

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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

I.09-01-018
(Filed January 29, 2009)

**MOTION OF THE CONSUMER PROTECTION
AND SAFETY DIVISION
FOR EXTENSION OF TIME**

I. INTRODUCTION

Pursuant to Rules 11.1 and 11.6 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division (CPSD) submits its Motion for Extension of Time to file its direct case in the Malibu Fire Investigation. CPSD specifically moves that it be given until May 3, 2010 to file its direct case in consideration of a change in counsel that has occurred in this high-priority, public safety matter. As is clearly implicated by this request, the moratorium on discovery propounded to CPSD, which has been imposed on other parties until CPSD files its direct case, should be maintained until May 3, 2010. CPSD further seeks to ensure that its discovery rights, pursuant to the Scoping Memo, are maintained through May 3, 2010, the date that CPSD's testimony would be due.

II. DISCUSSION

As of January 1, 2010, legal representation for CPSD in the Malibu Fire Investigation has been re-assigned to Staff Counsel Edward Moldavsky. The former counsel, Bob Cagen, retired from state service at the end of 2009. This transition, given the complex nature of this matter, the voluminous record that has been developed, and the critical public safety significance of this inquiry, necessitates an extension of time in order for CPSD to be given a fair opportunity to present its case.

b. Rule 11.6

Pursuant to Rule 11.6 of the Commission's Rules of Practice and Procedure, on January 4-5, 2010, CPSD sent emails to the Respondents' counsel, requesting the instant three-month extension. Certain Respondents' counsel in this matter responded to CPSD's emails. This resulted in some initial discussions regarding an updated procedural schedule. Upon being advised of the party status of Hans Laetz in this matter, CPSD informed Mr. Laetz of this request in a phone call on January 12, 2010. Mr Laetz does not oppose this request.

On January 12, 2010, CPSD received a lengthy (900+ words) procedural schedule offer from Peter Hanschen, on behalf of all named Respondents (Edison, AT&T, Verizon Wireless, Sprint and NextG).¹ The offer specifically countered CPSD's request, by offering a March 15, 2010 date for CPSD (and Intervenors) to serve direct testimony. However, the offer also contained other collateral provisions, such as modifying the discovery calendar such that CPSD would be under a moratorium on discovery prior to CPSD filing its direct case.

CPSD disagrees with such an approach due to its reading of the Scoping Memo, which states:

“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

¹ CPSD notes that the information contained in the email expanded upon information communicated in previous discussions.

propounded on the Respondents will be imposed until the date that the Respondents file their testimony.”²

CPSD believes that this wording indicates that the discovery calendar was intended to be synchronized with the date when CPSD would file its direct case. This synchronized approach (as related to CPSD’s testimony) balances the importance of CPSD’s basic discovery rights, along with the Respondents’ rights. CPSD also notes that due to the importance of the Commission’s regulatory role, the Legislature has vested pervasive statutory discovery authority with the Commission.³

In any case, CPSD is open to continuing discussions with interested parties to see if a joint schedule proposal can be developed.⁴ In the event that a joint schedule proposal is not reached in the near term, CPSD relies on the instant motion for a three-month extension as a procedural safeguard.

b. Rule 11.1(d)

Pursuant to Rule 11.1(d) of the Commission’s Rules of Practice and Procedure, CPSD notes the following facts and law.

First, CPSD believes that the recent change in CPSD’s counsel necessitates the requested three-month extension. To support this contention, CPSD notes that the right to counsel in Commission proceedings has been respected in many different contexts. For example, in an investigation regarding Paradise Movers LLC, the Commission noted:

“Respondent Shiloh appeared at the PHC to represent himself and the company. At the conclusion of the PHC he expressed a desire to seek the assistance of counsel in recognition of the seriousness and complexity of the allegations, and the ALJ granted him a reasonable time to arrange representation. The evidentiary hearing (EH) was initially scheduled for June 29, 1998 after the respondents retained counsel, but was

² Assigned Commissioner’s Ruling and Scoping Memo, *mimeo.*, at 6.

³ See, e.g., Cal. Pub. Util. Code §§ 315, 581, 582, 584, and 701.

⁴ CPSD notes that the currently-imposed February 1, 2010 deadline for filing CPSD’s direct case, necessitates the expeditious filing of the instant motion.

continued to July 23, 1998 at the respondents' request to allow time to prepare."⁵

CPSD notes that the context of the abovementioned case was different than the instant matter. For example, a household movers investigation is generally less complex and time-intensive than the instant investigation. There is also generally less of a public safety significance attached to such cases, when compared to large-scale fire investigations.

