

## **FINAL STATEMENT OF REASONS**

### **Fire Prevention Standards for Electrical Utilities, 2004**

#### **Title 14 of the California Code of Regulations (14 CCR), Chapter 7. Fire Protection, Article 4. Fire Prevention Standards for Electrical Utilities**

#### **Amend:**

#### **§1251. Definitions**

#### **§1252. Locations Where PRC 4292, 4293 Apply.**

#### **§1252.1. Official Area Maps.**

#### **§1253. Time When PRC 4292-4296 Apply.**

#### **§1254. Minimum Clearance Provisions--PRC 4292**

#### **§1256. Minimum Clearance Provisions--PRC 4293**

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

### **I. UPDATED INFORMATION: OVERVIEW OF FINAL ADOPTED REGULATORY ACTION**

On September 8, 2005, after reviewing comment and correspondence from concerned citizens and other agencies, and considering testimony presented at a public hearing, the Director of the California Department of Forestry and Fire Protection adopted amendments to the Fire Protection regulations as proposed in a public notice published on March 30, 2005. The final adopted regulation language included changes that were provided to interested public persons in a 15-Day Notice of amendments and includes changes subsequent to the 15-Day Notice hearing determined to be necessary by the Director. The subsequent amendments include non-substantial changes determined by the Director to have been in accordance with GC § 11346.8(c), and a decision to use language proposed in the 45-Day Notice for § 1257 (see § 1257 below). Final adopted regulation (as proposed in the 15-Day Notice or otherwise adopted by the Director), address the following general topics:

- elimination of redundant language;
- providing more updated information to utility companies on locations where the regulation is applicable;
- elimination of the set calendar dates under which the regulation applies in favor of a more flexible time frame;
- clarifications on the standards for minimum vegetation clearing around utility lines; and
- clarifications on the conditions under which vegetation clearing is exempt from these regulations.

More detailed information on the amendments adopted by the Director to the regulation language follow:

**§ 1251 Definitions.** Adopted amendments were made to definitions to improve the technical meaning of terms related to electrical utility equipment and fire protection requirements. The definition of “connector” was corrected to broaden the type of devices approved for electrical connections. Also, the definition of “firebreak” was modified to delete the term “ignition” as the term “spread of fire” adequately defines the purpose of a fire break.

**§1252. Locations Where PRC 4292, 4293 Apply:** Adopted amendments were made to the regulation to clarify that the CDF Director is responsible for application of these fire prevention rules in SRA. This helps avoid ambiguity about where the Director will apply fire prevention PRCs, and provides greater clarity that other parties are responsible for enforcement of clearing requirements on mountainous and brush covered land in other jurisdictions. Changes are needed to clarify the law, help protect against forest fires, and enhance cost recovery efforts against those who are responsible for fires.

**§ 1252.1. Official Area Maps.** Adopted amendments were made to improve clarification of locations and availability of maps to ensure electrical utility company direct access to the most current SRA maps.

**§1253. Time When PRC 4292-4296 Apply.** Adopted amendment deletes the arbitrary calendar dates during which the clearing standards apply. It also eliminates any reference or use of Figure 2 that specified varying dates for each County. These changes provide a very flexible clearing compliance attainment period for electrical utilities. The revision establishes clearing requirement attainment during the period of CDF declared fire season. This declaration is made annually by the director and affects other fire prevention requirements beyond hazard reduction related to electrical utilities. Changing compliance date to conform to a declared fire season provides a better assessment of actual hazard conditions by having fuel moisture conditions/hazardous fire conditions assessed by a professional, instead of an arbitrary date.

**§ 1254. Minimum Clearance Provisions--PRC 4292:** Adopted amendments to the section were made to clarify terminology related to fire spread. The term "propagate" was deleted as the term “spread of fire” adequately conveys the goal of vegetation clearing requirements. Also, code reference to “Figure 3 of this Article” was amended to reflect renumbering of all figures in this article due to deletion of figure in section 1253.

