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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)

OPPOSITION OF JOINT RESPONDENTS TO THE CONSUMER PROTECTION AND SAFETY DIVISION'S MOTION FOR A CONTINUANCE OF SCHEDULE

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I. INTRODUCTION

CPSD's motion to extend its reply deadline by three months masks its real intention to re-start its investigation in this matter. CPSD would not suddenly need this huge amount of additional time -- or any extension at all -- if it were planning to file a true reply to what Respondents have said in their testimony. The proper scope for a reply is framed by the issues posed by CPSD in its May 3, 2010 testimony and answered by Respondents' witnesses in their November 18, 2010 testimony: whether there is a "minimum design wind speed requirement" in GO 95 and what is a reasonable estimate of the maximum wind speed at the time the poles failed in Malibu Canyon.

Sensing the weakness of its opening testimony, CPSD gives every indication of now wanting to pursue two entirely new lines of inquiry dealing with the physical equipment attached to the failed poles. First, it says it needs information about the poles and their attachments that would only be useful if it were planning a pole-loading calculation in its reply testimony -- an option it had specifically decided not to pursue in the preparation of its opening testimony. Allowing an extension for this purpose violates all the rules of the proper scope of a reply, will make sur-reply essential and promises to drag this proceeding into 2012, if not later.

The second line of inquiry CPSD says it must make concerns alleged "spoliation" of evidence by Respondents. This allegation is reckless and unfounded in the extreme. The "new information" is simply the fact that not every piece of attached equipment has been retained. But CPSD makes no effort to show that the unavailability of these few items could have any prejudice in preparing either its opening or rebuttal testimony. Under Commission precedent, there has been no spoliation and nothing to justify a change in the schedule.

II. CPSD'S REASONS FOR A SCHEDULE EXTENSION GO FAR BEYOND THE PROPER SCOPE OF REBUTTAL TESTIMONY

CPSD seeks a continuance so that it may start its case from Square One. CPSD's newly stated interest in physical evidence comes over three years after the fire, three years after CPSD began its investigation and two years after the issuance of the OII. Yet, during the majority of those time periods, CPSD's has enjoyed broad discovery rights and access to physical evidence. Its interest in physical evidence, however, has been marginal at best.

The Respondents can only surmise that reason why CPSD never did the work to conduct a comprehensive analysis of the physical evidence, completed measurements of physical evidence made available to it, or previously sought the location of facilities damaged is because CPSD has relied on a theory of the case (embraced in Chapters 3 and 7 of the CPSD Report) in which information derived from such inquires played no role. The physical evidence was, and is, wholly irrelevant to CPSD's current direct case, a case which, as set forth below, relies on assertions that (1) GO 95 requires that poles withstand a wind speed of 92.4 MPH[1] and (2) the wind speed at the time the poles fell was less than 92.4 MPH (hereinafter referred to as the "92.4 MPH Theory.")[2] The foregoing characterization of CPSD's case did not originate with Respondents; it is how CPSD itself has described its approach to its investigation.[3]

On November 18, 2010, however, the 92.4 MPH Theory suffered a substantial blow. The prepared testimony of Respondents' wind experts and Respondents' soundly refuted the analysis of GO 95 proffered by the CPSD lead investigator making it impossible for CPSD to credibly pursue the 92.4 MPH Theory. Even if one accepted CPSD's novel, but demonstrably illogical,

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[1] CPSD Report Chapter 3.
[2] Id. at Chapter 7.
[3] See footnote 7 infra.

belief that GO 95 requires that all wood poles withstand speeds of 92.4 MPH,[4] it is all but certain that the wind speed at the time of the accident exceeded 92.4 MPH. Accordingly, as set forth below, CPSD needs a new theory and now seeks to pursue one it had previously eschewed. The Commission should conclude that it is too late to do so. CPSD should not be permitted to extend this already three year old proceeding any further because of CPSD's lack of diligence in reviewing the physical evidence long ago.

A. CPSD LONG AGO DECIDED TO PURSUE A THEORY THAT DID NOT REST ON PHYSICAL EVIDENCE

On November 8, 2007, three weeks after the fire, the lead CPSD investigator, Kan Wai Tong, inspected the fallen poles and attachments at the Southern California Edison (SCE) warehouse where they were stored. Shortly after that two-hour visit, CPSD decided that it would not pursue any sort of standard wind loading analysis. CPSD understood the general purpose and requirements of such an analysis; its lead investigator, Mr. Tong, acknowledged last summer that (1) the purpose of a traditional pole loading analysis was to insure that the load occasioned by facilities placed on a pole did not approach the ultimate breaking point of the pole and (2) that the required margin between the load and the breaking point (the safety factor) was calculated by simply dividing the ultimate capacity of the pole by the load actually installed[5] (or, as stated in Rule 44 of GO 95, the "ratio... of ultimate strength of materials to the maximum working

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[4] As noted in the testimony of Mr. Stewart and in Respondents Motion to Strike Chapter 3 of the CPSD Report, the computation CPSD employed to reach this figure, if applied to poles constructed of materials other than wood, leads to outcomes the Commission could not possibly have intended. Under the CPSD formula, a wood pole would be required to sustain winds of 92.4 MPH while a metal pole standing next to it would only be required to sustain a wind speed of 56.6 MPH. If both fall in a 70 MPH wind, CPSD would conclude that the owner of the wood pole violated GO 95 while the owner of the steel pole was in compliance.

[5] Deposition of Kan-Wai Tong (August 3-4, 2010). RT. 2:431-432.. (Hereinafter referred to as Tong Deposition.)

stress).[6] But, notwithstanding CPSD's understanding of the basic elements of wind loading, it never pursued that course.

Instead, CPSD elected to pursue an alternate course,[7] one which relied solely[8] on comparing the estimated the wind speed at the time of the incident with the wind speed[9] CPSD believed GO 95 required the pole to sustain, 92.4 MPH. Under the 92.4 MPH Theory, neither the size of the poles nor the facilities placed on the poles was relevant. All that mattered was the wind speed at the time of the incident. Was it higher or lower than 92.4 MPH?

Because CPSD elected in late 2007 to adhere to the 92.4 MPH Theory, the CPSD investigator never returned to the SCE warehouse for further inspection of the evidence or asked SCE for assistance in a further inspection at the warehouse.[10] Indeed, the decision to rely solely on wind speed was made even before the Respondents submitted their reports to the Commission on April 20, 2009[11] and before CPSD had reviewed Respondents' answers to CPSD's data requests in July 2009. The investigator's decision to eschew a traditional pole loading analysis was never revisited; CPSD never decided to attempt to replicate the conditions on the poles prior to the fire.[12]

In their October 29, 2010 motions to strike Chapters 3 and 7 of the CPSD report, Respondents addressed the shortcomings of the two components of the 92.4 MPH Theory. Accordingly those points will not be repeated here. In denying those motions, the ALJ

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[6] GO 95-A, page IV-8.

[7] Tong Deposition. 1:45-46; 1:88-89;1:147-148; 2:267-268

[8] The only other point on which CPSD relies for its assertion that the poles were overloaded is the "Cromer Report" and documents generated in response to it. See Table 2 at page 1-2 of the CPSD Report. The myriad shortcomings of the Mr. Cromer's Report are addressed the Prepared Direct Testimony of Alan Young; it will suffice to note here that Mr. Cromer employed the wrong safety factor.

[9] GO 95 is devoid of any reference to wind speed.

[10] Tong Deposition, 1:147.

[11] *Id* at 2:443.

[12] *Id* at 1:67.

determined that Respondents should present their evaluation of Chapters 3 and 7 at a hearing. Respondents are more than happy to do so. Respondents look forward to placing the testimony filed on November 18 next to Chapters 3 and 7 of the CPSD Report, and letting the Commission determine which is more credible.

Plainly, however, CPSD does not seek such a comparison. Instead, it now seeks to advance a brand new theory, one not advanced at all in its case in chief. It is simply too late, however, to start this case anew.

B. CPSD HAD AMPLE TIME TO DEVELOP THE CASE IT CHOSE AND CONDUCT DISCOVERY TO SUPPORT THAT CASE.

Discovery in this matter was initiated by the OII itself. In response to lengthy questions in the OII, each Respondent filed lengthy reports 21 months ago, on April 20, 2009. Shortly thereafter, CPSD submitted comprehensive data requests to the Respondents and repeated that process in early 2010.[13] CPSD deposed a number of witnesses prior to filing its testimony on May 3, 2010. All in all, CPSD enjoyed a formal discovery period of 15 months (January 29, 2009-May 3, 2010) as well as roughly a year of informal discovery between the date of the fire and the issuance of the staff report. CPSD had over two and a half years (between the date of the fire and the date it filed its testimony) to decide how it wanted to approach this matter. It should be held to the decision it made.

III. SINCE FILING THEIR TESTIMONY JOINT RESPONDENTS HAVE MADE EVERY EFFORT TO ASSIST CPSD IN MEETING ITS FILING DEADLINES

Appendix A to this Opposition is a detailed Timeline of the events from the date of the fire to the present. Over and over again, this timeline shows how Respondents have tried to respond in a timely manner to CPSD's inquiries and not to extend the schedule of this

[13] Respondents responses to that discovery has met with but a single motion to compel, that rated to Arthur Peralta. The balance must be deemed acceptable to CPSD.

proceeding unnecessarily. There are also numerous examples of occasions in which CPSD has delayed or abandoned part of its prosecution of the OII. Below are a couple of examples.

- Respondents have agreed to every procedural schedule extension request made by the CPSD, except the current one. On the other hand, CPSD has rejected every request for an extension made by the Respondents.
- Respondents have timely responded to CPSD's data requests, including responding within 9 working days to more than 75 requests made by CPSD on November 29, 2010. Expert work papers were produced shortly thereafter. In addition, Respondents purchased an external hard drive to provide the data to the CPSD.
- Respondents agreed to limit the length of its deposition of CPSD witnesses, to pay for CPSD's transcripts and video from such depositions, as well as CPSD's expert witness fees. CPSD has opposed Respondents from deposing one of employees and in one instance terminated early a deposition. Even when depositions have been taken, CPSD's witnesses have made material changes after the fact to the deposition record without explanation.

IV. NEITHER THE PENDING PERALTA MOTION NOR THE RECENT DEPOSITION OF MR. MCCOLLUM JUSTIFY A SCHEDULE EXTENSION

CPSD's motion to obtain access to work done by Art Peralta at the request of SCE counsel has been pending since March 26, 2010. On December 20 and 21, 2010, CPSD deposed Frederick McCollum, SCE's investigator on the Malibu fire working at the direction of the Law Department. On a number of occasions, SCE counsel instructed Mr. McCollum not to answer questions that would have revealed privileged attorney-client communications and/or work product. CPSD claims both the pending Peralta motion and its need to bring motions to compel

further answers from Mr. McCollum justify a schedule extension. Both claims lack merit. Again, CPSD's supposed schedule problems are of its own making.

1. Peralta Deposition

As the Timeline indicates, CPSD had learned of the Peralta work product, brought its motion to compel and filed its opening testimony by mid-May of 2010. CPSD never sought a modification of the procedural schedule that turned on the outcome of its motion. And nowhere in Mr. Tong's prepared testimony did he state that his analysis or conclusions were impacted in any way by not having access to Peralta's work. Respondents' testimony makes no mention of the Peralta work product and all of SCE's witnesses have responded to a CPSD data request confirming that none of them relied on or have ever seen the Peralta work product.[14] If CPSD's reply testimony is limited to rebutting that of Respondents, access to Mr. Peralta's work is not required and lack of access to it cannot suddenly justify schedule extension.

The Commission should note that while CPSD's Peralta motion has been pending, SCE has offered CPSD access to any factual information or data that Mr. Peralta may have observed during his visit to the site of the downed poles and equipment. SCE counsel repeated this offer as recently as January 5, 2011 during a meet and confer with CPSD where it was again rejected. SCE continues to believe that the issue of what CPSD is and is not entitled to obtain from Mr. Peralta can and should be resolved by discussion, mediation, and compromise rather than the all or nothing alternatives posed by CPSD's motion. At a minimum, SCE reiterates its request that oral argument on the Peralta motion is essential not only because of the importance of the legal

[14] The exception, of course, is SCE counsel Brian Cardoza who testifies solely on the Rule 1 allegation. As a lawyer representing SCE in this proceeding and related civil actions, Mr. Cardoza has had access to the Peralta work product but it is wholly unrelated to the very limited subject matter of his testimony.

issues but also to bring the Administrative Law Judges up to date on SCE's offers to provide access to all facts Mr. Peralta learned or observed during his site visit.

2. McCollum Deposition

Mr. McCollum has been SCE's principal investigator on behalf of the Law Department since the morning of the fire. All of his work has been at the direction of counsel. In that role, he also communicated with CPSD and the Commission including writing the one page incident summary which Mr. McCollum sent to the CPUC on October 25, 2007. Mr. McCollum also provided a number of answers to questions posed by CPSD staff member Kan-Wai Tong between December '07 and September '08 prior to the commencement of this OII. Finally, on April 5, 2010, Mr. McCollum provided a declaration setting forth the facts of his interactions with Mr. Peralta in order to establish SCE's privilege claim in opposition to CPSD's motion to compel disclosure of the Peralta work product. At the deposition, SCE counsel permitted CPSD to question Mr. McCollum about all of these non-privileged communications, the facts or materials Mr. McCollum relied on in writing these documents, and why he believed the statements in these communications were accurate. But these limited, non-privileged communications by Mr. McCollum do not constitute a waiver of all of the other, non-disclosed work he has done at the request of counsel or his conversations with counsel. CPSD obviously believes otherwise and has requested an opportunity to meet and confer, to which SCE has agreed as soon as the deposition transcript became available. SCE also advised CPSD that a written motion would be essential if the meet and confer were unsuccessful, given the importance of protecting privileged communications and work product.

In its current motion, CPSD argues this three-year old proceeding should be stopped dead in its tracks for three months so it can, among other things, pursue a motion to compel further answers from Mr. McCollum. Assuming Mr. McCollum has important information for CPSD

prosecution of this case and assuming CPSD is entitled to access that information -- both of which SCE vigorously disputes -- CPSD offers not a shred of explanation why it waited until just three weeks ago to depose him. Mr. McCollum's Section 315 incident report was written over three years ago. His responses to Mr. Tong's inquiries were written at least two years ago. Even Mr. McCollum's declaration regarding the Peralta work product was submitted in March 2010. CPSD has filed a motion seeking to extend its filing deadline because issues have arisen at a deposition taken just weeks before that deadline, yet that deposition could have been taken and these issues resolved months or even years ago.[15] If Respondents sought an extension on similar facts, one can only imagine the intensity of CPSD's opposition. It is time CPSD plays by the same rules as other parties before this Commission.

V. CPSD'S SPOLIATION ALLEGATIONS ARE WITHOUT MERIT AND PROVIDE NO BASIS FOR A SCHEDULE EXTENSION

CPSD's motion reaches a fever pitch in suggesting that it has just recently learned that Respondents discarded certain of the equipment originally attached to the failed poles; that such actions constitute "spoliation of evidence"; and that the three month extension is needed to pursue this issue. These are reckless charges[16] that have no basis in fact[17] or law and certainly do

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[15] On January 5, 2011, CPSD served a Notice of Taking Depositions for SCE witnesses beyond the date, January 21, 2011, when its testimony is due. The Notice schedules four depositions beyond January 21, and states in a footnote that depositions "for other persons of interest shall also be sought for subsequent dates in 2011." Evidently, CPSD is so confident its Motion will be granted that it sees no need to wait for a ruling or any disrespect to the Commission or the parties in presuming what the ruling will be.

[16] CPSD mentions in the Morris Declaration that, on December 21, 2010, Sprint emailed CPSD that it inadvertently provided an incorrect telephone number for a possible CPSD deponent. *See* Declaration of H. Y. Morris at 3-4, ¶ 12. However, less than one day later, Sprint provided CPSD with a corrected phone number as well as the requested address for the deponent. *Id.* The Declaration plainly does not establish any prejudice to CPSD on this point. The Declaration does not show, for example, that prior to the phone number being corrected, CPSD made any attempt to contact the possible deponent or was delayed in any manner by the inadvertent error.

[17] CPSD claims, at page 13, that, "*Each* of the Respondents knew their fiber optic cables attached to the Malibu Poles had been discarded and were not preserved at the SCE warehouse." (Emphasis added.) CPSD further claims, at page 19, that "This motion demonstrates that Respondents' representations that *they* preserved all of the evidence at a warehouse are false." (Emphasis added.) At a minimum, with regard to Sprint, these claims are plainly mistaken. First, as Sprint advised the Commission and CPSD in April, 2009, Sprint did not own fiber optic cable in

not justify any change in this proceeding's schedule.[18] The few pieces of discarded equipment have no impact on the theory behind CPSD's testimony which never considered the physical attributes of either the failed poles or any of the equipment attached to them. Even if CPSD now wishes to pursue pole-loading calculations in its rebuttal testimony, it has access to the same information it would have if the equipment had not been discarded. Finally, there is no evidence that the equipment was discarded with any intent or reason to believe it would ever be essential to an investigation regarding the cause of the pole failures. Under these circumstances, Commission decisions and California law clearly indicate "spoliation" has not occurred.

(continued...)

Malibu Canyon on the date of the fire. Sprint sold its fiber to NextG Networks, Inc. ("NextG") in January, 2007, ten months before the Santa Ana wind storm and fire on October 21, 2007. *See* Sprint's April 20, 2009 Report to the Commission at 19 *et seq.* Thereafter, NextG owned, operated and maintained the fiber optic cable and associated facilities on the 253 pole, the 252 pole and the 212 pole that Sprint had previously owned. Thus, CPSD's claim that "each" Respondent allegedly knew "their" fiber optic cable had been discarded is simply wrong. Second, on January 3, 2011, Sprint again advised CPSD, as it had on December 10, 2010, that, with respect to no-longer-in-service equipment (antennas, etc.) that Sprint owned on one of the failed poles, that equipment, together with the failed poles themselves, was moved *by SCE*, not by Sprint, and preserved *by SCE* in SCE's warehouse. Thus, the insinuation by CPSD that Sprint made a "false representation" to the Commission regarding the preservation of its equipment is mistaken. Sprint had, and has, no reason to believe that SCE did not fully and faithfully preserve the Sprint equipment on the 253 pole that SCE took to, and preserved in, its warehouse. The Commission should give no weight to CPSD's false statements when it rules on CPSD's motion.

[18] The recklessness of CPSD's accusation is illustrated by many inaccuracies, including the following. CPSD claims, at page 13, that, "*Each* of the Respondents knew their fiber optic cables attached to the Malibu Poles had been discarded and were not preserved at the SCE warehouse." (Emphasis added.) CPSD further claims, at page 19, that "This motion demonstrates that Respondents' representations that *they* preserved all of the evidence at a warehouse are false." (Emphasis added.) At a minimum, with regard to Sprint, these claims are plainly mistaken. First, as Sprint advised the Commission and CPSD in April, 2009, Sprint did not own fiber optic cable in Malibu Canyon on the date of the fire. Sprint sold its fiber to NextG Networks, Inc. ("NextG") in January, 2007, ten months before the Santa Ana wind storm and fire on October 21, 2007. *See* Sprint's April 20, 2009 Report to the Commission at 19 *et seq.* Thereafter, NextG owned, operated and maintained the fiber optic cable and associated facilities on the 253 pole, the 252 pole and the 212 pole that Sprint had previously owned. Thus, CPSD's claim that "each" Respondent allegedly knew "their" fiber optic cable had been discarded is simply wrong. Second, on January 3, 2011, Sprint again advised CPSD, as it had on December 10, 2010, that, with respect to no-longer-in-service equipment (antennas, etc.) that Sprint owned on one of the failed poles, that equipment, together with the failed poles themselves, was moved *by SCE*, not by Sprint, and preserved *by SCE* in SCE's warehouse. Thus, the insinuation by CPSD that Sprint made a "false representation" to the Commission regarding the preservation of its equipment is mistaken. Sprint had, and has, no reason to believe that SCE did not fully and faithfully preserve the Sprint equipment on the 253 pole that SCE took to, and preserved in, its warehouse. The Commission should give no weight to CPSD's false statements when it rules on CPSD's motion.

A. FACTUAL BACKGROUND

After the Malibu Canyon fire was extinguished SCE undertook to salvage the failed poles and as much of the attached equipment as reasonably practical. All of these items were transported to a storage facility in Westminster, California, where they have been stored since late October 2007. SCE's investigator, Rick McCollum, supervised this work and testified about it in an October 10, 2010 deposition he gave in the pending civil actions. Mr. McCollum was asked if any equipment originally attached to the poles was not in the Westminster facility, and he said he was aware of three items of SCE equipment that had been discarded or used elsewhere. These were: (a) a KPF switch that SCE decided to dismantle and use to rebuild another KPF switch elsewhere in Malibu that was urgently needed in order to restore power; (b) several feet of conductor that SCE work rules required be replaced before the conductors could be reattached to the insulator shoes; and (c) the Edison Carrier Solutions (ECS) fiber optic communications cable which had been damaged in the fire and could not be reused. Mr. McCollum explained that the decision to "cannibalize" the KPF switch was made only after photographs of it were taken and in recognition that SCE's first duty was to restore service rather than retain every piece of equipment for possible later examination. In the case of the conductor and ECS cable, Mr. McCollum testified that he was originally believed they would each be put back in service and therefore retention was not an issue. He later learned that work crews determined that portions could not be re-used and these crews disposed of the damaged conductor and cable.

In advance of CPSD's deposition of Mr. McCollum on December 20, 2010, as a courtesy, SCE sent CPSD a copy of his civil action deposition. CPSD questioned Mr. McCollum extensively about the KPF switch and the discarded conductor and ECS cable. After the deposition, CPSD inquired of other Respondents if they had discarded any equipment originally attached to the failed poles. Verizon Wireless, AT&T and NextG indicated that their fiber optic

cable had been damaged by the fire, that the damaged segments of those cables had been replaced and discarded.[19]

In its motion, CPSD claims that this information is a "game changer"; that it needs months of time to investigate the circumstances of this "spoliation" of evidence; and that the lack of access to these pieces of equipment has prejudiced its ability to present rebuttal testimony. None of these assertions are true.

