

FINAL STATEMENT OF REASONS

Utility Clearing Exemption Extension, 2011

[Adopted December 6, 2011]

Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 7 Fire Protection, and Article 4:

Amend:

§ 1257 Exempt Minimum Clearance Provisions-PRC §4293

UPDATED INFORMATION: OVERVIEW OF FINAL ADOPTED REGULATORY ACTION

On December 6, 2011, the Board of Forestry and Fire Protection adopted amendments to the Fire Prevention Standards for Electrical Utility in Title 14 CCR, Division 1.5, Chapter 7 Fire Protection, and Article 4. The adopted regulation makes permanent an existing regulation for fire prevention standards for electrical utilities. The adopted permanent regulation provides an exemption to the utility vegetation clearing requirements in Title 14 of the California Code of Regulations, Section 1257(a)(3), and defines the term "Hazard Tree" in Section 1257(b). The exemption allows for healthy, mature trees (trunks and limbs commonly referred to as "Major Woody Stems" or identified by the acronym "MWS"), sufficiently rigid so they do not present a risk to public safety, to be closer to powerlines than the minimum clearing distance under existing regulations. Specifically, the exemption reduces the allowable minimum clearance between the MWS and energized lines to six inches, compared to the previous clearing requirement of four feet (for lines less than 75,000 volts). The exemption applies to utilities lines in State Responsibility Area (SRA).

This regulation was initially adopted on May 30, 2007 with an expiration date of January 1, 2009. It was readopted on December 26, 2008 with an expiration date of January 1, 2010, and readopted a second time on February 1, 2010 with an expiration date of January 1, 2012. The Board approved a 45-day Notice for proposed permanent rule adoption at the meeting of September 2011 meeting. The Notice of Rulemaking was published on October 7, 2011 with close of public comment on November 22 and a revised public hearing date of December 6, 2011.

The initial adoption and two subsequent extensions were granted to complete what was essentially an experimental period for implementation and evaluation of the results. As monitoring of the interim rules confirmed their efficacy, adoption of a permanent regulation was endorsed by both the regulated utilities and the

Department of Forestry and Fire Protection Office of the State Fire Marshal (CAL FIRE).

FINDINGS

- The Board finds that monitoring work to evaluate the regulation's efficacy since its initial adoption in February 2007 has indicated that implementation of the regulation has been effective and not resulted in fire ignitions or increased fire hazard.
- The Board finds that the adopted regulation has been improved through new provisions that further define the characteristics of an exempt tree, provide for verification of exempt status by qualified professionals, and require inspections to assure continued compliance with the regulation.
- The Board finds that it is not practical and in some cases not desirable for aesthetic reasons to completely remove healthy, mature trees (trunks and limbs) solely because they are in proximity to energized utility lines.
- The Board finds that the exemption provides demonstrably cost-effective and fire safe solutions for identifying the appropriate trees/limbs that should be cleared around utility lines.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The State Board of Forestry and Fire Protection (Board) has considered alternatives to the regulation proposed.

Alternative 1: Allow the regulation to expire.

This alternative would allow the previously adopted regulation to expire on January 1, 2012 without adoption of a successive regulation thereby eliminating the clearing exemption. This alternative was rejected by the Board as a result of the finding that the existing exemption is both fire-safe and cost effective. The allowance for discretionary determination of the level of risk posed by specific tree trunks and/or limbs has been further supplemented in this proposed regulation with criteria for evaluation of Major Woody Stems. In addition, the regulation has been modified to require additional monitoring and reporting by utility companies. Allowing the regulation to expire would negate years of data collection and collaboration between state agencies and utility companies and is therefore not acceptable.

Alternative 2: Adopt the rule with a new sunset date. This alternative would disregard years of monitoring and collaboration toward the development of a permanent regulation. The sunset dates employed in previously adopted

versions of the regulation were deliberately included to provide discrete time periods in which to monitor the regulation's efficacy. The information gleaned from these monitoring periods was useful in the development of a permanent regulation. The permanent regulation proposed for adoption now includes a monitoring and reporting element for continued evaluation of the regulation. Adoption of the rule with a new sunset date would not provide additional information from which to evaluate the effectiveness of the regulation that could not be ascertained through this new monitoring and reporting element. In addition, it is unlikely that utility companies would invest further time and resources in a regulation of limited and uncertain duration. This alternative was therefore rejected.

