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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, Cellco Partnership LLP 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.

Investigation 09-01-018  
(Filed January 29, 2009)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

This ruling and scoping memo (Scoping Memo) follows the May 13, 2009 prehearing conference (PHC) held in this proceeding. It addresses Hans Laetz's motion for party status as well as the scope and schedule pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules).

**Background**

On October 21, 2007, at approximately 4:30 a.m., three wooden utility poles in Malibu, California, broke and fell to the ground. According to the Commission's Consumer Protection and Safety Division (CPSD), Southern California Edison Company (SCE), Cellco Partnership doing business as (d/b/a) Verizon Wireless (Verizon Wireless), Sprint Communications Company LP (Sprint Nextel), NextG Networks of California, Inc., and Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility LLC (AT&T) (collectively, Respondents) jointly owned, maintained, and shared the poles, which supported

live electrical wires and communication utility equipment. When the utility poles broke, electrical contact with the nearby vegetation occurred and caused a fire that the Los Angeles (LA) County Fire Department reported, “spread rapidly due to steep terrain and high winds”.

The flames burned approximately 3,836 acres in the Malibu area, destroyed 14 structures, 36 vehicles, and damaged 19 other structures. The LA County Fire Department’s Report concludes that an electrical contact with the vegetation near the three poles that fell on October 21, 2007 ignited the fire. The LA County Fire Department Report also states that the wind at the time of incident was blowing at approximately 50 mph which contributed to the spread of the fire. Purportedly, no person was injured by the fire or the associated efforts to control and put out the blaze.

On November 8, 2007, CPSD staff initiated an investigation of the Malibu or Canyon Fire. On October 21, 2008, CPSD provided the findings of its investigation to the Commission. Pursuant to Resolution No. L-370, the CPSD investigation report was released on December 18, 2008 (CPSD Report).

On February 2, 2009, the Commission issued an Order Instituting Investigation (OII) into whether the Respondents violated any provision or provisions of the Public Utilities Code (Pub. Util. Code), general orders or decisions, or other applicable rules or requirements in regard to their facilities which may have caused the fire in Malibu. The OII announced that the Commission expects to hold hearings and accept evidence about the matters and violations alleged in the CPSD Report.

On May 8, 2009, as directed, CPSD and the Respondents submitted prehearing conference statements outlining their respective positions and proposed schedules. In addition, Hans Laetz requested leave to intervene,

moved for party status, and submitted a prehearing conference statement. On May 13, 2009, the assigned Administrative Law Judge (ALJ) convened a prehearing conference (PHC) where the parties summarized their statements and proposed varying procedural schedules going forward. On May 20, 2009, CPSD and the Respondents jointly proposed a procedural schedule. On August 8, 2009, with the concurrence of the Respondents, CPSD submitted a revised schedule that proposes a later date for the submission of CPSD's testimony. The proposal for the later date factors in the discovery moratorium<sup>1</sup> granted to the parties at the PHC.

### **Motion for Party Status**

In support of his request for party status, Hans Laetz stated in his prehearing conference statement that he and his wife are homeowners in Malibu, California and customers of Edison, who were evacuated from their property during the fire in October 2007. He argued that CPSD and the Commission failed to raise, in the Order and initial pleadings, "matters of vital concern to the residents of Malibu in particular, and its entire service area in general."<sup>2</sup> He characterized those matters as "several pertinent and vitally-important collateral and/or related issues that directly affect this Investigation."<sup>3</sup> Mr. Laetz

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<sup>1</sup> There is a moratorium on discovery propounded to CPSD from May 14, 2009 until the date that CPSD and any intervenors serve their direct testimony upon the Commission and the service list. The moratorium on discovery then extends to the Respondents, and goes from the date that CPSD serves its direct testimony until the date that the Respondents serve their direct testimony.

<sup>2</sup> Hans Laetz Motion at p.3.

<sup>3</sup> *Id.*

also discussed past incidents involving Edison, and questioned certain assertions in the reports filed by several of the Respondents. He suggested eleven issues, from the Respondents' reports filed in April, needing further clarification.