B. RESPONDENTS HAVE OFFERED CPSD THE OPPORTUNITY TO INSPECT EQUIPMENT IDENTICAL TO THAT WHICH WAS DISCARDED OR DISMANTLED

CPSD has indicated that its concern with discarded equipment is that it will be unable to verify by physical observation that whatever information Respondents provide about that equipment (dimensions, weight, diameter) is accurate and correct. In a meet and confer conference call on January 5, 2011, counsel for each Respondent indicated that they would provide by January 12, 2011 a written description of where CPSD staff could go in order to physically observe equipment identical in all material respects to the discarded equipment as well as means of verifying such identicality by use of photographs, manufacturers' technical specifications and/or sworn testimony. Site visits for CPSD can be arranged immediately thereafter. CPSD, however, did not accept this offer from Respondents. It appeared CPSD was more interested in being able to claim it had no ability to verify than in learning whether the Respondents' offer would actually provide a satisfactory means of verification, as all Respondents represented to CPSD that it would.

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[19] As discussed at a recent meet and confer with the CPSD, the wireless respondents will verify that the facilities on the pole have in fact been discarded and if they have, they will identify other portions on their respective fiber systems where the original facilities are still located. The Respondents have agreed to supplement certain data responses to CPSD on January 12, 2011.

C. CPSD HAS LONG HAD ACCESS TO ALL OF THE RELEVANT DATA REGARDING THIS EQUIPMENT

CPSD has or could have obtained all the information it could possibly need regarding the few pieces of equipment that are not available for physical inspection. The sole relevance of the attached equipment is its contribution to load on the poles and that is a function of the equipment's size and weight.[20] CPSD cannot and has never claimed otherwise. Whenever asked for this information, SCE and the telecommunications Respondents have provided it -- whether the original equipment was discarded or not. In the case of the conductors, the original equipment can also be seen today on the replaced poles since the discarded portions consisted only of several feet on either side of the attachment points.[21] The same is true of the fiber optic cable: since only a portion of it was replaced, the original cable can be seen at the point where the new cable has been attached. As noted above, Respondents have offered to take CPSD to those points where the old and new cable meet.

D. GIVEN CPSD'S OPENING TESTIMONY, ACCESS TO ANY OF THE ATTACHED EQUIPMENT IS IRRELEVANT TO ITS REBUTTAL PREPARATION

As discussed above in Section II, CPSD has long maintained an approach to this case that does not rely on or even consider the size, weight or other attributes of the equipment originally attached to the failed poles. Mr. Tong's 92.4 MPH Theory is in no way derived from any equipment specifications. This is why he went only once to the Westminster facility to see the poles and the equipment that was retained and never returned. CPSD's motion does not explain how it can possibly be prejudiced by not being able to inspect these few pieces of discarded

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[20] The height of attachment on the pole is also important but obviously that would have to be estimated whether the equipment was discarded or saved after it was removed from the pole.

[21] In fact, Mr. Tong noticed and commented on these conductor splices when he made his one site visit to Malibu Canyon in November 2007. Following the visit, SCE informed why the splicing was necessary. Mr. Tong made no further inquiry and never expressed any interested in what had been done with the small lengths of old conductor.

equipment when it has never even recorded or relied upon the physical specifications of the many pieces of equipment that have been preserved.

E. GO 95, CPUC DECISIONS AND CALIFORNIA LAW CONFIRM THAT NO SPOLIATION HAS OCCURRED

CPSD seems to think that by breathlessly advising the Commission that Respondents discarded or dismantled a few pieces of attached equipment, it has established that spoliation of evidence has occurred and now it deserves three more months in which to investigate the circumstances and recommend sanctions. CPSD has made a fundamental legal error: the mere fact that a party has not preserved every possible piece of "evidence" does not constitute spoliation. There must first be a showing that the party had an awareness that it was disposing of something that would be important in resolving factual issues in later litigation; and that the party knew or should have known that the failure to preserve the evidence would prejudice the ability of other parties to establish the facts. CPSD has not made or even attempted to make either showing and for the reasons noted above, it cannot do so. Nor does the Commission impose any special or different obligation on public utilities such as the Respondents regarding the preservation of evidence.

CPSD claims that the discarding of equipment violated GO 95. In fact, Rule 17 of GO 95 only provides guidance to utilities in conducting investigations of major accidents. It says nothing about evidence preservation. Next, CPSD claims GO 95's new Rule 19 was violated. CPSD calls this rule "an explicit Commission requirement to preserve physical evidence relating to a CPSD investigation . . ."[22] Aside from the fact that this rule only became effective on August 25, 2009, Rule 19 explicitly leaves to the utility's discretion the extent of evidence

[22] CPSD Motion at 13.

preservation. It does require the utility provide Commission personnel with access to whatever evidence it has chosen to preserve which is exactly what SCE has done in this case.

Commission decisions recognize that spoliation can only occur when evidence is destroyed with an awareness of its value to current or future litigation. The Commission has defined spoliation as "the destruction of evidence in anticipation of its relevance to pending or future litigation."[23] For all of the reasons discussed above, neither SCE nor the other Respondents had any reason to believe at the time pieces of equipment were discarded that these physical items would have any relevance to future litigation concerning the Malibu fire. With regard to the wireless respondents, the CPSD did not even contact them until 9 or 10 months after the October 2007 incident and even then it only asked for pole loading information, without advising them that it was conducting an investigation. Indeed, there has been no showing by CPSD that any such relevance has emerged in the ensuing three years given Respondents' offer to provide physical inspection of comparable equipment, the availability of information about the loading characteristics of the equipment, and the fact that CPSD's theory of the case does not rely information about any equipment attached to the poles.

D.89-07-011 is such a decision. In this Commission decision, Randy and Cheryl Brewer ("the Brewers") alleged Southern California Gas Company ("SoCalGas") overcharged them for gas.[24] The Brewers alleged their old meter was faulty, evidenced by their recorded usage

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[23] *Investigation on the Commission's Own Motion into the Practices of the Southern California Edison Company to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking, its Monitoring and Reporting to the Commission, Refunds to Customers and Other Relief, and Future Performance Based Ratemaking for this Utility*, D.08-09-038, 2008 Cal. PUC LEXIS 401 at 139 n. 11 (CPUC September 18, 2008) (emphasis added).

[24] *Randy A. Brewer and Cheryl A. Brewer, Complainants, v. Southern California Gas Company, Defendant*, D.89-07-011, 1989 Cal. PUC LEXIS 759 at 1 (CPUC July 6, 1989).

dropping when the meter was replaced.[25] SoCalGas denied the allegations, but destroyed the old meter without investigating the cause of the malfunction.

The Commission noted evidence of the accuracy of the meter was necessary to prove the Brewers's claim.[26] The Brewers "did all they could to substantiate their theory."[27] However, without the meter, the Brewers's burden of proving their case was impossible.[28]

The Commission found SoCalGas's disposal of the meter "disingenuous."[29]

> [SoCalGas] knew or should have known how crucial the operation of the meter was to the complainant's pending claim for relief from high bills. . . . It should have acted reasonably to preserve evidence of the meter's accuracy. Instead, by failing to investigate the cause of the meter's nonregistration and losing track of the subsequent whereabouts of the meter, it has made it impossible for [the Brewers] to prove their case.[30]

As a result of SoCalGas's conduct, the Commission adopted a negative inference toward the destroying party and held SoCalGas could no longer argue the meter was accurate.31

The *Brewer* decision is useful in that it provides guidance from the Commission in the preservation of evidence. In *Brewer*, the claim was known; the meter was unique in that there was a claimed malfunction in the meter; the complaint relates to the functionality of the meter; and testing for reliability, which is at the heart of the claim, cannot be performed without the meter.

California state court and federal court decisions align with the Commission in finding that no sanctions can apply to the destruction of evidence in the absence of a showing that the

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[25] *Id.*
[26] Id. at 8.
[27] Id.
[28] Id. at 12.
[29] *Id.* at 11.
[30] *Id.* at 11-12.
[31] *See Id.* at 12.

destroyed evidence must be central to the opposition party's ability to present its case and the sanctioned party was or should have been aware of that importance.[32]

VI. CONCLUSION

None of CPSD's proffered reasons for this huge schedule extension withstands scrutiny. This proceeding is now at the rebuttal stage immediately prior to hearings. It should be finally moving towards completion. Instead, CPSD proposes to take discovery back to Square One and to embark on a fishing expedition concerning the discarding of a few pieces of equipment that can have no impact on any analysis of what caused the poles to fail. The motion for more time should be denied.

Should the motion be granted to any extent, and if CPSD uses the opportunity to file testimony beyond the proper scope of rebuttal to Respondents' testimony, then it will be essential to strike the improper CPSD reply testimony or to re-visit the entirety of the schedule for this OII including providing an ample opportunity for Respondents to engage in discovery regarding testimony that goes beyond the proper scope of reply testimony and to allow Respondents to file their own sur-reply.

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[32] *See, e.g., AmeriPride Serv., Inc. v. Valley Indus. Serv., Inc.*, No. CIV S-00113, 2006 WL 2308442 (E.D. Cal. Aug. 9, 2006) (applying spoliation sanctions to party destroying 100 tons of soil and sections of pipe essential to testing claim regarding chemical spill); *Williams v. Russ*, 167 Cal. App. 4th 1215 (Cal. Crt. App. 2 Dist. 2009) (legal malpractice claim dismissed, because plaintiff destroyed files relating to representation).

Dated: January 07, 2011

Respectfully submitted on behalf of Joint Respondents with respect to portions of Response of Joint Respondents to the Consumer Protection and Safety Division's Motion for a Continuance of Schedule,

/s/ Charles C. Read

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LAI-3119140v4

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
2 STATE OF CALIFORNIA
3
4 INVESTIGATION ON THE COMMISSION'S)
OWN MOTION INTO THE OPERATIONS AND)
5 PRACTICES OF SOUTHERN CALIFORNIA)
EDISON COMPANY (U338-E); CELLCO)
6 PARTNERSHIP LLC, D/B/A VERIZON) I.09.018
NETWORKS OF CALIFORNIA, INC.; AND) Filed Jan. 29, 2009
7 PACIFIC BELL TELEPHONE COMPANY,)
D/B/A AT&T MOBILITY LLC, REGARDING)
8 THE UTILITY FACILITIES AND THE)
CANYON FIRE IN MALIBU OF OCTOBER)
9 2007.)
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15 VIDEOTAPED DEPOSITION OF KAN-WAI TONG, VOL. I
16 LOS ANGELES, CALIFORNIA
17 TUESDAY, AUGUST 3, 2010
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REPORTED BY:
24 Alejandria E. Kate
RPR, CLR, CSR NO. 11897, HAWAII 448
25 JOB NO.: 32111

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
2 STATE OF CALIFORNIA
3
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16 LOS ANGELES, CALIFORNIA
17 WEDNESDAY, AUGUST 4, 2010
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23
REPORTED BY:
24 Alejandria E. Kate
RPR, CLR, CSR NO. 11897, HAWAII 448
25 JOB NO.: 32112

1 earlier answers, but let me be more specific.
2 Did you make any measurements indicating where
3 on the poles there were attachments or there had been
4 attachments, such as cross-arms?
5 A. What was your question?
6 Q. Did you make any measurements when you were at
7 Westminster to indicate the location on the pole where
8 there may have been attachments, such as a cross-arm?
9 A. I think I made some notes on it. I did.
10 Q. And those would have been in your notes as
11 well?
12 A. Yes, sir.
13 Q. Now, that visit on November 8, 2007, that was
14 the only time you have inspected the poles and related
15 equipment that have been stored from the fire?
16 A. Yes.
17 Q. And to your knowledge, no one else from CPSD
18 has ever made any visit to inspect the items stored at
19 Westminster; isn't that right?
20 A. Correct.
21 Q. And why is it that you decided not to make any
22 return visits for additional -- to gather additional
23 information or take additional measurements at
24 Westminster?
25 A. Because the poles were cut in pieces. That

1 means the evidence was altered. And also I -- I took an
2 approach that, you know, if I could get a wind speed or
3 calculate a minimum wind speed -- or the minimum wind
4 speed requirement for the facility to withstand at the
5 time of the incident -- I mean, I have to revisit the
6 site again -- I mean the evidence again.
7 Q. Okay. Let me move on to that issue that you
8 mentioned in your last answer that -- your calculation.
9 And I think you'll probably want to look at Page 3-4,
10 primarily, in your testimony.
11 Is it correct, Mr. Tong, that you contend that
12 the poles that failed should have been able to withstand
13 winds of up to 92.4 miles per hour if they had been
14 loaded in accordance with the safety factors in
15 Rule 44.1 and 44.3?
16 A. Correct.
17 Q. Okay. And is it correct that you rely on the
18 SIG study -- S-I-G -- to conclude that the maximum wind
19 in Malibu Canyon on the day of the fire did not exceed
20 approximately 70 miles per hour; is that right?
21 A. Correct.
22 Q. Okay. And, therefore, you conclude that since
23 the poles failed, or at least one or more of them
24 failed, one or more of them must have been overloaded;
25 is that right?

1 notes.
2 I'll represent to you that this collection of
3 documents was provided to respondents by CPSD as -- in
4 the form you see here.
5 I just wondered if you could identify the
6 three pages of notations, diagrams, as -- are those the
7 notations that you made on your trip to Westminster?
8 A. They appear to be.
9 Q. And do you recall any other notations or --
10 or -- or notes that you made beyond the three pages seen
11 here?
12 A. That's pretty much it.
13 Q. Okay. I believe you said, before lunch, that
14 not long after you made your visit to Westminster, which
15 was November of '08, I believe, that you decided that
16 you would pursue your analysis in the form of the
17 equation that we have been talking about on Page 3-4 and
18 calculating what you call a minimum design wind speed
19 requirement, rather than trying to replicate the
20 conditions on the poles.
21 Is that right?
22 A. That's correct.
23 Q. And in making that decision, did you consult
24 with anybody else at CPSD as to whether that was the
25 right course of action?

1 calculation in connection with this matter?
2 MR. MOLDAVSKY: Objection. Vague as to
3 "consider."
4 Go ahead.
5 A. I might have considered that.
6 Q. Okay. I apologize. When a lawyer hears
7 someone say "I might have," the question is always: Do
8 you actually recall doing X or Y or thinking X or Y?
9 Because "might" sounds like a guess. So let me ask the
10 question again.
11 Do you recall considering doing that other
12 type of pole wind load calculation in connection with
13 this matter?
14 A. Can you specify the time frame?
15 Q. Okay. Let's -- as broad as possible. At any
16 time in connection with your work on this case.
17 A. Yes.
18 Q. Okay. And there came a point in time when you
19 decided not to do that approach?
20 A. Yes.
21 Q. And what point in time was that? When did you
22 make that decision?
23 A. When I saw the evidence at Westminster base, I
24 realized that the evidence were altered. For example,
25 the poles were cut in pieces and trays were -- I mean,

1 things were put in different places.
2 Based on that, I'm not sure if I had reliable
3 data to conduct that kind of pole loading analysis.
4 Q. At that time, at the time following --
5 immediately following that visit, did you decide in your
6 own mind that this second type of pole loading
7 calculation simply wasn't going to be feasible for you?
8 A. Correct.
9 Q. Okay. Given the fact that you had made that
10 decision, why is it that you were asking the various
11 companies in this matter to provide you with information
12 concerning the specifications of the facilities that
13 they had installed on the poles?
14 A. I believe it will be helpful if later on if we
15 have the resources to conduct that type of pole loading
16 analysis.
17 Q. Did you have any intention of conducting such
18 a pole loading analysis in the foreseeable future?
19 A. Myself?
20 Q. Yes.
21 A. I don't think so, no.
22 Q. Did you have any discussions with anybody at
23 the PUC about any intention by anyone there to conduct
24 such an analysis in the foreseeable future?
25 MR. MOLDAVSKY: Exclude discussions with

1 Mr. Peralta's analysis, you can't do your own wind
2 loading analysis.
3 Now, isn't it correct that you there used the
4 term "wind loading analysis" to mean a pole loading
5 calculation of the type I've just described?
6 A. I think the approach I took was different from
7 Mr. Peralta's approach. So they may -- they may get to
8 the same result at the end.
9 Q. Okay. I understand that.
10 But my question is you've indicated here that
11 without information from Mr. Peralta, that you cannot --
12 CPSD cannot do a -- its own wind loading analysis for
13 the failed poles with the specifications and
14 configurations exactly as they existed the day of the
15 failure.
16 Now, that's your testimony; correct?
17 MR. MOLDAVSKY: I'll object. The
18 testimony speaks for itself.
19 Go ahead and answer.
20 A. I believe I was referring to a second approach
21 that you talk about --
22 Q. Yes.
23 A. -- other loadings. That's correct.
24 Q. Okay. And on that second approach, I think
25 you indicated that shortly after the November 8th, '08,

1 visit to Westminster, that you decided not to pursue
2 that approach; isn't that right?
3 A. At that point in time, yes.
4 Q. Okay. And so -- and after that time, did you
5 try to pursue that approach, to do a pole loading
6 calculation of the type that we -- that I have
7 described, taking account of the configuration and
8 attachments on the pole?
9 A. You mean personally, myself?
10 Q. Well, let's start with you, yes.
11 A. No.
12 Q. Do you know whether anybody else attempted to
13 do that kind of pole loading calculation? Anybody else
14 at CPSD. Pardon me.
15 A. Yes.
16 Q. And who was that?
17 A. Mr. Ray Fugere.
18 Q. Okay. And -- and did you ask him to undertake
19 that analysis, or do you know -- well, I'll stop there.
20 A. It wasn't my decision.
21 Q. Well, whose decision was it?
22 A. It was the legal's decision.
23 Q. Do you know when Mr. Fugere attempted to do
24 this pole loading calculation? Approximately.
25 A. It could be a few months ago.

1 on this pole?
2 A. That would be the same answer. Because the
3 pole -- all the poles were cut in pieces. I couldn't
4 tell which one belonged to which.
5 Q. Did you ask Mr. Ramos for help in
6 understanding which pieces belong to which pole?
7 A. I believe so.
8 Q. And did -- and what did he say?
9 A. I don't remember his exact wording, but he
10 kind of indicated that there was no machine, no
11 manpower, to move those evidence.
12 But we did actually -- took out some
13 insulators from -- I think from the big container. I
14 think so. That was the only thing we could move with
15 two people.
16 Q. Did you ask him to arrange at a later time
17 more people or heavier machinery in order to assemble
18 the poles in a reconstructed fashion?
19 A. I don't think I did, no.
20 Q. And why not? Wouldn't that have been useful?
21 MR. MOLDAVSKY: Objection. Compound.
22 Go ahead.
23 A. Because at that time, I already established my
24 approach to investigate this incident.
25 Q. And that was to use the maximum wind design

1 calculation that we've spent quite a bit of time on
2 Page 3-4?
3 A. That's pretty much it.
4 MR. READ: Okay. I think I am finished.
5 I thank you very much for your time and
6 attention. And I think the telecom
7 respondents have a sequence that I'm not
8 actually aware of, but they planned it out
9 here.
10 We'll take a break to rearrange
11 ourselves.
12 THE VIDEOGRAPHER: Off the record at
13 4:33 p.m.
14 (Whereupon, a recess was held
15 from 4:33 p.m. to 4:49 p.m.)
16 THE VIDEOGRAPHER: Back on video at
17 4:49 p.m.
18
19 EXAMINATION
20 BY MR. HANSCHEN:
21 Q. Good afternoon, Mr. Tang. I'm Peter Hanschen,
22 and I represent Verizon Wireless today. I have a few
23 questions I just want to follow up from Mr. Read's
24 questions to you.
25 First of all, can we agree that some of the

1 A. That's a fair statement.
2 Q. And, in fact, the safety factor is really
3 supposed to be -- the numerator is the ultimate breaking
4 point of the pole and the denominator is the maximum
5 amount of load and facilities you're going to put on it.
6 And if you have a safety factor of four,
7 you're only supposed to have a fourth of the total
8 capacity of the pole used. And if the safety factor is
9 three, you're only supposed to have a third of the
10 amount of the capacity of the pole used; is that
11 correct?
12 A. That's a fair statement.
13 Q. Okay. So to -- to determine whether you --
14 you've met the applicable safety standards, safety
15 factor requirements, you need to know whether what the
16 total capacity of the pole is, which you -- and you need
17 to know what load you're thinking about putting on it;
18 is that correct?
19 MR. MOLDAVSKY: Objection. Vague and
20 ambiguous.
21 Go ahead.
22 A. I can't think of the answer now.
23 Q. Well, I --
24 MR. MOLDAVSKY: Let the record reflect
25 the witness did indicate that he was

1 fatigued.
2 MR. MacBRIDE: Well, okay.
3 Q. But I'm still trying to find out at any
4 point -- I believe you indicated that my -- my general
5 statement was correct, that if you -- if you want to
6 satisfy the safety factor, you have to know what the
7 total capacity is of the pole and then the load that
8 might be put on it; is that correct?
9 A. I believe so.
10 Q. Okay. Now, let's turn to the total capacity
11 of the pole.
12 What you would need to know would be the type
13 of wood it's made out of and basically the
14 circumference; is that correct?
15 MR. MOLDAVSKY: Objection. Calls for an
16 expert conclusion.
17 Answer if you know.
18 Expert opinion.
19 MR. MacBRIDE: It calls for an expert
20 opinion?
21 MR. MOLDAVSKY: Sure.
22 A. I don't know.
23 Q. Have you ever looked at -- oh, so you're not
24 able to answer that question?
25 A. At this point in time, I cannot answer the

1 A. Are you referring to the testimony or --
2 Q. I'm sorry. Your testimony, yes.
3 A. I don't recall. I don't remember.
4 Q. Well, you -- you recall that you received most
5 of this information in April of 2009, at least that's
6 what the footnotes would suggest; is that correct?
7 A. Yes, sir.
8 Q. But you don't recall whether you made the
9 decision to adopt the approach set forth in your
10 testimony before or after receiving this information?
11 A. I believe it was before.
12 Q. It was before you received it?
13 MR. MacBRIDE: Okay. All right. Thank
14 you very much, Mr. Tong. I appreciate your
15 time. I appreciate your patience, especially
16 with a lawyer trying to do math.
17 THE VIDEOGRAPHER: Is this going to
18 conclude today's testimony?
19 MR. MacBRIDE: Yes, it is.
20 THE VIDEOGRAPHER: Okay. This concludes
21 Volume II of the video deposition of Kan-Wai
22 Tong. The number of DVDs used were four.
23 Off video at 6:24 p.m.
24 (Whereupon, a recess was held
25 from 6:24 p.m. to 6:29 p.m.)

