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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Edison Company (U338-E), Cellco Partnership LLC d/b/a Verizon Wireless, Sprint Communications Company LP, NextG Networks of California Inc. and Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility LLC Regarding the Utility Facilities and the Canyon Fire in Malibu of October 2007.	I.09.01.018 (Filed January 29, 2009)

OPENING COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338E) ON PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT

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I. Introduction

Pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure, Southern California Edison Company ("SCE") hereby provides opening comments on the proposed decision of Administrative Law Judge ("ALJ") Kenney conditionally approving a settlement agreement between the Consumer Protection and Safety Division ("CPSD"), AT&T Mobility LLC ("AT&T"), Sprint Telephony PCS, L.P. ("Sprint"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon") (hereinafter, Sprint, AT&T, and Verizon shall be collectively referred to as the "Settling Respondents," and CPSD and the Settling Respondents shall be collectively referred to as the "Settling Parties"). These comments are timely filed pursuant to the one-day extension granted by the ALJ on June 5, 2012, in response to Settling Respondents' request for an extension of time in which to file comments.

SCE supports the Settlement Agreement and believes it will provide tangible benefits to the public; however, several issues affecting SCE and other joint pole owners should be clarified in the ALJ's Proposed Decision.

II. Discussion

Implementation of the Enhanced Infrastructure and Inspection Fund ("EIIF") will necessarily involve participation by SCE and other joint pole owners that are not part of the Settlement Agreement. Through the EIIF, Settling Respondents have agreed to (1) pay the costs to upgrade all utility poles along 3.38 miles of Malibu Canyon Road to a minimum safety factor of 4.0 for wood poles and the equivalent safety factor for other materials; and (2) fund a statistically valid survey of joint-use poles located in SCE's service territory. (ALJ Proposed Decision at 7-8). The impact of both parts of the EIIF on non-parties to the Settlement Agreement should be clarified.

A. Comments and Proposed Clarification Regarding Survey of Joint Use Poles

With respect to the Settling Parties' inspection of joint poles in SCE's service territory, the Settlement Agreement states that the "pole selection methodology and inspection results shall be in a format mutually agreed upon by Settling Parties" and that the inspection "shall be

conducted by an independent contractor." (Settlement Agreement ¶ 8). As SCE noted in previous comments, the Settlement Agreement says nothing about the methodology for the pole loading calculations themselves, and there are a variety of ways to conduct pole loading calculations. All joint pole owners are responsible for compliance with California Public Utilities Code Section 451 and General Order 95 ("GO 95"), but pole owners who are not parties to the Settlement Agreement should not be required to pay for remedial work if the inspection results and/or pole loading calculations by Settling Parties are reasonably disputed.

SCE's understanding of the ALJ's Proposed Decision is that if a joint pole owner not a party to the Settlement Agreement disagrees with the Settling Parties' safety factor calculations such that Settling Respondents identify a pole for repair or replacement that the joint pole owner reasonably believes is presently compliant with GO 95, the cost of repair or replacements should be borne by Settling Respondents and any other joint owners of the pole who are in agreement with the proposed remediation work. Thereafter, the objecting party may need to defend its position before the Commission if and when CPSD commences an enforcement action. SCE has proposed minor wording changes to the Proposed Decision to clarify this process. *See* Appendix (proposing changes to the text of the ALJ's Proposed Decision at 29). The objecting party would bear the burden of demonstrating its position was technically correct and that the pole was indeed compliant with GO 95 without the remediation work. Of course, such after-the-fact disputes can be avoided if the Settling Parties give all joint pole owners including SCE an opportunity in advance of the audit to understand and provide input to the proposed pole-loading methodology. SCE would welcome the opportunity to participate in such a review.

Another potential area for dispute is over SCE standards in special wind loading areas and other SCE standards that may exceed GO 95 standards. The Proposed Decision should be modified to make clear that the survey must take into account SCE's design standards, including special 12- or 18-lb. wind loading criteria where applicable. Other pole owners should be prohibited from disputing the applicability of SCE's internal standards, including higher wind loading standards than called for in GO 95 (unless modified by Phase 3 of Rulemaking 08-11-

055).[1] *See* Appendix (proposing changes to Conclusions of Law in ALJ's Proposed Decision at ¶ 9 and Order in ALJ's Proposed Decision at ¶ 1(ix)).