**§ 1256. Minimum Clearance Provisions--PRC 4293:** Adopted amendment were made to better describe, and provide direction for, clearing requirements for both conductors and vegetation. The adopted language clarifies that vegetation clearing requirements be based on, among other things, the “sway” of vegetation in relation to the utility lines. By adding the term “vegetation may sway” to be a factor considered, clarification and direction is provided that clearing requirements for healthy trees should consider sway of tree, and avoid language that would increase clearing requirements beyond existing standards. The Director finds revisions as adopted do not materially change existing clearing requirements. Also, code reference to “Figure 4 this Article” was amended to reflect renumbering of all figures in this article due to deletion of figure in section 1253.

**§ 1257. Exempt Minimum Clearance Provisions--PRC 4293.** This section identifies exemptions to clearing requirements for trees that are being used to support appropriate

electrical utility hardware. The existing regulation does not permit leaning trees or other vegetation leaning over the lines to be used to support utility hardware. CDF considered in its 15 day notice of proposed rulemaking to amend the existing regulation to eliminate the exclusion of “leaning trees” and “any other growth” from conforming to the clearing requirements of this section. That change would have effectively meant that leaning trees and other growth can be used for supporting electrical utility hardware, under situations stated in subsection (a) where conductors are insulated and dead or decant branches have been removed. Upon further consideration by the Director, CDF has chosen to use the language proposed in the 45 day notice published on October 22, 2005, with edits to incorporate minor grammatical deletions, instead of the language in the 15 Day notice published March 30, 2005. The effect of this decision is to retain existing rule language that does not exempt “leaning trees” and “any other growth” from the clearing requirements. The decision was necessary to avoid likely vegetation threats to utility lines and ensure adequate fire hazard reduction standards are in place. The Director finds revisions as adopted do not materially change existing clearing requirements.

### **Non substantial amendments**

The first non-substantial amendment is related section 1253. It adds the requirement that the Department will publish on its official web site the annual dates when the clearing requirements are applicable (i.e. the “declared fire season”). The non substantive revision provides no cost or environmental impacts to the regulated community or agencies involved result due to revisions.

The second and third non-substantial amendment is related section 1254 and 1256. These regulations referenced “Figure” numbers. Section 1253 deleted a figure number and figure number references in 1254 and 1256 were renumbered to maintain sequencing.

Other grammatical, syntax, and writing style changes were made throughout the final adopted regulation language. Examples include subsection renumbering, consistent use of the term State Responsibility Areas, elimination of unrelated reference notes, incorporation of the contemporary term for regulation citation (CCR instead of CAC), and elimination of the nonspecific phrase in section 1252 “Unless otherwise specified by the Director”.

## **II. BACKGROUND, AUTHORIZATION AND SUMMARY OF LAWS RELATING TO THE REGULATION**

Title 14 of the California Code of Regulations (14 CCR), Chapter 7. Fire Protection, Article 4. Fire Prevention Standards for Electrical Utilities, and Public Resources Code Sections 4292-4296, Chapter 3, Mountainous, Forest, Brush and Grass Covered Lands, Part 2. Protection of Forest and Range and Forage Lands, are the regulations and statutes relating to fire prevention for electrical utilities. The statues give the Director the authority to adopt such rules and regulations necessary to assure fire protection responsibilities for power line owners and operators.

### **III. GENERAL FINDINGS ON PROPOSED REGULATION**

**The Director of the Department of Forestry and Fire Protection finds the adopted regulations are consistent with existing statutes.** Existing statutes provide standards for vegetation clearing around power lines, dates applicable for clearing, locations where clearing is applicable, and exception to clearing standards. The adopted regulations are consistent with the standards contained in these statutes.

**The Director finds that the adopted regulation addresses the stated purposes and necessities for the regulation.** These regulations are adopted to provide clarity of regulatory standards, improve enforceability of regulations, and ultimately reduce the number of fires occurring as a result of energized power lines igniting vegetation.