APPENDIX A– PROCEDURAL TIME LINE OF THE PROCEEDING

The following time line demonstrates:

(1) CPSD has had more than adequate opportunity to conduct its investigation and discovery in this matter;

(2) CPSD is now attempting to gain more time for discovery that it previously had opportunity to do and chose not to do of its own volition;

(3) despite very demanding time limits, Respondents have timely met all of CPSD's deadlines for responding to CPSD's three-plus sets of data requests (including supplemental requests);

(4) except for CPSD's one motion with regard to Mr. Peralta, CPSD has not brought a single motion to compel further data responses by Respondents with regard to its past data requests;

(5) CPSD is now attempting to gain more time for discovery that is completely inconsistent with its 92.4 MPH Theory of the case as set forth in its May 3, 2010 direct testimony and (b) completely unnecessary for a response to Respondents' rebuttal testimony. Respondents' rebuttal testimony only responded to the CPSD's May 3, 2010 direct testimony.

It is clear that CPSD is not interested in gathering information to reply to Respondents' November 18, 2010 rebuttal testimony, but has recognized the inherent flaws of its 92.4 MPH Theory and is now is trying to gather information for an entirely new theory of the case.

CPSD has refused to identify why it is seeking to conduct such broad ranging additional discovery that would have been more appropriately done years ago, except for its brand new so-called "spoliation" theory, which has no relationship to the majority of its discovery requests and which is responded to separately in this Response. It is clear that CPSD is simply seeking to do discovery which it (a) could have done before (b) voluntarily chose not to do; and (c) has no relationship to its 92.4 MPH Theory or Respondents' Rebuttal Testimony.

- **October 21, 2007 –** Extreme wind storm knocks down three poles in Malibu Canyon, resulting in fire.
- **October 21, 2007 –** SCE telephonically notifies the Utilities Safety and Reliability Branch of the incident.
- **October 21, 2007 to approximately November 15, 2007 –** SCE, AT&T, Verizon Wireless and NextG are in field to restore service and replace damaged facilities where necessary.[1]
- **October 25, 2007 –** SCE notifies CPUC's Consumer Service Division in writing of the incident.
- **November 8, 2007 (morning) –** CPSD investigator Tong examines damaged facilities at SCE's warehouse at Westminster. *He takes 3 pages of notes and drawings of the damaged facilities* (Attachment 1)*, as well as photographs. Mr. Tong testified that it was during this visit to SCE's Westminster warehouse that he determined that he would use a type of wind loading analysis that did not take into account the actual facilities attached to the poles or the stated strength of the pole.*[2] *Rather, he would use a separate approach which was based on the force of the wind that a cylindrical pole should be able to withstand which he could then compare to the wind speed at the time of the accident. This is CPSD's so-called 92.4 MPH Theory.*[3]
- **November 8, 2007 (afternoon) –** CPSD investigator Tong visits Malibu Canyon fire site.
- **November 8, 2007 to August 11, 2008 –** CPSD investigator Tong gathers information from SCE regarding the Malibu Canyon fire.
- **January 15, 2008 –** Over two months after the wireless companies were in the field repairing their respective facilities, in a letter from senior investigator, Frederick McCollum, SCE notifies the wireless companies with facilities on the poles that potential litigation claims may be filed against them as joint owners of the poles and that they should "preserve any and all records related to the subject poles."
- **August 14, 2008 –** Approximately ten months after the fire, CPSD investigator Tong telephones the wireless telecommunications companies and leaves messages requesting copies of wind loading calculations for the communications facilities that had been installed on the failed poles. *This message is the first contact between CPSD and the wireless companies regarding the Malibu Fire.*
- **October 10, 2008 –** CPSD receives the written Accident Bush Report 07-260 from the Los Angeles County Fire Department. The Report, which was last updated on November 1, 2007, more than 11 months before the CPSD's investigator received it, finds that based on the evidence observed and statements made during the investigation, the fire was accidental in nature; that a severe Santa Ana wind condition at the time was a major factor in the spread of the fire.

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[1] Sprint did not have any facilities in service in the Malibu Canyon at the time of the fire. See Sprint April 20, 2009 Report to the Commission at 3, 14. Accordingly, Sprint did not need to repair or replace any facilities damaged in the fire and did not engage in such activity.
[2] Tong Deposition, Vol. 1, at 66; Vol. 2 at 267-268. Attached as Ex. 1 to Joint Respondents' Opposition.
[3] Tong Deposition, Vol. 1, at 46, 66.

- **October 21, 2008 –** One year after the fire**,** CPSD issues its Incident Investigation Report. The Report concludes that based on the approach to wind loading analysis used by CPSD investigator Tong, namely the 92.4 MPH Theory, Joint Respondents violated certain provisions of General Order 95 ("GO 95") by failing to properly maintain and inspect the poles and for failing to prevent the safety factor from falling below the minimum Commission requirements. The CPSD analysis is the same approach that investigator Tong determined to use when he visited the SCE warehouse on November 8, 2007, again the 92.4 MPH Theory. As previously noted the 92.4 MPH Theory used by Mr. Tong does not take into consideration the nature of the poles themselves or the facilities that are attached thereto.
- **February 2, 2009** – The CPUC releases I.09-01-018 issued a few days earlier. Attached to the OII is the CPSD's Incident Investigation Report, including the wind loading analysis calculation used by Mr. Tong, i.e. the 92.4 MPH Theory. The OII orders the Respondents to file a report responding to certain questions posed in the OII by March 2, 2009.
- **February 19, 2009 –** After consulting with CPSD concerning a 60 day extension to file the report called for by the OII, the CPSD states that it would not object to a 30 day extension, but would not agree to a longer extension. Joint Respondents file a motion for an extension until May 1, 2009 to file their reports. (Attachment 2)
- **February 26, 2009 –** Joint Ruling issued extending time for Joint Respondents to file their respective reports until April 20, 2009. Ruling indicates that parties will not be able to excuse a failure to submit a responsive report on or before that date on pending discovery disputes. (Attachment 3)
- **March 2, 2009 –** CPSD submits response opposing Joint Respondents' request for extension of time stating that an extension would be disruptive to the proceeding. (Attachment 4)
- **March 9, 2009 –** In an effort to better understand the Incident Investigation Report upon which the OII is based, Joint Respondents send First Data Request to CPSD. (Attachment 5)
- **March 12, 2009 –**CPSD alleges that discovery against the CPSD at this stage of the proceeding is improper and refuses to answer specific data requests. (Attachment 6) CPSD subsequently provides certain non-privileged documents in its files, but without responding to the specific data requests or explaining how the documents were used.
- **April 20, 2009 –** Respondents file their respective reports responding to the questions set forth in the Commission's OII.
- **April 28, 2009 –** ALJ Reed issues ruling setting a prehearing conference for May 13, 2009 and ordering parties to file a prehearing conference statement by May 8, 2009.
- **May 8, 2009 –** Parties file their respective prehearing conference statements. CPSD statement proposes a procedural schedule, which among other things would give it approximately 5 weeks (including Thanksgiving) to submit its testimony replying to Respondents' testimony. CPSD also states that based on the Respondents' April 20, 2009 reports, it now has "no plans to introduce or

modify the report [Incident Investigation Report]." CPSD goes on to say that it expects to conduct depositions and other discovery to ascertain the facts and expects to provide its testimony on September 15, 2009. CPSD's PHC Statement highlights: "In CPSD's view the two most important factual issues in the proceeding are (1) to identify the assets that were attached to those poles and the utilities that owned or operated them at any given point in time before the poles broke in October 2007, and (2) to obtain all weight load safety calculations done before the poles broke to establish compliance with GO 95 and other good construction practice" (Attachment 7) *However, as discussed later in this Response, CPSD never discussed these so called important factual issues in its direct testimony; its lead investigator had already elected not to pursue such an approach. Instead, CPSD's witness Tong chose to adopt the same approach to wind loading that he discussed in the CPSD's Incident Investigation Report, namely the 92.4 MPH Theory. This approach is not in any way dependent upon the assets that were attached to the poles or any wind loading analysis, other than the 92.4 MPH Theory.*

- **May 20, 2009 –** CPSD and the Joint Respondents agree to a procedural schedule and submit it to ALJ Reed. (Attachment 8) *The agreed upon schedule requires CPSD to serve its rebuttal testimony on March 19, 2010, 49 days after the Respondent's serve their respective testimony*.
- **June 17, 2009 –** CPSD serves its First CPSD Data Request to each of the Respondents. The data request requires that the Respondents to file any objections to the data requests by June 24, 2009 and to respond no later than July 6, 2009. The Respondents comply with the CPSD's directives and submit their objections and responses on the dates set forth in the data request directions.
- **June 24, 2009** – CPSD provides a letter describing the discovery including personnel or agents that it wishes to depose. CPSD states that it would like to start depositions by July 13, 2009 and finish by August 7, 2009. (Attachment 9) *Most of the individuals that CPSD now wishes to depose are listed in the letter.*
- **June 30, 2009** – CPSD provides a letter to Respondents commenting on the objections to First CPSD Data Request. CPSD indicates that it will file a motion to compel promptly regarding any of the data request for which Respondents fail to provide adequate answers or continue to object to. (Attachment 10) *No motion of the nature described in CPSD's June 30, 2009 letter is ever filed with regard to these responses.*
- **June 30, 2009 – July 20, 2009 –** Respondents respond to CPSD's June 24, 2009 and June 30, 2009 letters, including providing proposed dates and locations for depositions of the witnesses listed in CPSD's June 24, 2009 letter.
- **July 22, 2009 –** Letter from CPSD regarding depositions and production of documents. CPSD indicates that it intends to bring a motion compel answers to data requests by July 30, 2009. CPSD also states that it proposes to postpone certain depositions until late August or September, but that it will proceed with other depositions during the week of August 3, 2009. CPSD states that it will file a written motion to change the schedule so that it can have a consultant conduct a wind speed study. (Attachment 11) *No motion of the nature described in the July 22, 2009 letter is ever filed.*

- **July 28, 2009 –** Conference call between CPSD counsel and counsel for Respondents. Mr. Cagen and Mr. Moldavsky participated in the call for CPSD. CPSD discussed the need to modify the schedule so that it could hire an expert to conduct a wind speed analysis. CPSD also indicated that it would not be able to file its motion to compel by July 30, 2009, as previously indicated, but it anticipated filing during the first week of August. Depositions would also not occur in the first week of August. *Again, motions to compel responses to First CPSD Data Request are never filed by CPSD.*
- **July 28, 2009 to August 6, 2009 –** Counsels for CPSD and Respondents discuss possible schedule modification to accommodate CPSD's desire to have a consultant discuss wind studies. The parties agree to a schedule that maintains the same 49 day interval between the filing of Respondent's testimony and the filing of CPSD's rebuttal testimony.
- **August 6, 2009 –** CPSD sends letter to ALJ Reed requesting an extension so that it can conduct wind studies. The letter indicates that Respondents are in agreement with CPSD's request. (Attachment 12)
- **October 22, 2009 –** Assigned Commissioner's Ruling and Scoping Memo issued. The Scoping Memo adopts the revised procedural schedule proposed by CPSD on August 6, 2009.
- **December 17, 2009 –** CPSD takes the deposition of Roger Auchard.
- **December 28, 2009 –** CPSD takes the deposition of James Austin and Jack Van Beyeren.
- **January 4, 2010 –** Approximately 4 weeks before its testimony is due, Mr. Moldavsky advises Respondents that Mr. Cagen has retired and that he will represent CPSD. Given the complexity of the case and the voluminous record, he requests that CPSD be given an extension until May 3, 2010. (Attachment 13)
- **January 14, 2010 –** CPSD submits a motion that it be given until May 3, 2010 to file its case in consideration of a change in counsel.
- **January 22, 2010 –** Respondents oppose CPSD's motion, noting that CPSD has had a full year to conduct its discovery and, since its case is due in approximately two weeks, it should be largely prepared. Respondents request that CPSD not be allowed to do further discovery at this late date.
- **February 1, 2010 – A**fter discussions with CPSD's counsel, Respondents advised ALJ Reed of a revised procedural schedule that allows CPSD to submit its direct case on May 3, 2010, as CPSD requested. *Subsequent procedural intervals, including the 49 day interval (adjusted for a weekend) for CPSD to submit its rebuttal testimony are maintained.* (Attachment 14)
- **March 3-5, 2010 –** CPSD deposes Richard Cromer, June Santiago and Arthur Peralta. *Mr. Cromer and Mr. Santiago had been identified nine months previously in CPSD's June 24, 2009 letter, but CPSD never noticed their depositions*.
- **March 5, 2010** – CPSD submits second CPSD Data Request to Respondents. Requesting objections by March 22, 2010 and Responses by March 29, 2010. *Respondents comply with CPSD's request submitting objections and responses on the dates requested.*

- **March 8, 2010 –** CPSD submits supplemental data requests to the wireless respondents. *Respondents respond in a timely manner on March 22, 2010, as requested.*
- **March 26, 2010 –** *Approximately one month before its testimony is due on May 3, 2010 and approximately 7 weeks after it was originally due before an extension was authorized to allow CPSD counsel allegedly to come up to speed*, CPSD files a motion to compel data collected by Arthur Peralta. *This motion is the only motion to compel filed by CPSD during the course of the proceeding.*
- **April 5, 2010** – SCE opposes motion on the grounds that such information is privileged.
- **May 3, 2010 –** *Two and one half years after it first started investigating the incident in November 2008,* CPSD finally serves its direct case. *Contrary to CPSD's counsel's representation in CPSD's prehearing conference, the CPSD's direct case includes the Incident Investigation Report which it had previously advised the Commission that it had no plans to introduce. In addition, Chapter 3 of the CPSD direct testimony, which is sponsored by Mr. Tong, continues to use a wind load analysis that is not dependent upon the nature and specification of the poles in question or the facilities attached to them. In other words, CPSD continued to use the same 92.4 MPH Theory that Mr. Tong decided to use when he first visited SCE's warehouse in Westminster on November 8, 2007.*
- **May 27, 2010 –** Joint Respondents submit Second Data Request to the CPSD.
- **June 4, 2010 –** Sprint, NextG and Verizon also submit a limited number of data requests to CPSD.
- **June 24, 2010** – CPSD submits objections and responses to Respondents data requests.
- **June 24, 2010 to July 9, 2010** – In response to Joint Respondents' indication that they intend to depose certain CPSD witnesses, CPSD demands that total number of deposition hours be limited, certain named witnesses to data responses be excluded from being deposed; CPSD be given free transcripts and that its experts be reimbursed. Following negotiations and a conference with ALJ Reed, these issues are between CPSD and the Joint Respondents are resolved and ALJ Reed is so advised. (Attachment 15) Because of witnesses' and counsels' summer schedules, the parties agree to extend the procedural schedule on a day for day basis to reflect their previously planned absences.
- **July 8, 2010 –** Joint Respondents submit Third Data Request to CPSD.
- **July 19, 2010** – Respondents take deposition of David Saah.
- **August 3, 2010 to August 4, 2010** – Respondents take the deposition of CPSD's Kan-Wai Tong.
- **August 10, 2010 –** Respondents take the deposition of CPSD's Pejman Moshfegh.
- **August 18, 2010 to August 19, 2010** – Respondents take deposition of CPSD's outside expert Tadashi Moody.
- **August 19, 2010** – CPSD responds to Joint Respondents' Third Data Request, objecting to all questions except 3.
- **August 25- August 26, 2010 –** Respondents take the deposition of CPSD's outside expert Max Moritz. *The deposition is abruptly terminated by CPSD*

counsel because of his belief that it exceeded the total time limits imposed by CPSD.

- **September 2, 2010 –** In an e-mail to CPSD, Respondents propose to confirm the effect of the depositions and the holiday season the procedural schedule. Respondents' suggest that the impact of the holidays be equally shared making Respondents' testimony due on November 18, 2010 and CPSD rebuttal testimony due February 9, 2011. (Attachment 16)
- **September 15, 2010** – CPSD responds to Respondents September 2, 2010 e-mail proposing a so-called "hybrid" approach whereby Respondents would continue to file its testimonies on November 18, 2010, but that CPSD would be given until February 9, 2011 to file its testimony. (Attachment 17)
- **September 16, 2010 –** Respondents reject CPSD's hybrid proposal as being one-sided and suggest that because of the tight schedule, the date for Respondents' testimony should be extended by 30 days until December 18, 2010 and the filing date for CPSD's reply testimony be extended by a disproportionately longer period, until February 25, 2011. (Attachment 18)
- **September 17, 2010 –** CPSD rejects Respondents' September 16, 2010 schedule proposal and states that Respondents testimony is due November 18, 2010; that if Respondents need more time they should let CPSD know and they will determine if an extension should be granted. (Attachment 19)
- **September 29, 2010 –** Respondents take the deposition of outside expert Jason Forthofer.
- **October 1, 2010 –** Counsel for Verizon Wireless advises CPSD that because of the complexity of the case and other reasons, it would like an extension until December 18, 2010 to file its testimony. It states that if CPSD is in agreement, after reviewing the testimony filed, CPSD can determine when it would be able to file its own testimony. (Attachment 20) *In other words, counsel for Verizon Wireless would give CPSD an open extension. Other Respondents advise CPSD that they agree with this approach. CPSD seeks no clarification of the fact that Respondents are proposing an open-ended extension for CPSD in exchange for a mere one-month extension for Respondents.*
- **October 7, 2010 –** CPSD advises the Respondents that it rejects the Respondents' extension proposal (including, presumably the open-ended extension for its own testimony) because it has a responsibility to protect the public safety and safety violations are an important and time-sensitive function. (Attachment 21)
- **October 8, 2010 –** Joint Respondents file an e-mail motion with ALJ Reed requesting a 30-day extension of time to file its testimony. It also proposes that the date for CPSD's reply testimony be extended by 30 days, plus two weeks, to take into account the holiday season. This would make the CPSD's testimony due on February 23, 2011. (Attachment 22)
- **October 11, 2010 –** CPSD advises the ALJ of its "vigorous objection" to the Respondents request for a 30-day extension stating that its opposition is primarily based on the critical importance of protecting Californians. (Attachment 23) *Even though it has taken more that two years to prepare its own case (and now asks for an addition 3 months to prepare its reply testimony) CPSD asserts that promptly holding utilities accountable is an important component of that goal.*

- **October 11, 2010 –** Respondents reply to CPSD's opposition. (Attachment 24)
- **October 12, 2010 –** CPSD re-iterates its position and requests that there be no oral argument on the motion. *CPSD states that "Respondents have raised no valid points to counter the proposition that protecting Californians from utility-caused incidents is critical and time-sensitive .... [W]e have to draw the line somewhere and we have to move to the accountability stage of this proceeding as expeditiously as possible..* (Attachment 25)
- **October 25, 2010** – ALJ Reed denies Respondents' motion to extend the procedural schedule.
- **November 18, 2010 –** Respondents file their respective testimonies.
- **November 29, 2010 –** CPSD serves data requests on each of the Respondents and requests responses within only 9 working days, by December 10, 2010. *Very few of the data requests are directed to the testimony filed by the Respondents, but instead reiterate the substance of the requests made by CPSD over 18 months ago. It is clear that CPSD's intent is not to get information to respond to Respondents' testimony, but to start its own case anew from square one.*
- **November 30, 2010 –** In an e-mail, CPSD advises that it intends to take depositions, starting with SCE's Frederick McCollum and ending with Arthur Peralta. It also designates, Casey Doherty, Mike Bogner and Lupe Hernandez as deponents. CPSD indicates that jointly sponsored witnesses (Dr. Peterka, Mr. Rosenthal and Mr. Schulte) may not be deposed, though a final decision has not been made. (Attachment 26) *McCollum, Doherty, and Hernandez had previously been identified by CPSD as deponents in July 2009, but their depositions were never taken. Arthur Peralta had been previously deposed. Claims that delays in producing Dr. Peterka's and Mr. Rosenthal's work papers and computer models are grounds for an extension, are specious as CPSD has no present intent to depose them.*
- **December 3, 2010 –** Respondents respond to CPSD's e-mail noting that it does not seem that CPSD shares the view that its testimony is due on January 10, 2011, as per the ALJ's October 25, 2010 Ruling. *Respondent's point out that if CPSD had agreed to Respondents' proposed schedule change, CPSD rebuttal testimony would have been due later.* (Attachment 27)
- **December 7, 2010 –** CPSD issues Notice of Depositions for McCollum, Lupe Hernandez and Casey Doherty. (Attachment 28)
- **December 8, 2010 –** NextG Advises CPSD that Casey Doherty is out of state and that it has no power to produce him for deposition, as he never was an employee. (In a December 22, 2009 meet and confer, NextG agrees to try to obtain for CPSD, Doherty's last know address).
- **December 9, 2010 –** AT&T advises CPSD that Lupe Hernandez and her attorney are available the first week of January. AT&T follows up with calls to CPSD on December 21 and 22.
- **December 10, 2010 –** Respondents provide their respective objections/responses to CPSD's November 29, 2010 data request. With respect to the data applicable to Dr. Peterka and Mr. Rosenthal, a disc was sent via over night UPS delivery to Los Angeles and hand-delivered to San Francisco for arrival on December 13, 2010. An additional 10 days was requested to provide additional voluminous

documents. Joint Respondents indicate that Dr. Peterka's computer program is available for review at his office by a qualified individual.