However, the language cited above does reveal an overarching principle that is applicable to Commission practice. A newly-assigned counsel requires time to review the record evidence and law, and thereby effectively advise the client regarding testimony. Fairness dictates that a reasonable amount of time be given to that effect in order to ensure a just and equitable process.

Second, CPSD notes the complexity of this important matter.⁶ The voluminous record that has been developed thus far is easily in the thousands of pages. Effective review of such documents is essential in ensuring that accurate and credible evidence is used to support potential allegations. Such review could also indicate the need for supplementation through additional discovery.

Protecting Californians from the threat of utility-related fires is of critical importance. Thus, while it is crucial to move as expeditiously as possible in matters that implicate public safety, such public safety concerns also inform the need for careful and deliberate scrutiny.⁷

⁵ D.99-06-090, 1999 Cal. PUC LEXIS 432, at *2.

⁶ See Assigned Commissioner's Ruling and Scoping Memo, *mimeo.*, at 7.

⁷ CPSD also notes that the results of its currently-pending wind study are important to consider. The Assigned Commissioner's Ruling and Scoping Memo contemplated that the weather experienced may impact the timeline of that study. (See Assigned Commissioner's Ruling and Scoping Memo, *mimeo.*, at 7.)

III. CONCLUSION

For the foregoing reasons, CPSD seeks a three-month extension of time for it to file direct testimony. CPSD specifically moves that it be given until May 3, 2010 to file its direct case, utilizing the abovementioned synchronized approach to discovery. During the pendency of this motion, CPSD is open to continuing discussions with interested parties to see if a joint schedule proposal can be developed. In the event that a joint schedule proposal is not reached in the near term, CPSD relies on the instant motion for a three-month extension as a procedural safeguard.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

Edward Moldavsky

Attorney for the Consumer Protection
and Safety Division

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703 5134
Fax: (415) 703-2262

January 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION FOR EXTENSION OF TIME**” in **I.09-01-018** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **January 19, 2010** at San Francisco, California.

/s/ JOANNE LARK
Joanne lark

SERVICE LIST
I.09-01-018

brian.cardoza@sce.com
edm@cpuc.ca.gov
anna.kapetanakos@att.com
greta.banks@att.com
phanschen@mofo.com
stephen.h.kukta@sprint.com
tmacbride@goodinmacbride.com
ens@loens.com
anitataffrice@earthlink.net
cindy.manheim@att.com
bill.wallace@verizonwireless.com
jordan.white@pacificorp.com
skuhn@counsel.lacounty.gov
dmarmalefsky@mofo.com
mcomeau@mofo.com
rosana.miramontes@doj.ca.gov
thomas.heller@doj.ca.gov
craig.hunter@wilsonelser.com
hanslaetz@gmail.com
jacque.lopez@verizon.com
jesus.g.roman@verizon.com
case.admin@sce.com
james.lehrer@sce.com
Robert.F.Lemoine@sce.com
scaine@cainelaw.com
lurick@sempra.com
cldavis@sempra.com
ko'beirne@semprautilities.com
Greg.Grizzel@fire.ca.gov
michael.bagley1@verizonwireless.com
edward.mcgah@verizonwireless.com
elaine.duncan@verizon.com

bhc4@pge.com
ELK3@pge.com
hugh.osborne@att.com
keith.krom@att.com
Kristin.L.Jacobson@sprint.com
ldri@pge.com
lhj2@pge.com
cpuccases@pge.com
ross.johnson@att.com
thomas.selhorst@att.com
info@tobiaslo.com
deyoung@caltel.org
wjp@ghlaw-llp.com
katiensel@dwf.com
cem@newsdata.com
cem@newsdata.com
cem@newsdata.com
RegRelCPUCCases@pge.com
rdelsman@nextgnetworks.net
heide.caswell@pacificorp.com
californiadockets@pacificorp.com
ffd@cpuc.ca.gov
kwt@cpuc.ca.gov
mdr@cpuc.ca.gov
rst@cpuc.ca.gov
bds@cpuc.ca.gov
jar@cpuc.ca.gov
jmh@cpuc.ca.gov
ndw@cpuc.ca.gov
rae@cpuc.ca.gov
rim@cpuc.ca.gov
tas@cpuc.ca.gov