- By stating the Director of CDF has authority for administering clearing regulations in SRA, greater clarity is provided about jurisdictional responsibility for fire prevention regulations. The Director is responsible for regulation on SRA; other parties are responsible for enforcement of clearing requirements on mountainous and brush covered land in other jurisdictions.
- By more routinely and accurately updating official maps and providing them to utility companies, locations where clearing requirements are necessary will better be understood by the regulated community.
- By providing for flexibility in the dates applicable for the clearing requirements, utility companies are not unnecessarily burdened with clearing requirements when seasonal fire conditions do not justify them.
- By restating the minimum clearance provisions in 14 CCR 1256, greater clarity and expression of compliance intent is stated. The adopted language now indicates that vegetation is necessary to the extent that vegetation may sway and the conductor may move, thereby eliminating the interpretation that healthy, live, trees far removed from the lines need to be removed.
- By rewriting the regulation stated in 14 CCR 1257, simple English language is used to describe the exceptions to the use of trees permitted for supporting power lines, providing better understanding by the regulated public, better enforceability of the regulation, and less chance of misuse of vegetation used for supporting power lines.

**The Director finds that the adopted regulation provides equal to or better than protection against power line related fires compared to the existing regulation, while providing equal to or less economic burden to those regulated.** By providing clarity in regulatory expectations, more flexibility in clearing date applicability, and better information on the locations where the regulation is applied, more efficient rule application will be applied resulting in reduced cost of maintenance.

**The Director finds that the adopted regulatory amendments are within the scope and consistent with California Environmental Quality Act.** The regulation is consistent with Article 19, Categorical Exemptions, and Guidelines for CEQA, Section 15300 and PRC 21084. The adopted regulation meets the requirements for a Categorical Exemption to CEQA under 15301, Classes 1, Existing Facilities; Section 15304 Minor Alterations to Land; and Section 15308, Actions by Regulatory

Agencies for Protection of the Environment.

**The Director finds the regulation will not result in significant effects on the environment considering individual projects and those projects taken together.**

The Department considered the potential cumulative effects and significant adverse environmental effects resulting from the treatments proposed in this regulation. The Director finds the regulation has impacts that are individually limited and not cumulatively considerable. This is based on, among other things, the application of the regulation on a limited geographic area, a limited intensity of impacts resulting from the vegetation clearing activity and application of the operational provisions of the Forest Practice Rules when such clearing includes Timber Operations as defined in the Forest Practice Rules.

**IV. ALTERNATIVES TO THE REGULATION CONSIDERED BY THE DIRECTOR AND THE DIRECTOR'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Director has considered alternatives to the proposed regulation. The alternatives primarily relate to differing vegetation clearing standards that fulfill the requirements of the PRC while minimize the economic impact of regulated public.

**Alternative #1: Adopt Standards Outlined in Rule 35 of the California Public Utilities Commission.** This alternative recommended using vegetation clearing standards under General Order 95, Rule 35, used by the California Public Utility Commission (CPUC) and used in other state building code and fire laws. This alternative was rejected because it was determined to be inconsistent with existing statutes in terms of the clearing requirements for power lines in SRA pursuant to PRC 4293.

**Alternative #2: Retain Beginning Date and Adopt a Flexible Ending Date of Period for Application of Regulation.** This alternative would had retained a set date for the beginning of the period during which the regulation is applicable, but created a ending date based on the date the Director declares the end to the fire season. This alternative would facilitate a more flexible time frame than the existing regulation. This would lower incurred costs to the regulated public by basing the end date of the regulation on actual fire conditions instead of an arbitrary date. It was rejected as the adopted regulation provided greater flexibility in determining the both the beginning and the ending date for application the regulation.