- **December 13, 2010 –** CPSD renews its request regarding deposition dates for the identified deponents and also asserts that the filing date for its testimony has to be adjusted by a yet to be agreed upon adjustment for the impact of the holiday season. (Attachment 29)
- **December 16, 2010 –** Respondents advise CPSD that based on the CPSD's own definition of the holiday season, from December 23, 2010 to January 3, 2011, a fair adjustment to the procedural schedule to take into account the impact of the holiday season would extend CPSD's filing date from January 10, 2011 to January 21, 2011. (Attachment 30)
- **December 16, 2010 –** Commission issues D.10-12-041 extending statutory deadline set in 1701.2(d) of the Public Utilities Code. The decision states that the CPSD's rebuttal testimony is due on January 10, 2011, subject to potential further adjustment to take into account the effect of the holiday season on the schedule.
- **December 20, 2010** – Further responses by Dr. Peterka and Mr. Rosenthal, the witnesses sponsored jointly be the Respondents are e-mailed with data send via UPS over night delivery to Los Angeles for delivery on December 21 (actual delivery on December 22) and hand-delivery to San Francisco on December 21. Included are discs with information, an 8 GB flash drive and a 500 GB hard drive. The flash drive and hard drive are at less than full capacity.
- **December 20, 2010 to December 21, 2010 –** CPSD deposes Frederick McCollum.
- **December 21, 2010 -** CPSD advises Respondents that it believes there may be spoliation of evidence, further justifying a delay in its filing of testimony.[4]
- **December 22, 2010 –** CPSD advises Joint Respondents that it does not agree that January 21, 2011 is a reasonable date for its testimony and that it will need at least 3 months to file its serve its testimony. (Attachment 31) Parties agree to an expedited procedure for filing and responding to a motion by CPSD to extend the procedural schedule.
- **December 24, 2010 –** CPSD advises that it needs information regarding computer models and more information regarding its spoliation claim. CPSD proposes to discuss these items at a meet and confer session on January 5, 2011.
- **December 24, 2010 –** ALJ Kenney, with the concurrence of ALJ Reed, agrees to the expedited procedure proposed by the parties regarding CPSD's motion for an extension of time.
- **January 3, 2011 –** CPSD files its Motion seeking a continuance of the procedural schedule.

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[4] CPSD mentions in the Morris Declaration that, on December 21, 2010, Sprint emailed CPSD that it inadvertently provided an incorrect telephone number for a possible CPSD deponent. *See* Declaration of H. Y. Morris at 3-4, ¶ 12. However, less than one day later, Sprint provided CPSD with a corrected phone number as well as the requested address for the deponent. *Id.* The Declaration plainly does not establish any prejudice to CPSD on this point. The Declaration does not show, for example, that prior to the phone number being corrected, CPSD made any attempt to contact the possible deponent or was delayed in any manner by the inadvertent error.

- **January 4, 2011** – CPSD deposes Larry Chow.
- **January 5, 2011 –** Parties conduct a Meet and Confer session with regard to CPSD's November 29, 2010 data request. *Fully one-half of the discussion is devoted to Respondents' proposals to show CPSD how it may obtain the information regarding the limited number of CPSD-specified utility facilities which CPSD claims it needs and which it alleges have been spoliated.*
- **January 5, 2010 –** During the meet and confer session, CPSD serves on Respondents its Notice of Taking Depositions, including two depositions on January 18, one deposition on January 24, two depositions on January 25 and one deposition on January 26, with an indication that depositions for other persons of interest shall also be sought for subsequent dates in 2011.
- **January 6, 2011** – CPSD deposes Lupe Hernandez.
- **January 7, 2011 –** CPSD deposes Melvin Stark.
- **January 11, 2011** – CPSD to depose Jack Van Beyeren.

ATTACHMENT 1

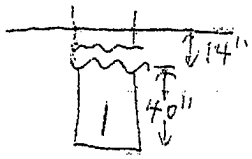
1 Stub Pole. 2 Transmission Poles

1. 22 79212.E Stub Pole. Joint.

5 pieces

35 ft pole.

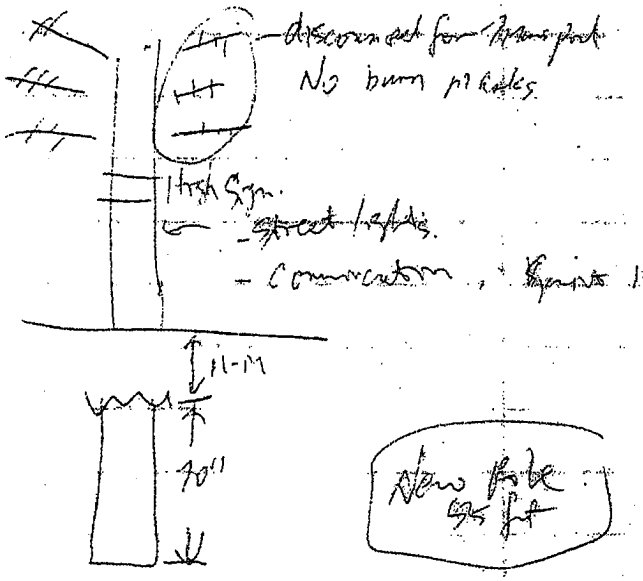
interior. good conditions.



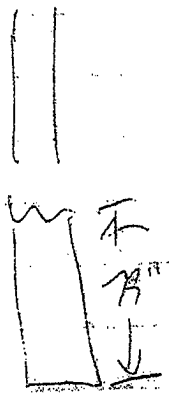
New Stub pole, 4557609E

35-ft

2. Transmission Pole: 1169253E 482 SCE
50 ft pole. 4 pieces.



3. Transmission Pole
450-ft



1169252E

New pole
455-ft

ATTACHMENT 2

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, Verizon Wireless LLC, Sprint Communications Company, LP, NextG Networks of California, Inc. and AT&T Communications of California, Inc., Regarding the Utility Facilities and the Canyon Fire in Malibu of October 2007.	)	Investigation 09-01-018

RESPONDENTS' JOINT MOTION FOR EXTENSION OF TIME

Pursuant to Rule 11.6 of the Commission's Rules of Practice and Procedure and Ordering Paragraph 7 of the above-captioned Order Instituting Investigation ("OII"), Southern California Edison Company ("SCE"), Cellco Partnership LLP d/b/a Verizon Wireless ("Verizon Wireless")[1], Sprint Communications Company LP ("Sprint"), NextG Networks of California Inc. ("NextG") and Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility LLC (collectively "AT&T")[2], the named respondents in the OII (hereinafter collectively referred to as the "Respondents"), hereby request a sixty (60) day extension (until May 1, 2009) to respond to the questions and requests for information that the Commission directed each respondent in the OII to address.

In accordance with Rule 11.6, on February 18, 2009, counsel for Verizon Wireless spoke with Robert Cagen, counsel for the Consumer Protection and Safety Division ("CPSC"), to determine if CPSD would agree to the extension request. Mr. Cagen stated that CPSD would not object to a 30 day extension, but did object to a 60 day extension. For the reasons discussed

[1] The OII misidentifies Verizon Wireless LLC as a Respondent, in as much as there is no such entity. It is our belief that the Commission intended to name Verizon Wireless (VAW) LLC, of which Cellco Partnership LLP d/b/a Verizon Wireless (U-3001-C) is the sole member.

[2] The OII identifies AT&T Communications of California, Inc. as one of the named Respondents. The listing of AT&T Communications of California, Inc. is an error in that AT&T Communications of California, Inc. has no facilities on the poles in question. Only AT&T Mobility has facilities on the poles in question in this investigation.

below, Respondents believe that a 30 day extension provides insufficient time to provide the requested information.

I. Background

In October 2007, the "Malibu" or "Canyon" fire occurred in the Malibu Canyon area of Los Angeles County. More than a year after the fire, the CPSD completed its Incident Investigation Report ("CPSD Report"), which is included as an Attachment to the OII. Thereafter, the CPSD Report was released on December 18, 2008 pursuant to Resolution No. L-370. On January 29, 2009, the Commission voted in executive session to institute the OII. On February 2, 2009 the OII was issued and served upon the above-referenced parties.

The OII contains a list of questions and information requests and directs each respondent to file a written report with the Commission by March 2, 2009. In these reports, Respondents are expected to provide information covering a nearly 18 year period — the period from January 1, 1990 through October 20, 2007. In addition to requesting data from each respondent, the requests also direct each to provide summaries of contentions and evidence in support of its positions with respect to certain conclusions reached by the CPSD in the CPSD Report. Each respondent is also directed to provide a stipulation of agreement as to any and all portions of the CPSD Report that it does not dispute.

The OII anticipates that Respondents may need additional time to respond to the questions set forth in the OII. As such, Ordering Paragraph 7 provides:

> A prehearing conference shall be convened before an Administrative Law Judge (ALJ) for the purpose of establishing a schedule in this matter, including the date, time, and location of an evidentiary hearing, <u>and for good cause shown the ALJ and/or Assigned Commission may extend the deadline of March 2, 2009 for any particular responses required.</u> (Emphasis added)

II. Good Cause Exists for the Requested Extension

Good cause exists for granting Respondents' request for a 60 day extension. *First*, the data requested in the OII is very comprehensive, covering a period of more than 17 years and requires each respondent to search for records not only in its possession, but which might be maintained by third parties who provided services for the respondent. Given the number and breadth of the data requests, the time provided in the OII (19 working days) is inadequate.

Second, the poles in question are so-called "joint poles" on which a number of utilities maintained facilities. The facts surrounding the cause of the fire are therefore more complex than if it was a pole on which a single utility maintained facilities. It took the CPSD more than one year to prepare the CPSD Report. Surely good cause exists to allow the Respondents 90 days (the 30 days provided in the OII plus a 60 day extension) to prepare their respective responses. This request is especially reasonable in light of the fact that the Commission has indicated that if it determines there have been violations, penalties may be imposed. Due process demands that Respondents have a reasonable amount of time to respond to the requests.

Third, the OII directs Respondents to provide summaries of their contentions, as well as evidence in support of such contentions, in agreement or disagreement with CPSD's conclusion of alleged violations of General Order ("GO") 95. (*See, e.g.*, Requests E and F.) In addition, the OII requires Respondents provide stipulations of agreement as to any and all portions of the CPSD Report that they do not dispute. (*See* Request J) These requests will require that each respondent evaluate and investigate certain of the conclusions reached by the CPSD in its report. These conclusions are often just that, conclusions with no specific supporting evidence. Respondents may not be able to respond to the CPSD Report's conclusions without the assistance of qualified experts. Respondents need additional time to retain such experts, and for the experts in turn to perform their respective analyses. Until that is done, Respondents may not be able to provide their respective responses to the CPSD Report's conclusions. The requested extension is therefore warranted in order to allow the Respondents time to undertake this analysis.

Fourth, some of the respondents have indicated that they have a number of legitimate questions about the CPSD Report and how the CPSD reached its conclusions. It is the intention of these respondents to send data requests to the CPSD in the near future. The requested extension should allow time for the CPSD to prepare responses to the data requests and for the respondents to evaluate the responses, and conduct further discover if necessary, in order to address the questions set forth in the OII.

Fifth, on February 13, 2009 SCE and AT&T each appealed the categorization of I.09-01-018 as an adjudicatory proceeding. The Commission has up to thirty (30) days (until March 15, 2009) to decide the appeals. Public Utilities Code §1701.1. This date is almost two weeks after

the time that the requested information is due. Given the pending appeals and the potential change in categorization of the proceeding, the requested extension is appropriate.

Finally, as noted in the CPSD Report, many of the respondents have already responded to the CPSD data requests (*See* page A-4) and, when the requested information was available, supplied it to the CPSD.[3] The requested extension should not unduly hinder the Commission or the CPSD, but should allow the information and report required to be submitted by each respective respondents to be more complete and useful.

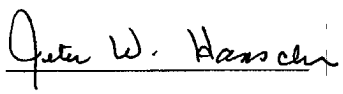
III. Conclusion

Based on the foregoing, good cause exists to extend the deadline for the Respondents' respective responses to the questions set forth in the OII until May 1, 2009. At least 60 days is required to respond; 30 days would be totally insufficient.

Ordering Paragraph 7 of the OII specifically authorizes the ALJ or assigned Commissioner to make such an extension. SCE, Verizon Wireless, Sprint, NextG and AT&T respectfully request that the date by which they must each respond to the questions set forth in the OII be extended to May 1, 2009.

Dated: February 19, 2009

Respectfully submitted,



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[3] NextG advises that at the time of the CPSD's request, it attempted in good faith to locate wind loading studies on the subject pole which it believes may still be in the hands of its contractor, BMS Communications. The requested extension will assist NextG in determining whether or not such a study was done on its behalf, whether or not its contractor has retained a copy of the study, and if so, then will ultimately allow NextG to deliver that study to CPSD.

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Robert F. LeMoine
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ATTACHMENT 3

TAS/JAR/lil 2/26/2009

FILED
02-26-09
03:04 PM

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 AND ADMINISTRATIVE LAW JUDGE'S JOINT RULING EXTENDING TIME TO FILE REPORTS

On February 19, 2009, Southern California Edison Company, Cellco Partnership LLP doing business as (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 (collectively, Respondents) filed a request for an extension to respond to the questions and requests for information set forth in the above-captioned Malibu Canyon Fire Order Instituting Investigation (Malibu Canyon Fire OII). The Malibu Canyon Fire OII directs each Respondent to file a report providing the information required and specified in the order by March 2, 2009.

The Respondents moved for a 60-day extension, seeking to delay their responses until May 1, 2009. Respondents also advised that the Consumer Protection and Safety Division (CPSD) indicated to them that it would not oppose a 30-day extension, but would oppose an extension of 60 days.

In support of their joint request, Respondents contend that: (1) the OII allotted them only 19 working days in which to compile and respond to a myriad number of data requests; (2) CPSD issued its report more than one year after the Malibu Canyon Fire; thus, due process requires that the several named utilities be accorded a reasonable amount of time to respond; (3) they need additional time to not only acquire expertise but also obtain the respective analyses of the commissioned experts; (4) they need additional time to propound discovery on CPSD regarding its report and the conclusions; and (5) the reports are currently due two weeks before the Commission must render its decision on SCE's and AT&T's categorization appeal.[1]

It appears that the Respondents have shown that an extension of time beyond March 2, 2009 should be granted in light of the coordination efforts that will be necessary in order to gather the information and documents requested and prepare the required reports. However, we are not persuaded that a 60-day extension is reasonable. Instead, we direct parties to file the reports ordered in the OII no later than April 20, 2009. At the same time, parties should meet, confer, and coordinate with the CPSD on any discovery that they seek to propound on it. If discovery difficulties arise, parties should so advise the assigned Administrative Law Judge. Parties will not be able to excuse a failure to submit a responsive report on or before April 20, 2009 on pending discovery disputes.

---

[1] SCE and AT&T filed Appeals of the Categorization of this investigation on February 13, 2009. The Commission must render its decision by March 15, 2009.

Accordingly, pursuant to Ordering Paragraph 7 of Order Instituting Investigation 09-01-018, **IT IS RULED**, for good cause shown, that:

1. The deadline for 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, "to file a report . . . providing the information specified and required in [the] order" shall be extended from March 2, 2009 until April 20, 2009.

2. Parties shall meet, confer, and coordinate with the CPSD on any discovery that they seek to propound on it.

3. If discovery difficulties arise, parties shall so advise the assigned Administrative Law Judge.

4. Parties will not be able to excuse a failure to submit a responsive report on or before April 20, 2009 on pending discovery disputes.

Dated February 26, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON	/s/ JACQUELINE A. REED
Timothy Alan Simon	Jacqueline A. Reed
Assigned Commissioner	Administrative Law Judge

ATTACHMENT 4

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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03-02-09
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Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Edison Company, Verizon Wireless LLC, Sprint Communications Company, LP, NextG Networks of California, and AT&T Communications of California, Inc., regarding the Utility Facilities and the Canyon Fire in Malibu of October 2007.	I.09-01-018 (Filed January 29, 2009)

CONSUMER PROTECTION AND SAFETY DIVISION'S RESPONSE TO RESPONDENTS' JOINT MOTION FOR EXTENSION OF TIME

On February 19, 2009 the Respondents to this proceeding filed a joint motion for a 60-day extension of time, to file the report the Commission directed Respondents to file on March 2, 2003 (OII, Ordering Paragraph 3). The Consumer Protection and Safety Division (CPSD) files this response.

CPSD does not object to a 30-day extension of time. CPSD does object to a 60-day extension. Such an extension would be unnecessary, excessive, and disruptive.

I. THE REPORT REQUIRES INFORMATION THAT MUST BE SUPPLIED PROMPTLY SO THAT THE PROCEEDING CAN MOVE EXPEDITIOUSLY

The report requires Respondents to file information about their construction and maintenance of the three utility poles that broke on October 21, 2007, and of the utility assets that they carried. This information is basic for the Commission to understand whether Respondents may have violated the Commission's general orders or other rules. The information Respondents must provide is also critical to establish the facts and circumstances which may have led to the fire on October 21, 2009 that burned over 3800 acres and destroyed and damaged houses and vehicles in Malibu Canyon.

The information and contentions that Respondents provide are essential for the Commission to proceed further and to make reasonable progress toward an eventual adjudicatory decision. CPSD believes that the Commission expects reasonable and expeditious progress to understand and address utility actions or omissions that may have led to the 2007 fires that devastated Southern California. For that reason, the Commission should deny Respondents request for an extension to May 1, 2009, to provide the reports required by Ordering Paragraph 3.

CPSD does not object to an extension to April 1, 2009. An extension of 30 days is consistent with the December 5, 2008 Administrative Law Judge's Ruling in I. 08-11-007 for the Guejito October 2007 fire. In that proceeding, a Respondent requested "a 60-day extension of time to respond to the questions and data requests contained in the OII" (ALJ Ruling, p.2). The ruling finds that a two-month extension was unwarranted and instead grants a 30-day extension.

II. RESPONDENTS HAVE FAILED TO DEMONSTRATE GOOD CAUSE FOR A 60 DAY EXTENSION

Respondents provide five reasons why they allege that a 30-day extension of time (for a total of 60 days) is inadequate to prepare the report, and why a 60-day extension (for a total of 90 days) is necessary (joint motion, pp. 2-4). CPSD disagrees.

Respondents' first reason for a 60-day extension is that "the data requested in the OII is very comprehensive, covering a period of more than 17 years and requires each respondent to search for records not only in its possession, but which might be maintained by third parties who provided services for the respondent" (Respondents' joint motion, p.2.)

The OII requests data about the history of <u>three wooden utility poles</u> and the utility equipment they were loaded with. If the Respondents maintain their computer and hard copy records of three poles in such a state that they require three months to locate and produce, the Commission has good reason for serious concern about Respondents recordkeeping. At any rate, Respondents have not demonstrated such chaos. If gathering data about three utility poles and their utility loads truly constitutes a gargantuan

Respondent task, the Commission has the right to know why before it grants Respondents' motion.

Second, Respondents claim that since the three utility poles are "joint" and carried a number of utility facilities, "[t] he facts surrounding the cause of the fire are therefore more complex than if it was a pole on which a single utility maintained facilities" (Respondents' joint motion, p. 3). This defies common sense. Simply because utility facilities are "joint" does not impede each utility from gathering and presenting the data it possesses, and from developing the position it takes about the legality of its own actions. In fact, private plaintiffs have previously sued at least some Respondents for the Malibu fire. It is inconceivable that Respondents have not already gathered the data the Commission requires. It is also unthinkable that all Respondents have not at the least preliminarily prepared their general defenses.

Third and fourth, Respondents argue that they cannot provide "data and summaries of their contentions" to the Commission until they "retain experts" and until they conduct discovery "about the CPSD Report and how the CPSD reached its conclusions." (Respondents' joint motion, p.3). Again, if Respondents have failed to gather data about those poles or have failed at least preliminarily to develop their general positions and contentions –16 months after a significant fire in which utility facilities are implicated and after they have been sued - the Respondents are charged with the responsibility to demonstrate to the Commission specifically how such a dire situation occurred.

Respondents' proposal to conduct discovery while CPSD develops its case is troubling to the future orderly progress of this proceeding. This kind of discovery can make a reasonable case schedule impossible. The Assigned Commissioner has stayed such disruptive discovery in I.08-11-047. CPSD expects to oppose major Respondent discovery during the first part of this proceeding. CPSD respectfully requests that a pre-hearing conference address these matters.

The fifth reason Respondents provide for an extension is that two Respondents have appealed this investigation's categorization as adjudicatory. CPSD has opposed the

categorization appeal in a separate pleading. This proceeding is adjudicatory, pure and simple.

The last reason Respondents offer for a two-month extension is that "many of the respondents have already responded to the [pre-OII] CPSD data requests". (Respondents' motion, p. 4). But pre-OII data responses directed to CPSD provide no good cause for Respondents to balk at a Commission decision requirement to file a report with the Commission containing specified data.

III. CONCLUSION

CPSD does not object to a 30-day extension of time for Respondents to provide their reports in response to the OII. CPSD respectfully requests that Respondents' motion for a 60-day extension be denied, as it is unnecessary, excessive, and disruptive to this proceeding.

Respectfully submitted,

/s/ ROBERT CAGEN

Robert Cagen

Attorney for the Consumer Protection
& Safety Division

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2197
Fax: (415) 703-2262

March 2, 2009

ATTACHMENT 5

Hanschen, Peter W.

From: Hanschen, Peter W.
Sent: Monday, March 09, 2009 11:44 AM
To: 'rcc@cpuc.ca.gov'
Cc: anna.kapetanakos@att.com; 'Brian.Cardoza@sce.com'; Nick Selby; TMacBride; Hanschen, Peter W.
Subject: Joint Respondents' First Data Request to the CPSD -- I.09-01-018

Attachments: Document.pdf

Document.pdf (4 MB)

Bob,
Attached is the Joint Respondents' First Data Request to the CPSD in I.09-01-018. As the cover letter explains, the Joint Respondents are propounding this initial data request jointly in an effort to minimize the burden of multiple, individual data request to the CPSD and in anticipation that it will help expedite discovery. We have requested a complete response by no later than March 23, 2009. As the letter notes, we are available to meet and confer this week, if necessary.
Regards,
Peter Hanschen

MORRISON | FOERSTER

PLEASE RESPOND TO:
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CALIFORNIA 94596-8130

101 YGNACIO VALLEY ROAD
SUITE 450
WALNUT CREEK
CALIFORNIA 94596-4094

TELEPHONE: 925.295.3300
FACSIMILE: 925.946.9912

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NEW YORK, SAN FRANCISCO, LOS ANGELES, PALO ALTO, SAN DIEGO, WASHINGTON, D.C.
NORTHERN VIRGINIA, ORANGE COUNTY, DENVER, SACRAMENTO, WALNUT CREEK
TOKYO, LONDON, BEIJING, SHANGHAI, HONG KONG, SINGAPORE, BRUSSELS

March 9, 2009

Writer's Direct Contact
925.295.3450
PHanschen@mofo.com

Via E-Mail – rcc@cpuc.ca.gov
By U.S. Mail

Robert Cagen
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Joint Respondents First Data Request to the Consumer Protection and Safety Division, I.09-01-018

Dear Bob:

I am writing on behalf of the named respondents in Investigation ("I") 09-01-018, Southern California Edison Company ("SCE"), Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Sprint Communications Company, LP ("Sprint"), NextG Networks of California, Inc. ('NextG"), and Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility LLC ("AT&T") (hereinafter collectively referred to as the "Joint Respondents").