Mr. Laetz shall have party status in this investigation. However, I reiterate what was stated at the PHC: this proceeding is a regulatory investigation and not a civil court action. Therefore the focus will be on the public interest impact of the alleged violations of "any provision or provisions of the Pub. Util. Code, general orders or decisions, or other applicable rules or requirements," rather than the impact on the Malibu Canyon residents alone. The ensuing civil litigation will determine the appropriate relief for those harmed in the immediate vicinity of the Malibu Canyon Fire.

Moreover, given their focus on particular details in the Respondents' reports, I do not believe that the issues Mr. Laetz identified for further clarification should be included among the primary/key issues of the proceeding. I encourage Mr. Laetz to discuss and work with CPSD to see whether and how his interests and concerns might be addressed by it. I saw some indications at the prehearing conference that both these parties might have further discussions about mutual interests and avoidance of duplication of efforts. Finally, I also encourage Mr. Laetz to review what is currently transpiring in Rulemaking (R.) 08-11-005<sup>4</sup> and determine whether all or any of his concerns might be raised or addressed therein. Since the Fire OIR is in

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<sup>4</sup> Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities (the Fire OIR).

progress, he will not be permitted to add new issues to it, but must join the proceeding as it advances.

### **Scope of Proceeding**

The OII states that this proceeding “shall seek to... (d)etermine whether any of the named Respondents violated any provisions of the Public Utilities Code, general orders, other rules, or requirements, regarding their facilities linked to the Malibu fire... and (d)etermine the remedy or remedies for any proven violation.” CPSD proposed that the proceeding address these same issues as well as the issue of whether the Respondents engaged in poor technical practices. It also stated that CPSD’s prosecution of the case will address the cause of the Malibu Fire and its possible connection to violations of the law.

SCE, Verizon Wireless, and AT&T urged that the scope of this proceeding be defined with greater specificity than appears in the OIR’s preliminary scoping memo or CPSD’s attached report. SCE, Verizon Wireless, AT&T, and Sprint Nextel further argued that the Malibu Fire’s causation should not be included in this Investigation’s scope because: (1) the causation issue is already central to the numerous civil proceedings related to the fire; (2) causation is beyond the Commission’s and its staff’s expertise; and (3) a thorough examination of the causation issue will protract this case and would require significant coordination with the civil actions. Sprint Nextel requested that if the scope includes causation-related issues, the Scoping Memo should clarify that such issues shall be considered solely for the Commission’s regulatory purposes.

Consistent with the Order, this proceeding will determine the following issues: (1) whether any of the named Respondents violated any provisions of the Pub. Util. Code, general orders, other rules, or requirements, regarding their facilities linked to the Malibu fire; (2) whether any of the named Respondents

engaged in poor technical practices; (3) what the appropriate remedies should be, if any of the named Respondents committed the stated violations and/or engaged in poor technical practices related to the Malibu fire. Within the context of these issues, this proceeding will consider causation-related sub-issues solely for the Commission's regulatory purposes, because they "could inform the actions that [the Commission] take[s] to prevent future utility related fires."<sup>5</sup> Standing alone, the Commission neither determines nor resolves proximate cause issues. Those are matters that are within the jurisdiction of the civil courts, and the Commission's regulatory determinations appropriately do not presume to influence the courts findings on civil liability or damages.

A moratorium on discovery propounded on CPSD is in effect until the date that CPSD files its direct case. Once CPSD files its direct testimony, a moratorium on discovery propounded on the Respondents will be imposed until the date that the Respondents file their testimony.

### **Proceeding Category and Need for Hearings**

The OII categorized this proceeding as adjudicatory. AT&T and SCE filed timely appeals of the categorization on February 13, 2009. In Decision 09-03-039, the Commission denied the appeals and affirmed the adjudicatory categorization of this matter. Any further appeal of category would be untimely.

The OII gives notice that the Commission will hold public hearings in this matter. In their prehearing conference comments, the Respondents and CPSD each stated that they believed that evidentiary hearings would be necessary.

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<sup>5</sup> See, *Investigation on the Commission's Own Motion into the Operations and Practices of Cox Communications and San Diego Gas & Electric Company Regarding the Utility Facilities linked to the Guejito Fire of October 2007*, Investigation (I.) 08-11-007, Assigned Commissioner's Ruling on Motion for Clarification and Scoping Memo, May 5, 2009, at 7.