**Alternative #3: Clearing Requirements Based on Any Position Through which the Conductor or Vegetation May Move.** The originally proposed regulation required that vegetation clearing be based on any position the vegetation may move and ultimately come in contact with the power lines. This was perceived to mean that any tree, healthy or not, that was tall enough to fall or somehow by some extreme event fall into the line would need to be removed to conform to the regulation. Such a requirement was perceived to impose significant additional clearing and result in significant additional costs and potentially significant environmental impacts. This alternative was rejected because the intent of the proposed regulation is to clarify existing regulations to improve enforceability of the laws and regulations. The intent of the proposed regulations is not to change existing laws and regulations or impose a new standard involving additional vegetation clearing.

## **V. POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Director has not identified any significant adverse environmental effects as a result of the proposed rules. They do not directly permit any additional activity or project with a significant adverse impact to the environment.

## **VI. ALTERNATIVES CONSIDERED TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED ACTION.**

Pursuant to GC section 11346.9(a)(4), the Director has determined that no other alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Director has identified alternatives that would lessen any adverse economic impact on small businesses. These include:

**Alternative #1: Adopt Standards Outlined in Rule 35 of the California Public Utilities Commission.** This alternative, as outlined above, would have resulted in significantly less clearing requirements for power lines in SRA. For the 2400 volt to 72,000 volt class of line energy, requirements would have resulted in maintaining an 18 inch clearance around lines, compared to existing statute which requires 4 feet. This would have resulted in a substantial maintenance cost reduction to the regulated public, but was rejected because it is inconsistent with existing statutes and not as effective in preventing fires.

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

The Director estimated the regulation will have no adverse economic impact on businesses. The impacted businesses are the owners or leasers of electrical utility transmission companies. The result of these regulations is likely to provide regulatory relief and less cost through:

- improved language resulting in less confusion over enforcement of regulation, better fire prevention compliance and less long term incurred cost due to wildfires resulting from inadequate vegetation clearing.
- More accurate and timely information being provided to utility companies on the locations (the most current SRA boundary) where the rule is applicable. As the maps of SRA change annually, utility owners will become more quickly aware of their current clearing responsibilities in SRA, avoiding confusion and unnecessary of work to meet the applicable clearing requirements.
- No increase in vegetation clearing by focusing clearing requirements away from healthy, low risk, trees further away from lines, not able to “sway” into lines. The regulation now focuses clearing on vegetation that may sway into lines, not fall or or somehow move in an extreme geological or metrological event, into the lines. This emphasis results in avoiding significant cost and potential environmental

impacts associated with removal of healthy vegetation that is low risk for falling into lines.

No net cost saving due the implementation of the regulation was calculated, as estimates of cost savings are speculative and the regulation amendments were focused on clarifying existing regulation as opposed to changing existing regulations to promote either cost savings or cost increases on the regulated public.

### **ADDITIONAL RELEVANT DOCUMENTS RELIED UPON**

The following are additional documents were provided for the Director's consideration during the rulemaking process to supplement previous information submitted to the Department and referenced in the *Initial Statement of Reasons*: None. Additional items identified in the 15 –Day Notice were ultimately not relied upon.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Director has determined the adopted action will have the following effects:

Mandate on local agencies and school districts: None are known.

Costs or savings to any State agency: None

Other non-discretionary cost or savings imposed upon local agencies: None are known.

Cost or savings in federal funding to the State: None are known.

Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None are known.

Potential cost impact on private persons or directly affected businesses: None are known.

Significant effect on housing costs: None are known.

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

The proposed rules do not conflict with, or duplicate Federal regulations.

**Pursuant to Government Code § 11346.2(b)(5)**: 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 Director has directed the staff to review the Code of Federal Regulations. The staff determined that no unnecessary duplication or conflict exists.

**Public Comments Reviewed During Workshop held on February 1, 2005**: The Director elected not to include the public comments and responses to public comments that were received during this workshop as part of the record as stated in the

“Workshop Meeting Announced”. This workshop was intended to be an informal opportunity to discuss regulation content. Instead, the Director elected to incorporate public input received at the workshop into a revised regulation which was published in a 15-Day Notice of public hearing.

**Response to Public Comments**: CDF has summarized the responses to public comments in Tab 4, beginning on rulemaking file page 400, and is incorporated by reference.

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