Attached to this letter is the Joint Respondents' First Data Request to the Consumer Protection and Safety Division ("CPSD"). The Joint Respondents are propounding this initial data request jointly in an effort to minimize the burden of multiple, individual data requests on the CPSD and in the anticipation that it will help expedite discovery.[1] We request that the CPSD respond to the Joint Respondents' First Data Request no later than March 23, 2009. The information requested is basically the information referred to in the Incident Investigation Report dated October 21, 2008, or that which the CPSD used to draw its conclusions. The information should be readily available to the CPSD and thus we believe the time frame for response should be more than adequate. As you are aware, the recent ruling by the Assigned Commissioner and Assigned ALJ implicitly admonishes the parties to pursue discovery in a timely fashion and we will require CPSD's cooperation in order to do so.

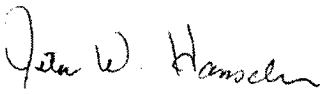
[1] Each of the Joint Respondents reserves the right to propound additional individual data requests. However, in an effort to expedite discovery, it was determined that the initial discovery request could be done jointly.

That being said, the Joint Respondents stand ready to meet and confer with you if the CPSD does not understand any of the requests, has objections to any of the requests or cannot meet the response date of March 23, 2009. If that is the case, we request that you advise us no later than the close of business on Tuesday, March 10, 2009. We can meet and confer with you in person or by conference call as early as the afternoon of the following day, March 11, 2009.

The information requested in the Joint Respondents/First Data Request is critical to the individual respondent's understanding of the CPSD's Incident Report and its conclusions. The information requested is absolutely necessary for the respondents to prepare and file the reports required by the Commission's Order Instituting Investigation.

Please inform counsel for each of the respondents no later than March 10, 2009 whether CPSD needs to meet and confer about these data requests. The e-mail address of each of the respondent's counsel is set forth in the opening paragraph of the data request.

Sincerely,



Peter W. Hanschen

cc Brian Cardoza, attorney for SCE
Earl Nicholas Selby, attorney for Sprint
Thomas MacBride, attorney for NextG
Anna Kapetanalos, attorney for AT&T

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	)	I.09-01-018

JOINT RESPONDENTS' FIRST DATA REQUEST TO THE CONSUMER PROECTION AND SAFETY DIVISION

Southern California Edison Company ("SCE"), Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless"), Sprint Communications Company, LP ("Sprint"), NextG Networks of California, Inc. ("NextG") and Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility, LLC ("AT&T") (hereinafter collectively referred to as the "Joint Respondents") request that the Consumer Protection and Safety Division ("CPSD") of the California Public Utilities Commission ("CPUC" or "Commission") provide the information and documents requested below on or before March 23, 2009. Responses should be provided to counsel for of the respective companies that comprise the Joint Respondents. The counsels for the respective companies are as follows:

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ATT&T California and AT&T Mobility LLC

INSTRUCTIONS AND DEFINITIONS

1. Each Request is intended to elicit discovery of all documents, tangible things, and knowledge or information of CPSD.

2. In responding to each Request please state the text of the request prior to providing the response, and provide the name of the person or persons answering, the title of such person(s), the person they work for, and the name of the witness or witnesses who will be prepared to testify concerning the matters contained in each response or document produced.

3. Each information or production request is continuing in nature. Thus, if CPSD acquires additional information after any request has been answered initially, CPSD is required to supplement their response following the receipt of such additional information, giving the information to the same extent as originally requested. If CPSD is unwilling to supplement their responses, so state in the form of an objection so that Joint Respondents, or any of the entities that make up the Joint Respondents, may have the opportunity to seek updated information again at a later date.

4. In the event that CPSD asserts that any requested information is "public information" otherwise available to Joint Respondents, please identify the following: (a) the document or file in which the requested material is contained; (b) the title of the document or file; (c) the specific chapter, section, page and line number on which the requested material is contained; and (d) the office and location nearest San Francisco, California where such document or file with the requested material is maintained and available for public inspection.

5. If any of the documents requested herein are claimed to be privileged or are otherwise withheld, CPSD is requested to provide the following:

   (a) A specific statement of the ground and authority on which CPSD relies in withholding production; and

   (b) For each document withheld, a statement which sets forth:

      (1) The identity of the author thereof, the parties thereto, and any other person who helped in its preparation;

      (2) The title or other identifying data;

      (3) The date of the document or, if no date appears thereon, the approximate date;

      (4) A summary of the nature and content of the document sufficient to identify it;

      (5) The name and location of each person having or last having possession, care, custody, or control of the original and of each copy thereof; and

      (6) If such document was but is no longer in CPSD possession or control, what disposition was made of it, including, but not limited to: (a) identify the last known custodian and location of the document; and state with specificity, (b) the name and address of the person who disposed of the document; and (c) the date, time, place, and mode or method of disposal.

6. The term "identify" means to describe any document or tangible thing responsive to the Request, in clear and unambiguous terms, and with sufficient clarity so that Joint Respondents may correctly ascertain the identity of the document or thing.

7. The terms "document," "documents," or "documentary material" include, but are not limited to, the following items, whether printed, recorded, or written or reproduced by hand: reports, studies, statistics, projections, forecasts, decisions and orders, intra-office and interoffice communications, correspondence, memoranda, financial data, summaries or records of conversations or interviews, statements, returns, diaries, calendars, work papers, graphs, notebooks, notes, charts, computations, plans, drawings, sketches, computer printouts, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, bulletins, records or representation or publications of any kind (including microfilm, videotape, and records however produced or reproduced), electronic or mechanical or electrical records of any kind (including, without limitation, tapes, tape cassettes, discs, emails, and records) other data compilations (including without limitation, input/output files, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, discs and recordings used in automated data processing, together with the programming instructions and other material necessary to translate, understand,

or use the same), and other documents or tangible things of whatever description which constitute or contain information within the scope of a Request to produce.

8. The terms "refer to," "relate to," or "regard" or any form of those words means to analyze, appraise, assess, characterize, comment on, concern, consider, constitute, contain, deliberate, delineate, describe, discuss, evaluate, evidence, explicate, pertain to, recommend, record, reflect, report on, set forth, show, summarize, or study.

9. The terms "include" or "including" means "including but not limited to."

10. "CPSD" means the Consumer Safety and Protection Division of the California Public Utilities Commission, its branches, officers, employees, agents, attorneys, experts, consultants and other representatives representing, acting on behalf, of or assisting CPSD.

11. "CPSD Report" means the report titled, "California Public Utilities Commission, Consumer Protection and Safety Division, Utilities Safety and Reliability Branch, Incident Investigation Report" dated October 21, 2008 and prepared by Kan Wai Tong, Incident Number E 20071021-01, which was included as an attachment to OII.

12. "CPUC" and "the Commission" means California Public Utilities Commission.

13. "Each Respective Respondent" means each of the entities that comprise the Joint Respondents, i.e. SCE, Verizon Wireless, Sprint, NextG and AT&T, in their respective individual capacities.

14. "Investigation" means the CPSD staff's investigation of the October 21, 2007 incident (Incident Number E 20071021-01) commonly referred to as the "Malibu" or "Canyon" Fire, including any and all physical inspections, witness interviews, technical reviews, analyses, studies, and tests, expert reports, and other investigative activities conducted in order to determine the facts, circumstances and cause or causes of the Malibu or Canyon Fire, including any and all such activities prior or subsequent to preparation of the CPSD Report of October 21, 2008 on the Malibu Fire.

15. "Joint Respondents" means SCE, Verizon Wireless, Sprint, NextG , and AT&T.

16. "Mailbu Fire" or "Canyon Fire" means the October 21, 2007 fire in Malibu as described in the OII and the CPSD Report.

17. "OII" means I.09-01-018 approved by the CPUC in executive session at its business meeting of January 29, 2009 and released to the public on February 2, 2009.

18. "USRB" means the Utilities Safety and Reliability Branch of the California Public Utilities Commission, its branches, officers, employees, agents, attorneys, experts, consultants and other representatives representing, acting on behalf, of or assisting USRB.

Request 1-1

At page A-2 of the CPSD Report certain "Witnesses" are identified. Please provide:

(a) all documents received from each identified witness.

(b) all documents, including all correspondence and communications between the CPSD and each identified witness.

(c) all notes, records and tapes of conversations between the CPSD and each identified witness.

Request 1-2

At page A-2 and A-3 of the CPSD Report certain "Evidence" is identified by Source and Description. Please provide copies of the Evidence described for each Source (Source 1-14) including copies of the data requests identified in the parenthetical following the description of the Evidence for each identified Source.

Request 1-3

Please provide all documents regarding the Malibu Fire provided to the CPSD or USRB by:

(a) Each Respective Respondent

(b) Los Angeles County Fire Department, including, but not limited to, the report reference in the "**NOTE**" following Appendix A of the CPSD Report.

Request 1-4

Please provide all information provided by the National Oceanic and Atmospheric Administration collected with regard to the CPSD's investigation of the Malibu Fire.

Request 1-5

Please provide all documents, including notes, statements, recordings, e-mails (both to and from the CPSD) regarding the CPSD's investigation of the Malibu fire.

Request 1-6

Please provide the following information for each Commission, CPSD or USRB employee, agent, consultant, expert or other representatives who helped prepare or review the CPSD Report prior to it being made public by Commission Resolution L-370:

(a) the name of the individual

(b) the individual's employer and the position held with such employer

(c) the education history of the individual, including degrees obtained, majors, dates of such degrees and the names of the schools attended and degrees, if any, obtained.

(d) the work experience of each identified individual, including the names of the companies in which the individual was employed, the dates of employment and a description of the individual's responsibilities at each place of employment.

(e) whether the identified individual has testified as an expert in litigation, regulatory or arbitration proceedings in the past, including the date of the proceeding, the title of the proceeding and the court, regulatory body or arbitration proceeding in which the testimony was offered. If the testimony is in written form or transcribed, please provide a copy of the testimony.

Request No. 1-7

Please provide a full explanation, together with all supporting evidence, of why the CPSD concluded in the CPSD Report at pages A-1 and A-7 that the Respondents are in:

(a) violation of GO-95, Rules 12.2.

(b) violation of GO-95, Rule 31.1.

(c) violation of GO-95, Rule 31.2.

(d) violation of GO-95, Rule 43.2.

(e) violation of GO-95, Rule 44.1.

(f) violation of GO-95, Rule 44.2.

Request No. 1-8

Please provide a full explanation, together with all supporting evidence, of why the CPSD concluded at pages A-1 and A-7 of the CPSD Report that the Respondents failed:

(a) to safely and properly maintain, inspect, replace and reinforce their poles and other facilities;

(b) to prevent their safety factors to fall below the minimum requirement specified in the Commission's general orders.

Request No. 1-9

Specifically with regard to Each Respective Respondent, please provide a full explanation, together with all supporting evidence, of why the CPSD concluded at pages A-1 and A-7 that each Respective Respondent is in:

(a) violation of GO-95, Rules 12.2.

(b) violation of GO-95, Rule 31.1.

(c) violation of GO-95, Rule 31.2.

(d) violation of GO-95, Rule 43.2.

(e) violation of GO-95, Rule 44.1.

(f) violation of GO-95, Rule 44.2.

Request No. 1-10

Specifically with regard to Each Respective Respondent, please provide a full explanation, together with all supporting evidence, of why the CPSD concluded at pages A-1 and A-7 of the CPSD Report that Each Respective Respondent failed:

(a) to safely and properly maintain, inspect, replace and reinforce their poles and other facilities;

(b) to prevent their safety factors to fall below the minimum requirement specified in the Commission's general orders.

Request No. 1-11

Page A-6 of the CPSD Report indicates that according to information provided by National Oceanic and Atmospheric Administration (NOAA) Cooperative Institute, the closest weather station (CEEC1 – Cheeseboro), located at 9 miles north of the fire, recorded the wind was gusting at approximately 49-mph at the time of the incident.

(a) Does the CPSD contend that the wind readings at Cheeseboro are representative of the wind speeds at the location of the poles in questions at the time of the incident described in the CPSD Report? If yes, please provide a full explanation as to why you believe this to be true, and all documents in support of this position.

(b) Provide all documents that indicate or tend to indicate that the wind speeds at Cheeseboro were not representative of the wind speeds at the locations of the poles in questions at the time of the incident described in the CPSD Report.

(c) Please provide any other documents regarding wind speeds at the locations of the poles in questions at the time of the incident described in the CPSD Report that were considered or reviewed by the CPSD as part of its investigation of the Malibu Fire.

(d) Please provide all documents regarding wind speeds at the locations of the pole and from the Cheeseboro station for the six (6) month period immediately preceding October 21, 2007.

Request No. 1-12

Page A-7 of the CPSD Report states: "Based on all the evidence made available to me, it is my opinion that the poles did not meet the requirements of GO 95, Rules 43.2 and 44.2, for ensuring that the failed poles maintained a safety factory of 4."

(a) Please provide all of the "evidence" or other documents that the CPSD specifically relies upon to form this opinion.

(b) Does the CPSD contend that the poles described in the CPSD Report became overloaded? If yes, please provide a full explanation as to the basis for this opinion and all documents or information in support of such contention.

(c) Does the CPSD contend that the poles described in the CPSD Report were not properly inspected? If yes, please provide a full explanation of the basis for this opinion and all documents or information in support of such contention.

Request No. 1-13

In Appendix A of the CPSD Report, CPSD calculates what it believes to be the "minimum wind speed that the poles should withstand." Appendix A states that the "formulas above are used and defined in the engineers' reference book." Please identify the engineers'

reference book and provide copies of all relevant definitions, material, formulas or other information from such reference book that was used to derive this calculation. Without limiting the foregoing, please provide a copy of the table or other material that was used to determine the surface pressure, measured in pounds per square feet, derived from a particular wind speed measured in miles per hour, together with a copy of the actual calculation made by the CPSD.

Request No. 1-14

Please state whether the CPSD's investigation of the Malibu Fire has been completed. If not:

(a) please describe any additional information, analysis, testing or other form of investigation that CPSD believes will be required in order to complete its investigation in this matter.

(b) please state when CPSD intends to complete any such additional analysis, testing, or other investigation, or if CPSD intends to relay upon additional analysis, testing or other investigation to be completed by a third party, including when such additional analysis, testing or other investigation will be completed by the third party.

(c) please state when CPSD intends to complete its investigation.

(d) please state whether CPSD intends to prepare any additional report containing the results of its investigation when it is completed.

(e) if CPSD intends to prepare an additional report containing the results of its investigation, please state when such report will be made available to Verizon Wireless.

Request No. 1-15

Please state whether CPSD has received discovery requests from any other party in this proceeding. If yes, please provide a copy of the discovery request and the CPSD's responses thereto.

ATTACHMENT 6

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 12, 2009

Via E-Mail & U.S. Mail:

Peter W. Hanschen
101 Ygnacio Valley Road
Suite 450
Walnut Creek, CA 94596-4094

PHanschen@mofo.com

RE: Joint Respondents' March 9 data request to CPSD, I. 09-01-018

Dear Peter:

This letter responds to your March 9 e-mail to me, sent on behalf of all Respondents, and attaching Joint Respondents' Data Requests directed to CPSD. In your letter, you allege that the data requests were done jointly to minimize the burden and help expedite discovery, but, in fact, these would be extremely burdensome and slow down discovery by seeking information well beyond the essential facts of what the CPSD witness relied upon in the CPSD's October 21, 2008 Report on the Malibu fire (Report).

Fundamentally, CPSD cannot agree that the procedure Respondents have followed in the data requests have complied with the February 26, 2009 "Assigned Commissioner's and Administrative Law Judge's Joint Ruling Extending Time to File Reports." (Ruling). The Ruling states that "[p]arties shall meet, confer, and coordinate with the CPSD on any discovery that they seek to propound on it." (Ruling, Ordering Paragraph 2, emphasis added). This makes it clear that the Ruling requires the Respondents to "meet, confer, and coordinate discovery" before they actually propound the discovery. CPSD believes that the Ruling's goal was to avoid the kind of Respondent discovery problems discussed at the January 12, 2009 prehearing conference in I.08-11-006 and I.08-11-007, before the same Assigned Commissioner and Assigned Administrative Law Judge (ALJ), who issued the Ruling herein. At that prehearing conference, Harvey Y. Morris, an Assistant General Counsel, explained that the attorneys and CPSD staff had been spread thin due to all of the Commission proceedings and investigations involving the fires, as well their other duties at the Commission, and how time-consuming numerous meet-and-confer sessions had already been in discovery in that case. (RT 30:18-32:2, 32:23-34:21.) The ALJ, after being informed of these problems,

subsequently referred to extensive discovery in that case and all of the other contemporaneous cases and safety matters imposed upon CPSD and attorneys representing CPSD as the "perfect storm." (RT 71:21-25.)

Viewed in this context, CPSD objects to the entire set of Respondents' data requests as being inconsistent with the Ruling. Respondents erroneously used the Ruling to conduct expedited discovery which is premature, overbroad, unduly burdensome and oppressive, and which seeks privileged and/or irrelevant data. By doing so, Respondents have violated both the letter and the spirit of the Ruling, which was intended to provide a more reasonable way to proceed by requiring the meet and confer to occur prior to propounding the data requests.

Respondents have requested or held no meeting, conference, discussion, or coordination with CPSD about any discovery Respondents seek to propound on CPSD. Your joint data requests actually propound the discovery, and bypass the meeting and discussions that the Ruling expects to foster prioritization and scheduling among the parties. CPSD does not view this as just a technical discovery defect and violation of the ruling – our CPSD and legal staff have limited resources. Our CPSD investigator assigned to the case is also right now doing field work on another matter and will not be available until next week to work on data responses. Our understanding of the Ruling is that this kind of scheduling matter is one of the many issues that Ruling had expected Respondents to consider and to work out with CPSD in advance of propounding discovery.

We do not agree to discovery of any communications among CPSD personnel and the attorneys in Legal Division, as they are clearly privileged under the attorney-client privilege. Nor do we believe that we must object and negotiate with you in meet-and-confer sessions each and every way that your data requests circumvents the attorney-client privilege (e.g., defining "CPSD" to include attorneys representing CPSD and defining "USRB" to include attorneys representing USRB), and in numerous data requests asking for all documents between CPSD and others, which would include the legal advice from attorneys (e.g., Request 1, 5, 6, 14.) Similarly, we do not believe that we must object and then negotiate with you extremely burdensome tasks, such as constantly updating each data response, identifying with tremendous detail all public information available to Respondents, creating detailed privilege logs (e.g., Instruction Nos. 3, 4, and 5), providing all documents "regarding" (which is broadly defined) CPSD's investigation (e.g., Request No. 5), or providing detailed information of everyone at the Commission who reviewed the CPSD Report before it became public (e.g., Request No. 6). We also believe it to be entirely improper and violates the attorney-client privilege and work product doctrine, and is unnecessary at this part of the litigation for Respondents to try to probe all future strategies and witnesses, which CPSD may be contemplating in the future of this proceeding (e.g., Instruction No.2 and Request No.14).

Despite this, CPSD is willing to respond to the essence of what Respondents contend is essential that you need in discovery at this time -- the non-privileged documents providing the information upon which CPSD's Report was based. CPSD proposes, by March 23 (the date you requested), to provide Respondents with the documents and information that CPSD used to prepare its October 21, 2008 Report. That is what you have asked for in your letter when you say that "the information requested [by Respondents] is basically the information referred to in the Incident Investigation Report dated October 21, 2008, or that which the CPSD used to draw its conclusions."

Any further discovery at this point is both disruptive and premature. CPSD has certainly not finished its own investigation, and in fact CPSD expects to use Respondents' April 20, 2009 report to the Commission as a basis to understand how to proceed with CPSD's own further discovery and preparing its testimony. After CPSD files its testimony, Respondents can then conduct further discovery, instead of seeking discovery of what CPSD might further plan to state while it is still in the formative stages. In the meantime, of course, nothing prevents Respondents from conducting discovery of each other, such as what documents or information they have provided to CPSD.

Please let me know as soon as possible whether Respondents agree to CPSD's offer on how to proceed and provide discovery. If you do not agree to this approach, then we should meet and confer on how Respondents should propound discovery, which would be consistent with the Ruling. However, CPSD does not agree to meet and confer about individual data requests that were propounded in violation of the Ruling.

I look forward to hearing from you. Please give me a call or e-mail me if you have any questions or thoughts about this.

Sincerely,

/s/ ROBERT CAGEN

_____

Robert Cagen
Attorney for the
Consumer Protection and Safety Division

RCC:afm

Cc By Email: Brian Cardoza, Attorney for SCE
Earl Nicholas Selby, Attorney for Sprint
Thomas MacBride, Attorney for NextG
Anna Kapetanalos, Attorney for AT&T

ATTACHMENT 7

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

PREHEARING CONFERENCE STATEMENT OF THE CONSUMER PROTECTION AND SAFETY DIVISION

I. INTRODUCTION

The Consumer Protection and Safety Division (CPSD) submits this prehearing conference statement, pursuant to the April 28, 2009 Administrative Law Judge's Ruling Setting Prehearing Conference and Rule 7.2 of the Commission's Rules of Practice and Procedure. CPSD will propose a proceeding schedule and a procedure for fairly and timely dealing with confidentiality claims.