Pursuant to the Settlement Agreement, "if the inspection shows that a pole does not meet the minimum GO 95 [safety factor] requirement, the Settling Party (or Settling Parties) that is a joint owner of the pole will work with all pole owners to bring the pole into compliance with the minimum GO 95 [safety factor] requirement." Settlement Agreement at ¶ 9. The Settlement Agreement provides that CPSD will not assess a penalty against the owner of any joint pole identified by the survey as being below the applicable GO 95 standard provided that it is brought into compliance within "a reasonable amount of time." Settlement Agreement ¶ 9; ALJ's Proposed Decision at 9. In response to SCE's concern expressed in its previous comments, the ALJ's Proposed Decision makes an important clarification to this provision by requiring pole repairs and replacements to be in accordance with existing priority levels and deadlines. (ALJ's Proposed Decision at 25 ("If the Settling Respondents discover poles that must be repaired or replaced, the Settling Respondents are required to notify the other joint owners of the substandard poles pursuant to Rule 18B of GO 95. The substandard ***poles must then be repaired or replaced in accordance with the priority levels and deadlines in Rule 18(A)(2)***.") (emphasis added)). If Settling Parties wish to expedite the replacement or repair of poles identified through the EIIF survey, they will be solely responsible for costs related to the work. Otherwise, pole repairs and replacements identified through the EIIF survey will be treated the same as any other work pursuant to Rule 18 of GO 95, SCE's existing pole replacement program, and the joint pole administration process.

[1] *See* GO 95, Rule 31.1; s*ee also* Assigned Commissioner's Ruling and Scoping Memo for Phase 3 of Rulemaking, R. 08-11-005 (filed June 1, 2012).

B. Proposed Clarification Regarding Enhancement Work in Malibu Canyon

Both the Settlement Agreement and the ALJ's Proposed Decision require the EIIF to be used to enhance all existing poles along 3.38 miles of Malibu Canyon Road "to a minimum safety factor ('s.f.') of 4.0 based on the use of wood poles, or the equivalent s.f. for other materials." SCE understands "other materials" to include all guys and other equipment on the poles in the designated area (not only the guys and equipment of Settling Respondents) and proposes an appropriate clarification to the Proposed Decision. *See* Appendix (proposing changes to Order in ALJ's Proposed Decision at ¶ 1(ix)).

Moreover, the ALJ's Proposed Decision states that the EIIF shall pay for "material, labor, and services" that are directly related to the enhancement work in Malibu Canyon and the survey of joint-use poles in SCE's service territory. (ALJ's Proposed Decision at 18, 33). Neither the Settlement Agreement nor the ALJ's Proposed Decision provides details about how the actual enhancement work in Malibu Canyon will be conducted. But given the electric facilities on all of these utility poles, SCE must be involved in any pole remediation or replacements – either by conducting the work or by supervising the work of an approved contractor. The Proposed Decision should make clear that the EIIF shall pay for any work conducted by SCE or other joint pole owners who are not parties to the Settlement Agreement in connection with upgrades to poles in Malibu Canyon. This includes reimbursing SCE for costs related to planning (line design, permitting, and coordination of outages), switching, and the repair or replacement work itself, or supervision of an approved contractor's work. *See* Appendix (proposing changes to Order in ALJ's Proposed Decision at ¶ 1(iii)).

Furthermore, given the location of the poles along the designated area of Malibu Canyon Road and the 18-month deadline for upgrading their safety factor (ALJ's Proposed Decision at 33), the work likely will have to be conducted at night or on the weekends and the EIIF must pay

for necessary overtime costs.[2] While 18 months should be sufficient time to complete the work, there should be recognition that delays are possible.