**Schedule**

The Respondents and CPSD initially proposed divergent schedules for this proceeding. However, after collaborative discussions, they submitted a joint proposed schedule in mid-May. In early August, CPSD advised that it would seek to retain weather experts to conduct a wind study which, depending on weather experienced, might not be completed until the end of January 2010. After consultation with the Respondents, CPSD proposed a revised schedule which the parties anticipate will accommodate the tasks necessary to completing this proceeding. CPSD states that if unforeseen events and difficulties compel any of the parties to seek a further modification of the schedule, the party will base the request on an appropriate showing.

The parties have persuasively argued that the complexity of this case demands more than the statutorily required twelve months for its resolution. I shall adopt the proposed revised schedule, set forth below, because it reflects Respondents’ and CPSD’s cooperative efforts to litigate this matter.

May 14, 2009	Discovery commences ( moratorium on discovery propounded to CPSD imposed until CPSD files its direct case)
February 1, 2010	CPSD and Intervenors serve direct case (moratorium on discovery propounded to Respondents imposed until the date that Respondents' testimony is due)
February 16, 2010	Prehearing Conference (contingent on wind study conditions)
April 13, 2010	All discovery to CPSD on its report/testimony to be concluded
June 1, 2010	Respondents serve testimony (moratorium on discovery propounded to Respondents lifted)

July 20, 2010	CPSD serves rebuttal testimony; all other parties may serve rebuttal testimony that addresses other Respondents' or Intervenor's testimony, but may not further respond to CPSD's direct case (moratorium on discovery propounded to CPSD lifted)
August 8, 2010	All Motions to strike or hearing related motions filed; and CPSD may file additional rebuttal testimony to Respondent's testimony that addresses CPSD's direct case that should have been raised as part of Respondent's initial testimony
July 27, 2010	Discovery closes on all testimony other than possible CPSD additional testimony addressing Respondent's testimony that should have been raised as part of Respondent's initial testimony
August 16, 2010, 10:00 a.m., Commission Courtroom; State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102	Evidentiary hearings begin
September 10, 2010	Evidentiary hearings conclude
30 days after conclusion of hearings	Concurrent opening briefs
15 days after briefs filed	Concurrent reply briefs
November 2010	Presiding Officer's Decision (POD)
December 2010	POD Considered at Commission Meeting

This schedule may be revised, as necessary, by the assigned Commissioner and/or the assigned ALJ.

**Assignment of Presiding Officer**

ALJ Jacqueline A. Reed will be the presiding officer.

**Ex Parte Rules**

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 8.2(b) of the Rules.

**IT IS RULED** that:

1. Hans Laetz's motion to intervene as a party is granted. Mr. Laetz shall participate in this proceeding within the scope set forth below.
2. Consistent with the Malibu Fire Order Instituting Investigation (OII), this proceeding will determine the following issues: (1) whether any of the named Respondents violated any provisions of the Public Utilities Code, general orders, other rules, or requirements, regarding their facilities linked to the Malibu fire; (2) whether any of the named Respondents engaged in poor technical practices; (3) what the appropriate remedies should be, if any of the named Respondents committed the stated violations and/or engaged in poor technical practices related to the Malibu fire.
3. Within the context of these issues, this proceeding will consider causation-related sub-issues solely for the Commission's regulatory purposes, because they "could inform the actions that [the Commission] take[s] to prevent future utility related fires."
4. The schedule of this proceeding is set forth in the body of this ruling. It may be revised, as necessary, by the assigned Commissioner or the Assigned Administrative Law Judge.

5. The category of this proceeding is adjudicatory.
6. As set forth in the Malibu Fire OIL, evidentiary hearings are needed.
7. In accordance with Public Utilities Code § 1701.2(b) and Rule 8.2(b),  
ex parte communications are prohibited.

Dated October 22, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON  
Timothy Alan Simon  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 22, 2009, at San Francisco, California.

/s/ CRISTINE FERNANDEZ  
Cristine Fernandez