II. PROPOSED SCHEDULE

CPSD proposes the following schedule for its own case and testimony:

1. September 15, 2009 - Prepared CPSD direct testimony.
2. June 22, 2009 – Decide confidentiality issues and claims, for all documents referred to in Respondents' April 20, 2009 reports. This must be done timely so that discovery can proceed smoothly and without sealing and unsealing documents during depositions. CPSD requests a date of May 22, 2009 for Respondents to justify confidentiality for specified documents and a CPSD Response no later than June 5, 2009.
3. May – Sept 15, 2009 – CPSD discovery period. Data requests directed to Respondents and estimated 10-20 depositions of Respondent employees or consultants. CPSD requests that a ruling prohibit discovery of CPSD by

Respondents until September 15, so that CPSD can attend to and complete the significant work that it must do before then.

4. September 15, 2009 – CPSD testimony.
5. November 16, 2009 - written Respondent testimony.
6. Reasonable opportunity for CPSD written rebuttal testimony after Respondents serve their direct testimony. CPSD bears the burden of proof in this proceeding. CPSD requests December 21, 2009 to serve its written rebuttal.
7. Hearings – January 18 (two weeks).

The schedule above is longer than CPSD prefers under better circumstances. The schedule above is made necessary because Respondents provided information and discovery to CPSD before the OII was issued that was materially inaccurate, wrong, incomplete, and misleading. Now that the information has been corrected by Respondents after CPSD's pre-OII investigation – if it has been this time presented accurately – CPSD requires adequate time to do the further discovery about those facts. CPSD would have been in a position to conduct such discovery before the OII if the Respondents had provided the proper information to CPSD then.

The Respondents' misinformation pertains to basic and material facts to this proceeding. CPSD relied on this information to prepare its pre-OII report. CPSD has no plans to introduce or modify the report - it is based on inaccurate information supplied by Respondents. CPSD expects during its discovery period to use depositions and other discovery to ascertain and assess the accurate facts, and expects to provide its testimony on September 15 to bring these facts and the conclusions that stem from them to the Commission's attention.

In CPSD's view the two most important factual issues in the proceeding are (1) to identify the assets that were attached to those poles and the utilities that owned or operated them to at any given point in time before the poles broke in October 2007, and (2) to obtain all weight load safety calculations done before the poles broke to establish compliance with GO 95 and other good construction practice. An accurate understanding of the facts pertaining to these issues is clearly an important factor in determining whether a violation occurred, and if so the particular utility or utilities that

were most directly responsible for the violation. Those are precisely the factual matters with which the Respondents provided CPSD inaccurate information before the Commission issued the OII.

Below CPSD describes some the Respondents' claims and information provided post-OII that differ significantly from the information Respondents provided to CPSD during CPSD's pre-OII investigation:

1A. Sprint Factual Assertions to CPSD and CPUC

PRE OII – Sprint is a joint owner of the poles that failed (bates 0289, 0292, 0144, and 0146). Before the OII, CPSD requested each of the Respondents to provide all wind loading safety calculations done before October 20, 2007 (the pole failure date) to help establish compliance with GO 95. CPSD asked Sprint for all such calculations it had done before installing facilities on the poles. Sprint, a joint pole owner, responded to CPSD before the OII that "Sprint could not find any wind loading calculations" ...and "could not confirm whether such calculation had been performed prior to installation of its facilities". (CPSD Report, p.A.5)

POST OII – Sprint's report discusses the possible "surprise" that CPSD and the Commission may experience "by the voluminous nature of the information and documents that Sprint has, to date, [and after the OII] been able to retrieve" (Sprint report, p.9). For sure CPSD was surprised, expecially by the Sprint wind loading safety calculation from 2003 that Sprint provided for the first time on April 20, 2009 (Sprint report page 15 and Ex. 33 referenced). This is precisely the calculation CPSD had requested from Sprint before the OII.

1B. Effect of the New Information

The new information potentially changes the case greatly. This wind loading safety calculation is the only such Respondent calculation that has been provided to the Commission and which was purportedly done before the poles broke. Clearly if CPSD had had knowledge of this study before the OII it would have asked many questions about the study and its use. That will now need to be done during CPSD's post-OII discovery.

2A. Verizon Factual Assertions to CPSD and CPUC

PRE-OII – Before the OII CPSD requested all Verizon historical wind loading safety calculations done before Verizon constructed or added any facilities on its poles (0141 and 0142). Verizon is one of the joint owners of the poles that failed in 2007 (bates 0144-0146, 0289 and 0292). Verizon responded with a wind loading calculation that appeared to have applied to its installation of equipment to the poles in 1995 (bates 0123-0142). Because the request clearly requested calculations done before the poles broke, CPSD understood and concluded that the calculations had been done in 1995 or before, previous to the addition of Verizon assets to the pole. Nothing in the calculation or the communications CPSD's investigator had with Verizon led CPSD to believe that the calculation was actually done in 2008.

POST OII – Verizon now states that it actually did the wind loading safety calculation of 1995 assets in October 2008, rather than in 1995 before construction. Verizon states it made its 2008 calculation using the electric facilities on the replacement poles a year after the Malibu fire occurred (Verizon report, pp. 17 and 18). Another Respondent, AT&T – asserts that the Verizon calculations "were not the original calculations conducted at the time Verizon Wireless installed its facilities on the subject poles, and do not accurately represent the safety factor or wind loading capacities of the subject poles at the time Cerizon Wireless attached its fiber optic lines" (AT&T report, p.14)

2B. Effect of the New Information

Verizon's pre-OII information led CPSD to conclude that Verizon had conducted a "real time" wind loading safety calculation before 1995. CPSD then concluded that any pole overloading must have taken place after 1995. While post-1995 overloading remains a possibility, it is also now possible that overloading may have occurred for the first time in 1995. The Verizon information provided for the first time in its report demonstrates the limitations of the information Verizon provided to CPSD before the OII was issued. It has changed the way CPSD must analyze this matter, and has greatly added to discovery that CPSD must do after the OII.

3A. NextG Factual Assertions to CPUC and CPSD

PRE-OII – NextG is one of the joint owners of the poles that failed in 2007 (bates 0289, 0292, and 0144 - 0146). CPSD requested all pre-2007 wind load calculations done by NextG before construction (0170). NextG responded that it had located no such calculation (0168, and CPSD report p.A-5).

POST-OII – NextG states in its report that it had done wind-loading safety calculations in 2003 for planned construction that Southern California Edison Company (SCE) – another joint pole partner – rejected. According to Next G's report, SCE and NextG's consultant had a "field meeting" in October 2003, after which SCE "recalculated the wind loading for the poles at issue and determined that the wind-loading criteria had been met" (NextG report, pp.10 and 11).

3B. Effect of the New Information

NextG's information is new and different to the pre-OII information that NextG gave to CPSD before the Commission issued the OII. Before the report, NextG never told CPSD that the company had made wind-load calculations in 2003 that another party (SCE) had rejected, and NextG has never provided those calculations to CPSD (either before or after the OII). Nor did NextG explain that a "field meeting" had occurred between joint pole owner representatives, which caused SCE to recalculate wind loading and to determine that wind-loading criteria "had been met". If CPSD had this information before the OII, it clearly would have conducted its investigation far differently. CPSD will need to conduct its discovery on these important matters for the first time in the next few months.

4A. SCE's Factual Assertions to CPUC and CPSD

PRE-OII – Before the Commission issued the OII, CPSD requested that SCE provide all wind load safety factor calculations done before installation of assets on the poles. SCE responded by stating that it had no such calculations (bates 0182 and 0184).

POST-OII – SCE'S report still produces no wind load study. However, SCE apparently now believes that it must have done such a study in 2003 or 2004. SCE now "notes that it recently received documents from another Respondent to this proceeding

which appear to relate to or reflect potentially relevant calculations and analyses performed by SCE during the subject time-period. SCE's internal search for relevant information did not identify these documents" (SCE report, p.2).

CPSD does not know which Respondent SCE is referring to. However, we do know that several communication utility Respondents have referred in their filings and documents to discussions and wind load calculations during the 2003 or 2004 period. According to those companies by agreement SCE was supposed to have done, and may have done, wind load calculations during that period (example - AT&T report, KD-3 and KD-4 attachment). Also, according to Verizon, SCE failed to provide adequate information for the other partners to determine what equipment SCE had installed on joint poles at any specified location or time. (Verizon report, p.6). If accurate this is also important information that CPSD and the Commission are learning for the first time in this proceeding.

4B. Effect of the New Information

If SCE did indeed do a wind loading safety calculation in 2003 or 2004, the calculation and assumptions used are clearly important to this proceeding. Also, if SCE actually failed to provide its partners (and itself) with adequate records to conduct wind load calculations, that is also important information. CPSD must test these factual contentions with depositions and other discovery.

5A. AT&T's Factual Assertions to CPUC and CPSD

PRE-OII - Before the Commission issued the OII, CPSD asked AT&T for all wind load calculations for AT&T facilities on or previously on the three poles (bates 0121). AT&T responded that "AT&T California" had no assets on the poles (bates 0120). With that response, CPSD understood that "AT&T" had no communication assets on the poles when they broke, and CPSD did no further discovery of AT&T.

POST-OII – After the Commission issued the OII, AT&T revealed to the Commission and CPSD that while "AT&T California" had no interest in assets on the pole, "AT&T Mobility" certainly did have telephone assets borne by the poles that broke in October 2007. CPSD also notes that AT&T to date has refused to answer the

Commission's explicit requirement for Respondents to state their contentions about the cause of the Malibu fire.

5B. Effect of the New Information

The issue of which company had assets (and when) on the poles is fundamental to this case. Before the OII was issued AT&T played technical semantics games with the words "AT&T" and "AT&T California" and misled CPSD and the Commission. CPSD did no further pre-OII discovery on AT&T assets attached to the poles because it understood there were no such assets. The result is that CPSD will need to do discovery in the next few months to understand the circumstances involved with "AT&T Mobility" assets on the poles.

III. ISSUES FOR SCOPING MEMO

CPSD requests the following broad issues be included in the scoping memo for this proceeding.

1. Did the Respondents violate the Commission's general orders or other legal standards of the Commission?
2. Did the Respondents otherwise engage in poor technical practices?
3. If yes to either of the above, what are the appropriate remedies? This includes, among other items, an acknowledgment that the cause of the Malibu fire and its possible connection to violations of the law will be addressed in the preceeding.
4. Possible Rule 1 violations – CPSD is now assessing whether the misinformation the CPSD and the Commission received before the OII was issued constitutes a Rule 1 violation. We are also assessing whether the refusal of any Respondent to answer the Commission's OII data requests of the Commission constitutes a Rule 1 violation. While CPSD has not decided to take the step of asserting a violation or violations, CPSD suggests that the circumstances here warrant including the issue in the scoping memo.

Respectfully submitted,

/s/ ROBERT C. CAGEN

Robert C. Cagen

Attorney for the Consumer Protection
and Safety Division

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Tel. No. (415) 703-2197
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Email: **rcc@cpuc.ca.gov**

May 8, 2009

ATTACHMENT 8

Hanschen, Peter W.

From: Hanschen, Peter W.
Sent: Wednesday, May 20, 2009 5:01 PM
To: 'jar@cpuc.ca.gov'
Cc: 'brian.cardoza@sce.com'; 'rcc@cpuc.ca.gov'; 'anna.kapetanakos@att.com'; 'greta.banks@att.com'; Hanschen, Peter W.; 'stephen.h.kukta@sprint.com'; 'tmacbride@goodinmacbride.com'; 'ens@loens.com'; 'anitataffrice@earthlink.net'; 'bill.wallace@verizonwireless.com'; 'skuhn@counsel.lacounty.gov'; Marmalefsky, Dan; Comeau, Michelle N.; 'craig.hunter@wilsonelser.com'; 'hanslaetz@qmail.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'; 'cldavis@sempra.com'; 'lurick@sempra.com'; 'ko'beirne@semprautilities.com'; 'michael.bagley1@verizonwireless.com'; 'edward.mcgah@verizonwireless.com'; 'elaine.duncan@verizon.com'; 'bhc4@pge.com'; 'ELK3 @pge.com'; 'fsc2@pge.com'; 'hugh.osborne@att.com'; 'keith.krom@att.com'; 'Kristin.L.Jacobson@sprint.com'; 'ldri@pge.com'; 'cpuccases@pge.com'; 'lhj2@pge.com'; 'RDJ@att.com'; 'thomas.selhorst@att.com'; 'info@tobiaslo.com'; 'deyoung@caltel.org'; 'katienelson@dwt.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'RegRelCPUCCases@pge.com'; 'rdelsman@nextgnetworks.net'; 'heide.caswell@pacificorp.com'; 'jordan.white@pacificorp.com'; 'californiadockets@pacificorp.com'; 'cindy.manheim@att.com'; 'ffd@cpuc.ca.gov'; 'kwt@cpuc.ca.gov'; 'mdr@cpuc.ca.gov'; 'rst@cpuc.ca.gov'; 'jar@cpuc.ca.gov'; 'jmh@cpuc.ca.gov'; 'ndw@cpuc.ca.gov'; 'rim@cpuc.ca.gov'; 'tas@cpuc.ca.gov'
Subject: I.09-01-018 - Schedule

Attachments: Document.pdf

Document.pdf (44 KB)

Dear ALJ Reed,

Counsel for the Consumer Protection and Safety Division and Respondents (SCE, AT&T, Verizon Wireless, Sprint, and NextG) have met and conferred in an effort to agree upon a schedule for the above referenced proceeding. I am pleased to advise you that the CPSD and Respondents have agreed upon the attached schedule for this proceeding and we recommend that it be adopted as part of the Scoping Memorandum.

In my May 18, 2009 email to Mr. Cagan, I requested that you reserve time on your calendar on May 21, 2009 at 10 AM so that the CPSD and the Respondents could report on the progress of their discussions. In light of our agreement, we do not believe that such a conference is necessary.

Regards,
Peter Hanschen

SCHEDULE

Preamble: The CPSD and the Respondents have proposed this schedule in the spirit of cooperation and based on good faith estimates of the time and tasks needed to be accomplished to complete this proceeding. The CPSD and Respondents agree, however, that unforeseen events and difficulties may preclude a party acting in good faith from meeting the dates set forth below. Consequently, the CPSD and Respondents agree that the schedule does not preclude a party from requesting additional time or other schedule modifications, nor the Commission or Assigned Administrative Law Judge from granting such request for additional time, based on an appropriate showing.

May 14, 2009	Discovery commences (moratorium on discovery propounded to CPSD imposed until Oct.1, 2009)
October 1, 2009	CPSD and Intervenors serves report/testimony (direct case) (moratorium on discovery propounded to Respondents imposed until January 29, 2010)
December 11, 2009	All discovery to CPSD on its report/testimony to be concluded
January 29, 2010	Respondents serve testimony (moratorium on discovery propounded to Respondents lifted)
March 19, 2010	CPSD serves rebuttal testimony; all other parties may serve rebuttal testimony that addresses other Respondent's or Intervenor's testimony, but may not further respond to CPSD's direct case (moratorium on discovery propounded to CPSD lifted)
April 7, 2010	All Parties file motions to strike or hearing related motions; CPSD may file additional rebuttal testimony to Respondent testimony that addresses CPSD's direct case that should have been raised as part of Respondent's January 29, 2010 testimony
April 14, 2010	Discovery closes on all testimony other than possible April 7, 2010 CPSD testimony
May 3, 2010	Hearings begin
May 28, 2010	Hearings end

ATTACHMENT 9

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

By U.S. Mail and By E-mail

June 24, 2009

Dan Marmalefsky (By U.S. Mail)
Michelle N. Comeau
Morrison & Foerster LLP.
555 W. 5th St., Suite 3500
Los Angeles, CA 90013

Peter W. Hanschen
Morrison & Foerster LLP.
101 Ygnacio Valley Road, Suite 450
Walnut Creek, CA 94596
phanschen@mofo.com

Brian Cardoza
James M. Lehrer
Robert F. Lemoine
Southern California Edison Company
2244 Walnut Grove Avenue
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Brian.Cardoza@sce.com

Kristin L. Jacobson (By U.S. Mail)
Sprint Communications Company
201 Mission Street, Suite 1400
San Francisco, CA 94105

Steven J. Coffee (By U.S. Mail)
Craig C. Hunter
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 South Flower Street, Suite 2900
Los Angeles, Ca 90071

Anna Kapetanakos
Keith M. Krom
AT&T Services, Inc.
525 Market Street, Suite 2024
San Francisco, CA 94105
anna.kapetanakos@att.com

Re: Malibu Fire Investigation, I.09-01-018

Dear Respondent Attorneys:

This letter will list the discovery that CPSD has identified that it intends to accomplish this summer. I believe we can accomplish the necessary discovery primarily by agreement rather than by a more formal procedure, and I hope that this letter will be useful to the parties to help reach an agreement suitable to all.

Below are the Respondent personnel or agents CPSD has preliminarily identified and whom we wish to depose:

SCE – Melvin Stark (SCE report, pp.18, 19).
SCE – Lawrence Chow (SCE report, p. 19).
SCE – June Rivo Santiago (AT&T report, attachment KD-4).
SCE – Richard Kromer or Kramer (AT&T report, attachment KD-4).
SCE – Jim Austin (AT&T report, attachment KD-3).

SCE – Bob Patterson (Sprint report, p.27).
SCE – Richard Wetmore (Sprint report, p.27).
Sprint – Michael D. Smith – TetraTech – Sprint report, p.15).
Sprint – Ed Marquez (Sprint report, p.27).
Sprint – Darryl Cardamone (Sprint report, p. 27).
AT&T – Lupe Hernandez BMS (AT&T report, p.20).
AT&T – Dennis Ennis BMS (AT&T report, p. 20).
AT&T – Chris Case AT&T (AT&T report, p.20).
Verizon – Malcolm Brown (Verizon report, p.33).
Verizon – CES engineer or other person responsible for October 2008 wind load calculations and analysis (Verizon report, p.17 and 18).
NextG – Casey Doherty, BMS (NextG report, p.15).
NextG – Cory Vandebos, HPC (NextG report, p.15).

Please note that this list may change (add or delete deponents) as CPSD gathers or analyzes more information. But I believe this will give everyone enough of an idea of the discovery we intend to take that we can plan for it.

CPSD is willing to accept any schedule for individuals that the parties mutually agree to. The order of depositions is not critical to CPSD so that the parties can agree to produce their witnesses as mutually convenient. CPSD expects that most of these depositions can be scheduled for two a day assuming the same location – a morning deposition and an afternoon one. I propose that the notice of depositions be by letter agreement (sent to the service list) rather than by formal filed notice and/or subpoenas.

We would like to start the depositions by July 13 and finish by August 7. I will be unavailable from August 10 through about August 20. If we have not finished the depositions by August 7 I am available for depositions during the week from August 24-28.

Once the depositions have been set, CPSD expects to request the deponent to bring specified documents to the deposition. CPSD will provide the data request to the Respondent sponsoring the deponent.

CPSD believes that San Francisco is the appropriate location to have the depositions. As you know the upcoming California's budget is very uncertain, and we have no idea whether CPSD or its attorneys are going to have travel funds or not. Most of the attorneys are here anyway and it appears more convenient for everyone to bring the deponents here. CPSD's pre-OII investigation occurred in Los Angeles. CPSD believes that it can demonstrate to the Commission that the reason it needs to take depositions now was the inaccurate and incomplete information that CPSD received from Respondents in the pre-OII investigation. We certainly don't expect any Respondent to stipulate to that reason for San Francisco depositions, but I do want to give all of the Respondents notice that in the absence of an agreement for depositions in San Francisco CPSD will certainly raise the point with the Commission and will seek San Francisco depositions.

CPSD will arrange for deposition reporters from the Commission reporting section. If they are unavailable on certain days and rescheduling is not possible we will need to have Respondents arrange for reporters.

I look forward to discussing this further with all of you and hope that we can reach an agreement that evidences the cooperation that I believe we have tried to foster among ourselves, and that allows us to proceed expeditiously and efficiently.

Sincerely yours,

/s/ ROBERT C. CAGEN
Robert C. Cagen
Attorney for CPSD

RCC:afm

ATTACHMENT 10

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 30, 2009

VIA ELECTRONIC MAIL

Anna Kapetanakos
Cynthia Manheim
AT&T
Peter Hanschen
Verizon

Nicholas Selby
Sprint

Thomas McBride
NextG

Re: Malibu Fire OII, I.09-01-018,
CPSD Data Request No. 1 to SCE
Dated June 4, 2009

Dear :

This letter is CPSD's response to the various Respondent data request objections sent to me on June 24. The objections appear to be coordinated to a certain degree and to repeat themes in common. I would like to provide this letter to each of you to consider as a means to move forward in discovery by an agreement rather than a motion.

First, at least some of the Respondents apparently have reserved the opportunity to provide additional or augmented objections at a later time. CPSD's communication requests objections no later than June 24. As CPSD discussed earlier with SCE when it reserved objections for later, the tight schedule all parties agreed to does not allow for multiple sets of discovery objections. The objections that Respondents have raised already are the only ones CPSD expects to address at this point or later.

Below CPSD will respond briefly to certain objections. Because the data requests were numbered and sometimes worded somewhat differently for each Respondent, I will identify the data requests by subject in a way I believe will be sufficient for Respondents to locate them. In instances in which CPSD agrees that your objections may have validity we will say so. In some instances even when we believe the objection is meritless we will offer compromises that CPSD believes should fit both the legitimate interests of CPSD and of SCE. CPSD believes that Respondents have raised clearly invalid objections to the other data requests.

CPSD wont address in this letter data requests that Respondents may choose to answer despite their objections. We do intend to file a motion to compel promptly regarding any of the data requests that Respondents provide inadequate answers for or continue to object to. This includes, among other items, the responses to our request for Respondents to do retroactive

wind load safety calculations, which under the circumstances in this proceeding are absolutely essential and appropriate discovery.

Data requests concerning Respondents' system wind load safety calculations

CPSD requested all of Respondents' wind loading calculations for wood poles in SCE's service territory done from 1990 through 2007. This material is clearly calculated both to lead to admissible evidence and to lead to the discovery of admissible evidence. The time period is the same one we are concerned with in this proceeding. Respondents' practices of wind loading calculation for construction and installation during that period is critical to this case. Particularly because we have very few wind load calculations available for the three poles from 1990-2007, despite considerable construction and installation, we need to understand whether this lack of documentation is limited to these three poles or is a system characteristic.