Alternative 3: Adopt a permanent regulation with modifications for professional review, more explicit criteria, and a monitoring and reporting program. This alternative modifies the existing regulation to better incorporate consideration of size and distance requirements, include professional review by a Registered Professional Forester or Certified Arborist, and require a monitoring and reporting system to allow the Department to continue to evaluate the effectiveness of the rule. Further, this alternative provides additional criteria for what constitutes a MWS to improve enforceability of the rule and reduce fire risk by excluding smaller diameter "large woody stems". This is the preferred alternative adopted by the Board following a publicly noticed hearing held December 6, 2011.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the adopted regulation. The regulation makes permanent the existing temporary rule which expires on January 1, 2012. The exemption provided by the adopted regulation is specifically designed to avoid unnecessary tree removal to comply with clearing standards where there has been a demonstrated low risk of fire ignition (see OAL File # 070319-03-S, dated April 30, 2008).

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated that this regulation would not have any adverse economic impact on any business. The regulation modifies and makes permanent an existing temporary regulation. This regulation allows for a reduced minimum clearance distance between energized electric power lines (for lines that handle less than 75,000 volts) and healthy, mature trees (trunks and limbs), that are sufficiently rigid such that they do not present a risk to public safety. This reduction in the clearing requirements is estimated to have a significant

positive financial effect for utilities, and potentially utility rate payers, due to the lesser amount of vegetation removal or installation of insulation around electric utility lines for compliance with existing rules.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified a potential adverse impact on small business that would occur as a result of the adoption of this regulation. Alternatives to lessen a potential adverse impact to small business have therefore not been contemplated.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation as referenced in this *Statement of Reasons*:

1. PG&E, April 17, 1998. Joint Parties "Request for Approval of Criteria for Major Woody Tree Exemption to Rule 35 of General Order 95 in re: CPUC I.94-06-012.I
2. CPUC, October 22, 1997. Opinion announced in Decision 97-10-056 in re: I.94-06-012 Investigation on the Commission's own motion and order to show cause to determine if San Diego Gas and Electric Company should be held in violation of the Commissions' General Order 95 for failure to have exercised reasonable tree trimming practices and procedures.
3. Loughery, R. December, 2004. Testimony on CDF Public hearing on Fire Prevention Standards for Electric Utilities.
4. PG&E, December 2004. Written Testimony of PG&E of Public hearing before the CDF.
5. CN Utility Consulting, December 2004. Written comments in response to CDF rulemaking of October 22, 2004.
6. PG&E Engineering Test Report: VMS Tree Primary Clearance Test – Preliminary Report February 13, 2006. PG&E Engineering and Test Report Number 443-06.1.
7. CPUC. January, 2006. General Order 95. Rule 35.
8. OAL File Number 07 0319-03 S.

9. CAL FIRE Program Review Report, August 4, 2009.

10. PGE MSW summary report August, 31, 2009

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PUBLIC WRITTEN COMMENTS AND RESPONSE FOR 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED OCTOBER 7, 2011

No written comments were received from any source during the 45-day public comment period or the public hearing held on December 6, 2011.

PUBLIC HEARING SPEAKER COMMENTS AND RESPONSE FOR 45 DAY NOTICE HEARING DATED DECEMBER 6, 2011

Comment S1-1 Melodie Durham, Staff Chief, California Department of Forestry and Fire Protection/Office of the State Fire Marshal (CAL FIRE)

Commenter expressed Department's support for adoption of the regulation and thanked the Board.

BOF response: Department's support for adoption noted.

Rule Text Edit: No

Comment S2-1 Niel Fischer, Pacific Gas & Electric Company

Commenter expressed PG&E's support for adoption of the regulation and thanked the Board and Department for their continued assistance in the monitoring and amendment of the regulation.

BOF response: Support for adoption noted.

Rule Text Edit: No

1 Utility Clearing Exemption Extension, 2011

2 14 CCR, Division 1.5, Chapter 7 Fire Protection, Article 4.