C. Proposed Clarification Regarding Compliance with Cal. Pub. Util. Code § 451 and GO 95

In response to prior comments by SCE regarding the timing of remedial work, the ALJ's Proposed Decision states that "regardless of funding authorized in its most recent GRC, SCE has an obligation under § 451 and GO 95 to repair or replace poles that do not comply with GO 95 safety requirements." (ALJ's Proposed Decision at 22). SCE acknowledges this obligation. However, Paragraph 9 of the Proposed Decision's Conclusions of Law suggests that it is SCE's obligation alone to repair and replace non-compliant poles. (*Id.* at 31, ¶ 9). The paragraph should be revised to make clear this obligation is shared by all joint pole owners. *See* Appendix (proposing changes to Conclusions of Law in ALJ's Proposed Decision at ¶ 9.

III. Conclusion

The Proposed Decision should be modified as indicated in the attached Appendix for the reasons stated above. SCE raises these issues and concerns not in an attempt to thwart the approval of the Settlement Agreement but rather to seek clarification regarding its effect on non-settling pole owners and to ensure its smooth implementation.

These comments are not intended to express an opinion on the merits of any claim by CPSD or any defense by Settling Respondents, and SCE preserves all arguments and defenses in this matter.

[2] Los Angeles County is very specific about when work along Malibu Canyon Road can be conducted. The pole enhancements contemplated by the Settlement Agreement likely will require traffic control and will be restricted to certain hours if lane closures are necessary.

Dated: June 8, 2012

Respectfully submitted,

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Appendix with Proposed Changes to ALJ's Proposed Decision

SCE respectfully proposes the following changes to the ALJ's Proposed Decision:

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We recognize there may be disputes among joint owners about the need for remediation and who will bear the costs for remediation. However, this is no different from what can occur today; the Settlement Agreement does not raise any new issues in this regard. If ~~SCE cannot obtain cooperation from other~~there is not a consensus among joint owners for remedial actions required by GO 95, ~~SCE~~ the joint owners who take the remedial actions can file a complaint at the Commission against non-contributing owners, and the Commission can commence an enforcement action.

Page 31 - Conclusions of Law

5. The upgrades, inspections, repairs, and replacements of utility facilities that are undertaken pursuant to the Settlement Agreement are subject to GO 95. All pole loading calculations undertaken pursuant to the Settlement Agreement must take into account SCE's design standards, including special 12- or 18-lb wind loading criteria where applicable.

…

7. ~~SCE~~ Joint pole owners have~~s~~ an obligation under § 451 and GO 95 to repair or replace poles that do not comply with GO 95 safety requirements~~, regardless of funding authorized in SCE's most recent GRC~~.

……

Pages 32-33 - ORDER

IT IS ORDERED that:

1. The attached Settlement Agreement between the Consumer Protection and Safety Division and the Respondents AT&T Mobility LLC, Sprint Telephony PCS, L.P., and Cellco Partnership LLP d/b/a/ Verizon Wireless is approved, subject to the following conditions:

…

iii. The EIIF shall only pay for the actual costs of material, labor, and services that are directly related to Items ii.a and ii.b above, including necessary costs incurred by joint pole owners that are not parties to the Settlement Agreement. In the case of joint pole owners that are not parties to the Settlement Agreement, such necessary costs include those related to planning (line design, permitting, and coordination of outages), switching, the repair or replacement work itself or

supervision of an approved contractor's work, and necessary overtime costs. EIIF funds shall not pay for any internal overhead and administrative costs incurred by the Settling Respondents.

…

ix. The term "safety factor" as used in the Settlement Agreement shall be defined by Rule 44 of GO 95. The term "equivalent safety factor for other materials" as used in the Settlement Agreement shall be defined by Table 4 and Footnote (c) of Rule 44. "Other materials" as used in the Settlement Agreement shall include all guys and other equipment on the poles in the designated area (not only the guys and equipment of Settling Respondents). All safety factor calculations undertaken pursuant to the Settlement Agreement also must take into account SCE's design standards, including special 12- or 18-lb wind loading criteria. The term "Settling Party (or Settling Parties)" in Paragraph 9 of the Settlement Agreement shall be replaced with "Settling Respondent (or Settling Respondents)."