Each Respondent appears to contend that a review of 17 years of data is burdensome. Although the information any Respondent has provided is insufficient to determine the validity of that claim, CPSD is willing as part of an overall agreement to accept a production of two years of data, for 2003 and for 2007 prior to the incident. If later we find that CPSD needs data for other years, we will request it then.

For the same reasons and on the same basis, CPSD is willing to accept data for only 2003 and 2007 as part of an overall agreement to compromise a data request that requires 2003,2004, 2005, 2006, and 2007 wind load data and other data (e.g. #9 Sprint).

Please note that CPSD's offer to compromise does not extend to its request for data concerning the three failed poles or installations or construction affecting them. The Respondent information that must be provided for those assets remains for the entire time period from 1990 through 2007.

Please also note that CPSD's offer for a two year review does not extend to our data request for 1990-2007 manuals, instructions, and other documents discussing when Respondents must do or need not do wind load safety calculations. CPSD does expect those documents for the entire period requested. The documents are highly relevant to this proceeding and should be readily available to Respondents' engineering or constructions departments as well.

Data requests re wind speed in Malibu Canyon on October 21, 2007

We agree that Respondents' objection to produce the Malibu Canyon wind speed opinions of experts retained by Respondents may be premature and objectionable at this stage of the proceeding. For that reason CPSD Respondents need not produce at this juncture of the proceeding, opinions of experts retained by them to establish or estimate the wind speed in Malibu Canyon on October 21, 2007.

However, each Respondents also contends in their reports to the Commission that the 3 poles that broke were properly constructed, maintained, and inspected. They also each contend that

winds were higher than CPSD estimated and that these winds were a factor in this breakage. CPSD continues to request responses to discover the factual basis of the Respondents' contentions. To the extent the wind speed can be estimated (or is used for experts to help estimate wind speed), or that Respondents' wind speed contentions are based on facts or opinions of experts other than those retained by Respondents for the purpose of this proceeding), CPSD will continue to require that discovery. As examples, those contributions to Respondents' conclusions and contentions could have come from lay observation of data, Fire department personnel, or from expert weather bureau data.

Communications and documents to and from other persons and entities and Respondents pertaining to wind loading calculations and analyses

CPSD requested all communications between each Respondent and any other person and entity, generated between January 1, 1990 and October 20, 2007, that refers or relates to wind load analyses or calculations. Compromising this data request poses a problem. Much of this proceeding rests on the frequency and nature of wind loading communications between and among joint pole owners during the period from 1990 through 2007. This is true both for the three poles at issue and for the system in general.

However, for any Respondent that agrees to identifying and producing a knowledgeable employee to testify at a deposition about the nature of written and verbal inter-utility communications about wind loading, CPSD is willing to consider limiting this data request to a search for large projects between 1990 and 2007, and a small and agreed upon sample of other projects. I don't have an idea in mind of "large projects" and am open to your suggestions on this matter.

As you probably know, CPSD has made a similar discovery offer to SCE pertaining to its data request. Thank you for the opportunity to work this out informally rather than by motion. Please let me know promptly whether Respondents wish to pursue an agreement further.

Sincerely,

/s/ ROBERT CAGEN
Robert Cagen
Staff Counsel
rcc@cpuc.ca.gov
(415) 703-2197

Cc:

ATTACHMENT 11

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 22, 2009

By Email
Brian Cardoza: brian.cardoza@sce.com
Thomas Macbride: tmacbride@goodinmacbride.com
Anna Kapetanakos: anna.kapetanakos@att.com
Earl Nicholas Selby: ens@loens.com
Peter Hanschen: phanschen@mofo.com

Dear Brian, Tom, Anna, Cynthia, Nick, and Peter:

Re: **I.09-01-18 – Malibu Fire Investigation**

This letter responds to Brian Cardoza's July 16 letter, which discusses depositions of Respondents' personnel and agents.

Brian's letter refers to the position of some Respondents (SCE, AT&T) that would require certain CPSD depositions to be held in LA rather than in San Francisco. CPSD cannot agree to this expense and inconvenience. The depositions are necessary only because Respondents failed to provide thorough and accurate information to CPSD's investigator during its pre-OII investigation in Los Angeles. Therefore if Respondents continue to demand that depositions take place in Los Angeles, CPSD will file a motion by July 30 to require depositions in San Francisco, or in the alternative to strike identified Respondent testimony or statements associated with the witness.

Also, CPSD will not depose Respondent personnel at any location when the Respondent refuses to produce data both appropriate and necessary to the proceeding and to the witness' deposition testimony. That includes, but is not limited to, Respondent reconstruction of wind load safety calculations, data about the regular procedure that Respondents participated in from 1993-2007 for wind loading, and at least two years of data (2003 and 2007) showing all wind load safety calculations and the circumstances under which Respondent did such calculations or considered them unnecessary for reinstallation or construction. Because Respondents have refused to answer these questions that we believe are entirely legitimate, CPSD will bring a motion to compel these data responses. We expect to file this motion by July 30. Obviously we can't rely on a ruling before August 3, so we will need to postpone the SCE and perhaps other depositions until late in August or September. Because of the nature of their testimony, CPSD is willing to proceed with the San Francisco (as offered) depositions of AT&T's Chris Case and Sprint's Michael Smith, during the week of August 3.

As I alerted Respondents in my July 24 letter, CPSD will file a written motion to change the schedule and permit a consultant wind speed study at Malibu. I suggest we jointly contact the assigned ALJ promptly to alert her that CPSD will be making such a motion. I do not know when a schedule ruling will be issued, and I assume none of us want such a ruling to be issued while we are dealing with these discovery matters. Again, CPSD expects to file its motion by July 30. We expect Respondents to commit in advance to cooperate fully to quickly accommodate and schedule depositions if it becomes apparent that the motion will be denied.

I hope and believe this procedure meets Respondents' interests as well as those of CPSD. I believe it does because it provides a means to determine legitimacy of issues and discovery inquiries, and to hold depositions dependant on them after these matters are resolved. I look forward to discussing this matter with each of you.

Sincerely,

/s/ ROBERT CAGEN
Robert Cagen
Attorney for CPSD

RCC:afm

ATTACHMENT 12

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 6, 2009

Jacqueline Reed
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue,
San Francisco, CA 94102

Re: I.09-01-018 – Malibu Fire Investigation

Dear Administrative Law Judge Reed:

The purpose of this letter is to explain the reasons why CPSD seeks a change in the May 20 schedule that the Respondents and CPSD previously agreed to recommend be adopted for this proceeding. That schedule change, initiated by CPSD, has been discussed with the other Respondents and by agreement has been incorporated, along with other negotiated dates, in the other attachment that accompanies this letter.

CPSD believes that one of the important factual issues in this proceeding is to determine the wind speed on October 21, 2007, in Malibu Canyon at the location of the three poles that broke on that day. CPSD is unaware of any weather station that directly measured that wind at that time, and CPSD possesses no special expertise in making wind velocity assessments. The Respondents have asserted to the Commission and have reminded CPSD that it bears the burden of proof to demonstrate that the wind speed did not exceed the design limits of the poles that failed.

In the last month, CPSD has learned that wind experts are able to conduct a study to estimate the speed of the wind at the location of the failed poles on October 21, 2007. I have personally spoken to these experts. One central part of the study would be to place weather stations at the location of the three poles, during the Santa Ana season this fall. The poles failed during Santa Ana winds, and I believe no party disputes that. The weather station would record wind speed and direction for later analysis. Hopefully and with the cooperation of nature, the weather station will record at least several Santa Ana winds after the station is in place. The experts have told CPSD that the historical <u>average</u> frequency of Santa Ana winds in Southern California is between one and two events in September, between one and two in October, and three events in each month of November, December, and January. Please note that this is just a average; some years no Santa Ana winds may appear during those months or others.

In addition to the "field data" described above, there are other parts of the study and analysis that, while important, do not depend on the Santa Ana wind blowing this season. Because it is the field Santa Ana wind study that influence the schedule, I am not describing other parts of the study in this letter.

CPSD chose the date of February 1, 2010 to provide CPSD's testimony (and the experts' wind speed analyses) because that date allows a high possibility of enough Santa Ana winds recorded in Malibu Canyon before then, and allows those winds to be analyzed and correlated with other data. If comparable winds do not happen to allow the experts to draw their conclusions, CPSD would report this to you and the parties and discuss an alternate schedule or procedure for the case.

CPSD has yet not retained or contracted with these experts. We expect to do so as soon as possible. I will certainly inform you and the parties when we have arrived at a contract.

CPSD knows of no Respondent that objects to CPSD's request for a change of schedule. The schedule attached was jointly developed by the Respondents and the CPSD, and maintains the same time intervals after CPSD's February 1, 2010 testimony as were present in the proposed schedule provided to you on May 20,
2009.

I am sending this communication and the schedule attachment to the entire service list.

Thank you for your consideration of the proposed schedule change discussed in this letter.

Sincerely,

/s/ ROBERT CAGEN
Robert Cagen
Attorney for CPSD

RCC:ice

cc. Service List: I. 09-01-018

ATTACHMENT 13

Hanschen, Peter W.

From: Moldavsky, Ed [edm@cpuc.ca.gov]

Sent: Monday, January 04, 2010 5:50 PM

To: selbytelecom@comcast.net; Jacobson, Kristin [GA]; Hanschen, Peter W.; TMacBride; rdelsman@nextgnetworks.net; Brian.Cardoza@sce.com; anna kapetanakos; cindy manheim

Cc: Morris, Harvey Y.

Subject: I.09-01-018 - CPSD Seeks Procedural Schedule Modification

Importance: High

Parties in I.09-01-018:

I am sending this note to advise you that with the retirement of Mr. Cagen, as of January 1, 2010, I am the new counsel assigned to represent CPSD in this matter. As such, I have taken a look at the current procedural schedule, which contemplates CPSD serving testimony on February 1, 2010, and believe that CPSD is not currently able to meet this deadline. Given the complexity of this case and the voluminous record developed in this matter, with the replacement of counsel, CPSD requests that it be given until May 1, 2010 to serve testimony.

I am open to discussing this proposal with Parties by phone or email. However, I also contemplate seeking such an extension from the ALJ (in compliance with the requirements of Rule 11.6).

Thank you, and I look forward to working with all of you,

Ed Moldavsky
Staff Counsel
California Public Utilities Commission
(415) 703-5134

ATTACHMENT 14

Hanschen, Peter W.

From: selbytelecom [selbytelecom@comcast.net]

Sent: Monday, February 01, 2010 3:55 PM

To: jar@cpuc.ca.gov

Cc: brian.cardoza@sce.com; 'Moldavsky, Ed'; anna.kapetanakos@att.com; greta.banks@att.com; Hanschen, Peter W.; 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; Marmalefsky, Dan; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; craig.hunter@wilsonelser.com; hanslaetz@qmail.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

Subject: I.09-010-018: Request of CPSD and Joint Respondents for Modification of Schedule

Hon. Jacqueline A. Reed
Administrative Law Judge
RE: I.09-01-018

Dear Judge Reed,

On January 4, 2010, the Consumer Protection and Safety Division ("CPSD") and the Joint Respondents in I.09-01-018 began engaging in discussions regarding CPSD's request to postpone its service of direct testimony by three months from the original due date of February 1, 2010. These talks evolved into a broader discussion of the overall procedural schedule in this matter. On January 14, 2010, the Consumer Protection and Safety Division ("CPSD") filed and served its motion entitled, "MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION FOR EXTENSION OF TIME" in I.09-01-018, as a formal procedural safeguard. On January 22, 2010, the Joint Respondents in I.09-01-018 filed, through AT&T, their formal response in opposition to CPSD's Motion entitled, "OPPOSITION OF JOINT RESPONDENTS TO MOTION FOR EXTENSION OF TIME BY THE CONSUMER PROTECTION AND SAFETY DIVISION."

As a result of the abovementioned discussions, CPSD and the Joint Respondents hereby wish to report to Your Honor that they have reached agreement with regard to a proposed modification of the schedule set forth in the October 22, 2009 Assigned Commissioner's Ruling and Scoping Memo ("Scoping Memo"). CPSD and the Joint Respondents respectfully request that Your Honor and the Assigned Commissioner, Commissioner Simon, approve the proposed modification of the schedule in the Scoping Memo as set forth below:

March 8, 2010 (by COB) – CPSD will complete additional depositions, if any, against Respondents and will not serve further written discovery on Respondents, or notice further depositions, until Respondents have served their testimony on October 15, 2010.

May 3, 2010 - CPSD serves direct testimony (moratorium on Respondents' discovery propounded to CPSD ends). [In Scoping Memo - February 1, 2010]

August 2, 2010 (by COB) – Respondents will complete depositions of CPSD witnesses and will not serve further written discovery on CPSD, or notice further depositions, until CPSD has filed

its Rebuttal Testimony on December 6, 2010. [In Scoping Memo - April 13, 2010]

October 15, 2010 - Respondents serve testimony (moratorium on discovery propounded to Respondents lifted). [In Scoping Memo - June 1, 2010]

December 6, 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). [In Scoping Memo - July 20, 2010]

December 13, 2010 - Discovery closes. [In Scoping Memo - July 27, 2010, described as: "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]

December 23, 2010 - Motion date. [In Scoping Memo - August 8, described as: "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."]

The Hearing and Briefing Schedule is to be set pursuant to the Commission's calendar and availability in 2011.

CPSD and the Joint Respondents note that the PHC currently set for February 16, 2010 may not be necessary in light of the agreed-upon modifications. Thus, CPSD and the Joint Respondents respectfully leave that determination to the Commission's discretion.

This email is being served on all parties with electronic mail addresses shown on the Commission's official Service List for this proceeding as of February 1, 2010. (To limit bouncebacks, the electronic service list has been divided into two groups.)

Respectfully submitted:

Edward Moldavsky, Attorney for CPSD
Brian Cardoza, Attorney for Southern California Edison
Peter Hanschen, Attorney for Verizon Wireless
Anna Kapetanakos, Attorney for AT&T and AT&T Mobility
Tom MacBride, Attorney for NextG Networks
Nick Selby, Attorney for Sprint Telephony PCS, L.P.

ATTACHMENT 15

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300

TELEPHONE: (213) 489-3939 • FACSIMILE: (213) 243-2539

Direct Number: (213) 243-2818
ccread@jonesday.com

July 9, 2010

VIA E-MAIL (jacqueline.reed@cpuc.ca.gov)

Jacqueline A. Reed
Assistant Chief Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: OII 09-01-018

Dear ALJ Reed:

I write on behalf of all Respondents and in response to Mr. Morris's email to you of yesterday. That email was a complete surprise to Respondents. As further explained below, we do not believe that a conference with you today is necessary on the discovery issues mentioned by Mr. Morris, and a conference call to permit Mr. Morris to make further argument on CPSD's pending motion to compel is not appropriate. If a call were to occur on the subject of that motion, Respondents must respectfully request that it be transcribed.

First, Your Honor asked for a report within 10 days of our July 1 conference call with you regarding progress on the deposition discovery issues. Yesterday, Respondents prepared a draft of such a report and sent it to CPSD for its comments. Instead, Mr. Morris replied with an email stating that our draft was one-sided and that he intended to seek a conference with Your Honor. The fact is that Respondents and CPSD actually have made substantial progress on the issues that we brought before you. CPSD and Respondents have agreed to the following:

a. a total number of deposition hours for the two CPSD testifying engineers and for the four wind experts;

b. dates of July 20 and Aug. 10 for the depositions of Mr. Tong and Mr. Moshfegh, respectively;

c. dates of July 19-22 for the depositions of Mr. Saah and Mr. Kay-Rugen;

d. the locations and court reporting arrangements for each of the depositions;

e. providing a copy of each transcript to CPSD at no charge;

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • DUBAI • FRANKFURT • HONG KONG • HOUSTON
IRVINE • LONDON • LOS ANGELES • MADRID • MEXICO CITY • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS
PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

f. ground rules for videotaping of the depositions and providing a copy of each videotape to CPSD at no charge; and

g. all procedural deadlines in the OII starting with the cut-off date for further discovery by Respondents will be extended on at least a day for day basis, computed from the date of the last CPSD witness deposition.

While Respondents do not have a problem with Your Honor issuing an order confirming these arrangements, we do not see a need for such an order and certainly no teleconference is needed. CPSD and Respondents can simply prepare the order and submit it jointly for your signature.

In fact, the only significant issue remaining is the actual dates of the depositions of the two remaining wind experts, Mr. Moritz and Mr. Moody. On that subject, as of yesterday, Mr. Morris promised to check with each of those individuals as to their availability after August 10. He has not yet provided that information. In addition, Respondents followed Your Honor's suggestion and have submitted a number of joint and individual supplemental data requests, which remain pending.

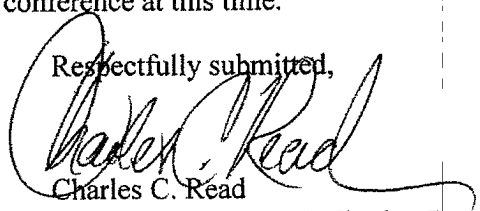
Mr. Morris' email makes it clear that the real reason he wants today's conference with Your Honor is to make further argument on CPSD's pending motion to compel SCE to produce the so-called Peralta report, as to which SCE has claimed both the privileges of attorney-client communication and attorney work product. That motion has been fully briefed but starting with last week's conference with Your Honor, Mr. Morris is now trying improperly and inaccurately to link it to the right of any and all Respondents to submit supplemental data requests to CPSD, following up on answers previously submitted by CPSD staff engineer Raymond Fugere. In those answers, Mr. Fugere stated that he attempted to do a pole loading calculation but was unable to complete it because he lacked unspecified information from Respondents. As Your Honor suggested in the July 1 conference, Respondents yesterday submitted supplemental data requests designed to clarify exactly what Mr. Fugere has and doesn't have in the way of information for a pole loading calculation.

Without allowing Mr. Fugere to answer the supplemental data requests, Mr. Morris wishes to argue that the information Mr. Fugere was referring to is the Peralta report. This claim is inaccurate: access to the Peralta report is not essential to do an accurate and reliable pole loading calculation. If CPSD wishes to add this as an argument to support its motion to produce the report, it should follow the appropriate procedure: file a motion for leave to submit further argument and provide an opportunity for SCE to respond. But if Your Honor is inclined to hold a conference call on this subject today, then SCE and all other Respondents request that such a hearing must be conducted on the record.

However, SCE continues to believe that neither further argument nor a decision on the pending motion regarding the Peralta report is necessary or useful at this time. As we have repeatedly told Mr. Morris, once we have responses to the supplemental data requests, SCE believes it will be able to discuss with CPSD information that it presently has or can obtain wholly apart from the Peralta report which will permit it to perform a pole loading calculation. While this approach does not guarantee to render CPSD's motion moot (and SCE is not asking CPSD to withdraw its motion), SCE does believe that this process will provide additional information that will be important for CPSD to have and for Your Honor and the Commission to consider before deciding the motion.

Regardless of Mr. Morris's attempt to link Respondents' discovery rights against Mr. Fugere to its motion to compel the Peralta report from SCE, there is no such linkage argument to be made with respect to the telecommunications Respondents. There is no motion to compel pending against them, yet it is just as important to them as it is to SCE to understand Mr. Fugere's claim of inability to perform a pole loading calculation. That discovery process is underway with yesterday's submission of supplemental data requests and it should be allowed to proceed. All Respondents have agreed to defer the issue of the need for a deposition of Mr. Fugere until we have an opportunity to review those answers. So, once again, it is premature and unnecessary to involve Your Honor in a conference at this time.

Respectfully submitted,



Charles C. Read
On behalf of SCE and all other Respondents

cc: Mr. Harvey Morris
Mr. Ed Moldavsky
All Respondent Counsel

ATTACHMENT 16

Hanschen, Peter W.

From: Hanschen, Peter W.
Sent: Thursday, September 02, 2010 12:52 PM
To: 'Moldavsky, Ed'; 'Morris, Harvey Y.'
Cc: 'anna.kapetanakos@att.com'; 'cindy.manheim@att.com'; 'TMacBride'; 'Robert Millar'; 'Joffe, Steve'; 'Nick.Selby'; 'kristin.l.jacobson@sprint.com'; 'Brian.Cardoza@sce.com'; 'Charles Read'; Marmalefsky, Dan
Subject: Proposed Revised Procedural Schedule

Attachments: Revised Procedural Schedule - 1.DOC

Revised Procedural Schedule - ...

Dear Ed and Harvey,

With the cessation of the deposition of the last of the CPSD's named witnesses on August 26, 2010 and the approaching expiration of the subsequent ten (10) day period for follow-up data requests occurring on Sunday, September 5, 2010 (adjusted to the first work day, September 7, 2010), it seems that it is an appropriate time to determine a new revised procedural schedule from that previously agreed upon and reflected in the February 1, 2010 e-mail to ALJ Reed.

Earlier this summer when we were discussing with you the scheduling of depositions and the availability of CPSD witnesses, we recognized that adjustments would have to be made in the February 1, 2010 procedural schedule to accommodate any delays caused by the availability of witnesses and counsel over the summer period. In general, both parties agreed that the schedule would be adjusted on a day-for day basis, but since we did not know whether the effect of that delay might result in due dates being impacted by the holiday season, the parties acknowledged that they would maintain flexibility to adjust the schedule to accommodate holidays.

The attached chart, shows the relevant portion of the procedural schedule that was set forth in the February 1, 2010 e-mail to ALJ Reed, as well as the schedule as adjusted on a day-for-day basis to accommodate the 34 day change in the discovery period caused by the need to accommodate witnesses and counsel over the summer period. It also includes a third column which sets forth a proposed procedural schedule which takes into account the impact of the holiday season due to the delay. That schedule is discussed further below.

