments from Communications Providers, December 28, 2023 at 2-3.

<sup>56</sup> Opening comments from Communications Providers, December 28, 2023 at 2-3.

The Commission should modify the Staff Proposal and Draft Resolution SPD-15 to require the communications providers to supply additional information to identify at a more granular level the costs they claim they will face. Communications providers should file that information as testimony in the phase 2 application proceeding.

Information to be filed by communications providers on the record should include:

1. Pictorial drawings of the proposed distribution and service drop architectures for both the electric assets and the communications providers' access network facilities.
2. Design drawings of the proposed distribution and service drop architectures for both the electric assets and the communications providers' access network facilities.
3. Cost estimates for undergrounding of electric and communications providers' assets, based on these designed architectures. Cost estimates are to be derived from the engineered drawings and bills of materials, based on "takeoff"<sup>57</sup> inventories of the drawings.
4. Comparative cost reporting which specifically documents: a) the claimed incremental cost increases which are incurred by communications providers when participating in joint undergrounding projects with electric providers, vs. b) the costs incurred by the communications providers when constructing their own outside plant facilities (i.e., cables, wires, pole-mounted equipment) which are deployed via utility pole attachments by themselves without participation in a "joint trench" project with an energy provider. This comparative cost reporting will allow the Commission to evaluate the actual increased cost which may be incurred by communication providers should they participate in possible undergrounding projects with electricity providers.

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<sup>57</sup> In construction cost estimating, "takeoff" is the practice of writing the cost estimate for a construction project based on a bill of materials that is composed of the designed elements of the project. Those designed elements as drawn on engineering drawings are subsequently recorded from the drawing or "taken off" to be items listed on the bill of materials. Costs are then determined based on the items and unit quantities which are listed on the bill of materials.

To facilitate communications providers in developing documentation of the costs they may face, the Commission should first require the electric utilities and other major pole owners<sup>58</sup> to address several fundamental questions with information on the record. The Commission should modify the Staff Proposal and Draft Resolution SPD-15 to require electric utilities to provide the following as part of their phase 2 applications:

1. Identification of those utility poles designated for undergrounding that contain telecommunications attachments, and a statement that answers: Whether the attached telecommunications facilities shall be undergrounded along with the electric infrastructure?
2. In each instance of such electric asset undergrounding, if the answer to question 1 is “no,” will the poles with remaining telecommunications attachments be left as a monopole with only telecommunications assets on it?
3. If the answer to question 2 is “yes,” are these remaining poles going to be sold, leased, or otherwise be made available to communications providers?
4. In answer to question 3, if the remaining poles are sold, leased, or otherwise made available to communications providers, how and in what accounts will this income be recorded?
5. Will the electric utilities and other major pole owners continue to have the responsibility to maintain, service, and replace the poles as necessary?
6. If an electric utility has removed their equipment, what justification shows why ratepayers should justly and reasonably bear any costs in addition to income received from entities attaching equipment to the pole.

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<sup>58</sup> The term “major pole owners” is a term of reference that has been utilized by the Commission in pole attachment proceedings dating back to 1998, when the Commission amended the right of way rules to apply to Southern California Edison, PG&E, AT&T, Frontier, Consolidated Communications, or their predecessor entities. This term has been utilized in each subsequent proceeding to identify the major pole owners at that given time.

These requirements will provide clarity on the total consumer cost of electric undergrounding plans and allow the Commission to consider a holistic cost-benefit analysis.

### **III. CONCLUSION**

Cal Advocates respectfully requests that the Commission adopt the recommendations discussed herein.

Respectfully submitted,

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