3 Exempt Minimum Clearance Provisions-PRC §4293

4 [Adopted December 6, 2011]

5
6 Amend

7 14 CCR § 1257 - Exempt Minimum Clearance Provisions

8 Note: Authority cited: Sections 4111 and 4293 Public Resources
9 Code. Reference: Sections 4293 and 4296, Public Resources Code.

10 **§ 1257. Exempt Minimum Clearance Provisions - PRC 4293.**

11 (a) The minimum clearance provisions of PRC 4293 applicable in State
12 Responsibility Areas are exempted:

13 (1) Where conductors are:

14 (A) insulated tree wire, maintained with the high density,
15 abrasion resistant outer covering intact, or

16 (B) insulated self-supporting aerial cable, maintained with
17 the insulation intact, or

18 (C) supported by sound and living tree trunks from which
19 all dead or decadent branches have been removed.

20 (2) On areas described in 14 CCR 1255(c).

21 (3) ~~For major woody stems that have been established in their~~
22 ~~current location for a minimum of ten years; are vigorous and healthy;~~
23 ~~whose trunks and major limbs are at least six inches from primary~~
24 ~~distribution conductors (those generally less than 22,500 volts); and~~
25 ~~of sufficient strength and rigidity to prevent the trunk or limb from~~

1 ~~encroaching within six inches of primary distribution conductors under~~
2 ~~reasonably foreseeable local wind and weather conditions. The (a)(3)~~
3 ~~exemption shall expire January 1, 2012. For mature trees ("Exempt~~
4 ~~Trees") whose trunks and major limbs are located more than six inches,~~
5 ~~but less than the distance required for clearance by PRC 4293, from~~
6 ~~primary distribution equipment (conductor and energy carrying~~
7 ~~hardware, generally less than 35 kilovolts).~~

8 (A) Exempt trees must meet all of the following criteria,
9 as confirmed by a Certified Arborist or a Registered Professional
10 Forester:

11 1. The tree or limb must be six (6) inches or more
12 from the line at all times.

13 2. The size of the tree or limb at the conductor level
14 must be at least six (6) inches in diameter.

15 3. The tree must not have "scaffold branches," below
16 eight and one-half feet from the ground (so the tree can not be easily
17 climbed).

18 (B) All Utility Companies with primary distribution
19 conductors in State Responsibility Areas (SRA) of California shall:

20 1. Inspect Exempt trees annually to verify they
21 continue to meet the criteria in 14 CCR 1257(a)(3).

22 2. Maintain a database of information about Exempt
23 Trees that includes 1) location, using the format of
24 latitude/longitude in decimal degrees (DDD.DDDD Datum WGS84); 2)
25 species; and 3) last date of inspection. If any Utility does not

1 currently maintain such a database it must establish one and provide
2 its initial report to CAL FIRE by July 1, 2013. Utilities may request,
3 and the Director may approve, an extension of time in which to achieve
4 compliance with this reporting requirement.

5 3. Report the information required pursuant to 14 CCR
6 1257(d)(2), in an electronically researchable format, annually to CAL
7 FIRE by July 1 of each year for the previous calendar year.

8 4. When constructing, installing, replacing, or
9 maintaining primary distribution equipment, prevent the creation of
10 new Exempt Trees, to the extent feasible.

11 (C) Where there are site specific indications that a
12 conductor has or will come into contact with an Exempt Tree, or
13 portion thereof as described above, the condition will be corrected
14 either by altering the tree or by applying an engineering solution.
15 The actions taken will be documented in that utility's Exempt Tree
16 database.

17
18 (b) These exemptions do not apply to "Hazard Trees" as identified and
19 explained in the Department's "Powerline Fire Prevention Field Guide"
20 dated November 2008 and posted on the Department's website at:

21 <http://cdfdata.fire.ca.gov/pub/fireplan/fpupload/fppguidepdf126.pdf>
22 ~~y dead and decadent or rotten trees, trees weakened by decay or~~
23 ~~disease, leaning trees and portions thereof that are leaning toward~~
24 ~~conductor(s) and any other growth which may fall across the conductor~~
25 ~~and break it.~~