As you can see from the schedule, the effect of a day-for-day extension is, in fact, to bring the holiday period into play. CPSD's rebuttal testimony would be due just 10 days after the New Year. Because of this, we believe that it would be appropriate to extend the day-for-day schedule extension by an additional 30 day period. In making this extension, it would be most equitable to divide the 30 day extension period equally between the respondents/interested parties and the CPSD. The effect of this would be to make the dates that the respondents'/interested parties' testimonies are due to be 15 days later than is reflected in the day-for-day extension schedule and CPSD's testimony would be due 30 days later than reflected in the day-for-day extension schedule. CPSD would therefore have until February 9, 2011 to submit rebuttal testimony. This short extension would have the effect of mitigating the impact of the holidays on any revised filing dates without doing damage to the overall timely completion of the proceeding.

Let me know if the proposed schedule is acceptable to the CPSD. If you would like to discuss it, let me know and I can set up a conference call later this week or next.

Ed, there is one other procedural matter that we should take care of. At the cessation of Dr. Moritz's deposition on August 26, 2010, in your absence Mr. Heiden dismissed the witness before the parties had the opportunity to stipulate to a procedure for the witness to review the transcript and sign it. We propose that we use the same protocol that we agreed to use for the other deponents. That is, within 45 days of the receipt of the deposition transcript, Dr. Moritz will provide to the court reporter any corrections, as well as sign the transcript. Let us know if that is acceptable to you.

Regards,
Peter Hanschen
On behalf or the Joint Respondents

PROCEDURAL SCHEDULE

	Agreed Upon Procedural Schedule as set forth in Feb. 1, 2010 e-mail to ALJ Reed	Procedural Schedule as Modified by Day-for Day Extension	Proposed Procedural Schedule to Take Account of Holidays
Respondents complete deposition of CPSD witnesses and cessation of data requests to CPSD	August 2, 2010	September 7 (Note: First work day following close of Moritz deposition on August 26 + 10 days for further discovery*)	September 7, 2010
Respondents serve testimony and discovery propounded to Respondents lifted	October 15, 2010	November 18, 2010	December 3, 2010
CPSD serves rebuttal testimony; all other Respondents may serve rebuttal testimony that addresses other respondent and interested party testimony; moratorium on discovery to CPSD lifted.	December 6, 2010	January 10, 2011	February 9, 2011
Discovery closes	December 13, 2010	January 17, 2011	February 16, 2011**
Motion Date	December 23, 2010	January 27, 2011	February 28, 2011

*Total extension of 34 days
**Per prior discussions this date may have to be revised depending on rebuttal testimony

ATTACHMENT 17

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]

Sent: Wednesday, September 15, 2010 12:36 PM

To: Hanschen, Peter W.; Morris, Harvey Y.

Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan

Subject: RE: Proposed Revised Procedural Schedule

Importance: High

Dear Peter and Respondents:

Please note that I had accidentally sent an earlier draft of this email to this list. I have requested a recall of that prior draft. Regarding the procedural schedule, CPSD has reviewed your proposals and believes that an accommodation can be reached. CPSD proposes a "hybrid" approach as follows:

Respondents serve testimony and discovery propounded to Respondents lifted - November 18, 2010

CPSD serves rebuttal testimony; all other Respondents may serve rebuttal testimony that addresses other respondent and interested party testimony; moratorium on discovery to CPSD lifted -

February 9, 2011

Discovery closes - February 16, 2011

Motion Date - February 28, 2011

CPSD was happy to accommodate Mr. Seitz's (counsel for SCE) schedule so that he could participate in the depositions of CPSD's witnesses, even if that contributed to the extension being sought by Respondents. However, allowing Respondents to serve testimony in December does not give CPSD enough time to assess the Respondents' testimonies and and conduct any needed discovery. Even as proposed above, CPSD would have to move quite briskly through the Thanksgiving and Christmas/New Year's holidays to propound discovery, and would have to rely on the good-faith efforts of all of the Respondents to respond to that propounded discovery in a timely manner. If depositions need to be scheduled, CPSD would also need to rely on Respondents' cooperation in producing those witnesses in December. Deposition transcripts take time to process and that could also conceivably lead to further delays.

CPSD served its testimony to Respondents on May 3, 2010. The November 18, 2010 service date would give Respondents over six months to develop responsive testimony. CPSD also notes that due to the number of Respondents in this case, CPSD would need to develop rebuttal testimony based on five different sets of testimony. Given the intervening holiday season, that task may prove challenging.

As a minor matter, I noticed a footnote on your proposal sheet regarding revising the final discovery cut-off date, and CPSD objects to that concept. CPSD is in the same position as Respondents as far as waiting to see what the other side presents on the service dates. In agreeing to a procedural calendar, we are mutually estimating the time needed for each side to present its case.

Further, I would note that you reference "Interested Parties" in your note below. Please advise me if you are referencing any party other than the five Respondents to this OII.

Thank you,

Ed Moldavsky
Staff Counsel

ATTACHMENT 18

Hanschen, Peter W.

From: Hanschen, Peter W.

Sent: Thursday, September 16, 2010 11:09 AM

To: 'Moldavsky, Ed'; 'Morris, Harvey Y.'

Cc: 'anna.kapetanakos@att.com'; 'cindy.manheim@att.com'; 'TMacBride'; 'Robert Millar'; 'Joffe, Steve'; 'Nick.Selby'; 'kristin.l.jacobson@sprint.com'; 'Brian.Cardoza@sce.com'; 'Charles Read'; Marmalefsky, Dan; 'craig.hunter@wilsonelser.com'

Subject: RE: Proposed Revised Procedural Schedule

Ed,

We are in receipt of your e-mail. We are surprised that CPSD does not want to discuss this matter and attempt to arrive jointly at a revised procedural schedule that is acceptable and fair to both sides. In our past discussions, we have been able to arrive at a fair, balanced schedule on more than one occasion when the CPSD sought extensions to file its opening case. We thought our September 2, 2010 proposal was very fair and represented a balanced approach. It avoided the impact of the holiday season by equally allocating a short extension of time between the Respondents and the CPSD. By extending the due date for the Respondents' testimony by only two weeks and extending the due date for the CPSD's rebuttal testimony by 30 days, it avoided the impact of the holiday season. We ask that you re-consider our proposal as a balanced approach that is fair to both the CPSD and the Respondents

You describe your counter proposal as an "accommodation" and "hybrid", but we don't view it that way at all. What you have proposed is that Respondents adhere to the due date to which they are already entitled to under the agreed upon day-for-day extension, while the due date for the CPSD's testimony is extended by an additional 30 days. Your proposal is thus neither an accommodation nor a hybrid. It simply allocates all of the schedule extension to the CPSD, while denying any equitable sharing with the Respondents.

Accordingly, we reject your proposal. If CPSD insists that Respondents receive no extension beyond the day-for day extension to which the parties have previously agreed, then CPSD, as well , should comply with the dates set by the day-to-day extension. Any extension beyond that should be limited to a few days, but certainly not anything close to 30 days.

If the CPSD believes that the schedule is tight and that it may need more time, as your e-mail implies, we would be willing to consider extending the Respondents' testimony due date by 30 days, or until December 18, while also extending the due date for the CPSD testimony until February 25, 2011. This approach would result in a slightly disproportionate extension in CPSD's favor and give you more time. Let us know if you would like to discuss this approach further.

Your e-mail also asked about the reference to "Interested Parties" and whether it meant something other than the five Respondents. I believe that the procedural schedule has always included the possibility of intervenors filing testimony. I used the term "interested parties" rather than intervenors. I am not aware of parties other than the Respondents that may file testimony, but the reference was simply meant to carry forward the approach that had been used in previous schedules. If you like, we can change the reference to intervenors rather than interested parties.

Lastly, you asked about the footnote regarding the final discovery cut-off date. The footnote was simply meant to acknowledge that under the schedule, discovery closes one week after the CPSD files its rebuttal testimony. Given our past discussions and your representations that the CPSD is

manpower constrained, we thought that it might be appropriate to acknowledge that there may have to be some flexibility in the cutoff date. If not, it may be necessary to cram considerable discovery, including depositions, into a very short period.

Regards,

Peter Hanschen

On behalf of the Joint Respondents

From: Moldavsky, Ed [mailto:ed.moldavsky@cpuc.ca.gov]
Sent: Wednesday, September 15, 2010 1:45 PM
To: Hanschen, Peter W.; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan
Subject: RE: Proposed Revised Procedural Schedule

Peter,
Unfortunately, I am not available for a conference call at either of those times. I would also note as a matter of efficiency, that throughout this case teleconferences have had a tendency of lasting significantly longer than scheduled, and have at times been less than fruitful. On this issue, I think that I have been pretty clear in the email copied below as to CPSD's position. If you disagree, or have questions, please email them to me. I will respond as soon as I can, but please note that this scheduling matter must be balanced against significant resource constraints.
Ed

From: Hanschen, Peter W. [mailto:PHanschen@mofo.com]
Sent: Wednesday, September 15, 2010 1:11 PM
To: Moldavsky, Ed; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan
Subject: RE: Proposed Revised Procedural Schedule

Ed,
With regard to your response, there are a couple items that we would like to discuss with you. Are you available for a conference call tomorrow morning or Friday morning? Let me know what works best for you and I will set up a call-in number.
Peter

From: Moldavsky, Ed [mailto:ed.moldavsky@cpuc.ca.gov]
Sent: Wednesday, September 15, 2010 12:36 PM
To: Hanschen, Peter W.; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan
Subject: RE: Proposed Revised Procedural Schedule
Importance: High

Dear Peter and Respondents:

Please note that I had accidentally sent an earlier draft of this email to this list. I have requested a recall of that prior draft. Regarding the procedural schedule, CPSD has reviewed your proposals and believes that an accommodation can be reached. CPSD proposes a "hybrid" approach as follows:

Respondents serve testimony and discovery propounded to Respondents lifted - November 18, 2010

ATTACHMENT 19

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]

Sent: Friday, September 17, 2010 12:21 PM

To: Hanschen, Peter W.; Morris, Harvey Y.

Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan; craig.hunter@wilsonelser.com

Subject: RE: Proposed Revised Procedural Schedule

Peter,

It appears from your note below that Respondents basically want CPSD to reconsider Respondents' proposals as to the procedural schedule. Accordingly, CPSD urges Respondents to reconsider CPSD's scheduling proposal, for the reasons articulated in our September 15 note. As it stands, the only point of agreement (as to the remaining testimony service dates) is that the Respondents' testimonies are due on November 18, 2010. CPSD's Rebuttal testimony was moved forward with the understanding that an accommodation would be made based on the intervening holidays. The duration of that accommodation was not defined in our discussions and, based on your email below, remains unresolved.

If Respondents need more time to put their cases together, please let me know and I will see if CPSD can agree to an extension.

Regards,

Ed Moldavsky
Staff Counsel
California Public Utilities Commission

P.S.: Thank you for explaining your meaning as to "interested party" in this context. Further, CPSD reiterates its objection to the concept of having discovery in this matter end any later than one week after CPSD's rebuttal, under any circumstances. CPSD urges Respondents to be economical in their discovery.

From: Hanschen, Peter W. [mailto:PHanschen@mofo.com]
Sent: Thursday, September 16, 2010 11:09 AM
To: Moldavsky, Ed; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com; Brian.Cardoza@sce.com; Charles Read; Marmalefsky, Dan; craig.hunter@wilsonelser.com
Subject: RE: Proposed Revised Procedural Schedule

Ed,

We are in receipt of your e-mail. We are surprised that CPSD does not want to discuss this matter and attempt to arrive jointly at a revised procedural schedule that is acceptable and fair to both sides. In our past discussions, we have been able to arrive at a fair, balanced schedule on more than one occasion when the CPSD sought extensions to file its opening case. We thought our September 2, 2010 proposal was very fair and represented a balanced approach. It avoided the impact of the holiday season by equally allocating a short extension of time between the Respondents and the CPSD. By extending the due date for the Respondents' testimony by only two weeks and extending the due date for the CPSD's rebuttal testimony by 30 days, it avoided the impact of the holiday season. We ask that you re-consider our proposal as a balanced approach that is fair to both the CPSD and the Respondents

ATTACHMENT 20

Hanschen, Peter W.

From: Hanschen, Peter W.

Sent: Friday, October 01, 2010 10:25 AM

To: 'Moldavsky, Ed'; 'Morris, Harvey Y.'

Cc: 'anna.kapetanakos@att.com'; 'cindy.manheim@att.com'; 'Brian.Cardoza@sce.com'; 'Charles Read'; 'TMacBride'; 'Robert Millar'; 'Joffe, Steve'; 'Nick.Selby'; 'kristin.l.jacobson@sprint.com'

Subject: Schedule

Ed,

As I mentioned, we have a particular problem with the current schedule that resulted in part from the various delays/extensions to date.

First, my partner, Dan Marmalefsky, will be in India pretty much for the entire month of November and it is essential that he be involved. But for the earlier delays, this timing problem would not have occurred.

Second, at the time the schedule was originally negotiated, discovery had not occurred, depositions had not been taken and CPSD had not provided its testimony. Just as the CPSD found in preparing its opening testimony, we are also finding that the testimony is much more complex and time consuming to prepare than we originally thought. Indeed, I am sure that CPSD will find this same fact to be true once again when it rebuttal testimony is due. Simply put, this is a complex proceeding and all of the parties need more time than initially allotted.

With those facts in mind, I suggest that we extend the due date for Respondents' testimonies by one month, until December 18, 2010. I propose that we then institute a short moratorium on any discovery or activity in the case from December 18 until after the holidays, say January 7, 2011. This will take the holidays out of play for purposes of scheduling. After that, as far as I am concerned, CPSD can review the testimony and then advise the parties of the date that it will serve its rebuttal testimony. That arrangement will provide CPSD with assurance that it will have sufficient time to respond, without itself being required to commit to a date now without the benefit of review and analysis of Respondents' submissions.

I have not discussed this proposal with the other Respondents. By copy of this e-mail, I am requesting that they provide their thoughts on this proposal.

Ed, let me know when you are available on Monday to discuss scheduling.

Regards,

Peter Hanschen

From: Moldavsky, Ed [mailto:ed.moldavsky@cpuc.ca.gov]
Sent: Thursday, September 30, 2010 5:13 PM
To: Hanschen, Peter W.
Cc: Morris, Harvey Y.
Subject: RE: Schedule

Peter,

Thank you for following up. It is not just my schedule that needs to be balanced to figure out a time, as I need to confer with CPSD management first. Perhaps if you were to give me a ballpark of how much time you are looking for in seeking an extension, I can then ask CPSD management about its flexibility to such a request.

Ed

From: Hanschen, Peter W. [mailto:PHanschen@mofo.com]

ATTACHMENT 21

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]
Sent: Thursday, October 07, 2010 4:47 PM
To: Moldavsky, Ed; Hanschen, Peter W.; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; Brian.Cardoza@sce.com; Charles Read; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com
Subject: RE: Schedule

Dear Peter and Respondents,

I have heard back today from CPSD management regarding your extension request and would like to report the outcome to you. CPSD will be respectfully rejecting your extension request. As I described to you during our conference call, CPSD has a responsibility to protect the public from utility-related safety hazards, such as the pole overloading issue in this case. Holding utilities accountable for such safety violations is a very important and time-sensitive function. CPSD submitted its testimony on May 3, 2010 and CPSD agreed to delay the depositions of CPSD's witnesses based on Respondents' request to wait until their deposition specialist was available. In any case, Respondents have had ample time to develop whatever defensive theories they intend on presenting.

Regards,

Ed Moldavsky
Staff Counsel
California Public Utilities Commission

-----Original Message-----
From: Moldavsky, Ed
Sent: Friday, October 01, 2010 3:46 PM
To: Hanschen, Peter W.; Morris, Harvey Y.
Cc: anna.kapetanakos@att.com; cindy.manheim@att.com; Brian.Cardoza@sce.com; Charles Read; TMacBride; Robert Millar; Joffe, Steve; Nick.Selby; kristin.l.jacobson@sprint.com
Subject: RE: Schedule

Peter and Respondents,

Thank you for your note. I am willing to hear the Respondents out on Monday at 3 pm, but I may not be able to fully brief my client by that time due to other emergent issues. For the record, I do disagree with any implication that the Respondents' request for more time to submit their testimonies is based on CPSD's actions. In the interest of efficiency, I will not belabor that point unless pressed.

Have a nice weekend,

Ed Moldavsky

Ed,

As I mentioned, we have a particular problem with the current schedule that resulted in part from the various delays/extensions to date.

ATTACHMENT 22

Hanschen, Peter W.

From: Hanschen, Peter W.
Sent: Friday, October 08, 2010 3:51 PM
To: 'jar@cpuc.ca.gov'
Cc: 'brian.cardoza@sce.com'; 'edm@cpuc.ca.gov'; 'matthew@turn.org'; 'anna.kapetanakos@att.com'; 'greta.banks@att.com'; Hanschen, Peter W.; 'stephen.h.kukta@sprint.com'; 'tmacbride@goodinmacbride.com'; 'selbytelecom@gmail.com'; 'anitataffrice@earthlink.net'; 'cindy.manheim@att.com'; 'bill.wallace@verizonwireless.com'; 'jordan.white@pacificorp.com'; 'skuhn@counsel.lacounty.gov'; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; 'rosana.miramontes@doj.ca.gov'; 'thomas.heller@doj.ca.gov'; 'ccread@jonesday.com'; 'craig.hunter@wilsonelser.com'; 'hanslaetz@qmail.com'; 'jesus.g.roman@verizon.com'; 'case.admin@sce.com'; 'james.lehrer@sce.com'; 'Robert.F.Lemoine@sce.com'; 'scaine@cainelaw.com'; 'LUrick@SempraUtilities.com'; 'CLDavis@SempraUtilities.com'; 'KO'Beirne@SempraUtilities.com'; 'Greg.Grizzel@fire.ca.gov'; 'michael.bagley1@verizonwireless.com'; 'csimon@bergerkahn.com'; 'smuncey@bergerkahn.com'; 'edward.mcgah@verizonwireless.com'; 'elaine.duncan@verizon.com'; 'bhc4@pge.com'; 'RegRelCPUCCases@pge.com'; 'ELK3@pge.com'; 'hugh.osborne@att.com'; 'keith.krom@att.com'; 'Kristin.L.Jacobson@sprint.com'; 'lhj2@pge.com'; 'CPUCCases@pge.com'; 'rdj@att.com'; 'thomas.selhorst@att.com'; 'info@tobiaslo.com'; 'deyoung@caltel.org'; 'wjp@ghlaw-llp.com'; 'mariacarbone@dwt.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'rdelsman@nextgnetworks.net'; 'californiadockets@pacificorp.com'; 'heide.caswell@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'; 'ljw@cpuc.ca.gov'; 'pm2@cpuc.ca.gov'; 'rae@cpuc.ca.gov'; 'rim@cpuc.ca.gov'; 'tas@cpuc.ca.gov'; 'tim@cpuc.ca.gov'
Subject: Motion for Extension of Time - I.09-01-018

Dear Judge Reed:

In accordance with Rule 11.6 of the Commission's Rules of Practice and Procedure, which allows motions for extension of time to be made orally, by e-mail, or by letter, Joint Respondents, Southern California Edison Company, Verizon Wireless, AT&T, Sprint and NextG Networks, respectfully request that you approve a 30 day extension to the procedural schedule currently being followed by the respective parties in the current investigation (albeit never formally adopted). The schedule currently being followed calls for Joint Respondents' testimonies to be filed on November 18, 2010; CPSD's rebuttal testimony would be due on January 10, 2011, subject to further adjustments yet to be agreed upon by the parties to take into account the effect of the holiday season on the schedule. Joint Respondents request that the procedural schedule be extended by 30 days so that Joint Respondents' testimonies would be due on December 17, 2010 and CPSD's (as well as any other rebuttal testimonies) would be due on February 23, 2011, which represents a 30 day extension plus two weeks to take into account the effect of the holiday season. Discovery on such rebuttal testimonies would close one week later on March 2, 2011. All motions would have to be filed on or before March 14, 2011 and hearings could start anytime thereafter.

The Joint Respondents request an extension for a number of reasons:

First, additional time is needed to respond to CPSD's direct testimony in this matter. The intervals between procedural dates that were established by the parties more than a year ago were established without actual knowledge of the complexity of the issues in this investigation. The intervals and dates have proven to be unrealistic. Thus, as you know, earlier this year CPSD requested and the Joint Respondents agreed that CPSD could file its case on May 3, 2010, more than three months after the date called for in the Assigned Commissioner's Scoping Order. Joint Respondents have found that CPSD's presentation is complex and technical, such that a substantial amount of time is required to prepare responsive testimony . Furthermore, in an effort to better understand CPSD's showing, over the course of this past summer, Joint Respondents conducted discovery of CPSD's witnesses, including depositions. Only now are the Joint Respondents receiving some, but not all, of the corrected transcripts from the deposed CPSD's witnesses. Complicating Joint Respondents' understanding of an already complex showing by CPSD is the fact that many of the corrections made to the sworn depositions are substantive in nature and in some instances are directly contrary to the testimony given at the time of the deposition. In addition, the five Respondents in this proceeding are attempting to coordinate their testimony in an effort to avoid duplication wherever possible. This too is a time-consuming process.

Second, Dan Marmalefsky, counsel for Verizon Wireless, will be in India and will not be available for much of the month of

November. Mr. Marmalefsky is essential to the preparation and review of Verizon Wireless' presentation. The conflict with Mr. Marmalefsky's schedule arose only because of accommodations and adjustments to the proposed deposition schedule that were required to be made because of conflicts in schedules or due to the unavailability of witnesses and/or counsel over the summer vacation period.

Third, as noted above, the year end holiday season will come in the midst of the schedule currently being followed. While CPSD and the Joint Respondents have agreed to adjust the schedule to take account of the holidays, the parties have yet to agree on a due date. Nevertheless, even if the parties could agree to such an adjustment, the intervening holidays will still have some impact on the parties --on CPSD in the preparation of its rebuttal case and also on the Joint Respondents in the answering of discovery and the preparation of rebuttal testimony.

The Joint Respondents have discussed various schedule extensions with CPSD, but CPSD, while in one instance agreeing to extend the due date for its own rebuttal testimony, has steadfastly refused to agree to any extension for the Joint Respondents' testimony.

Respondents regret having to bring this motion for an extension of time to Your Honor's attention. We know that Your Honor prefers that the parties work out their differences and on the two occasions in the past when CPSD requested extensions of the schedule, we were able to do so. Unfortunately, we have not been able to work out such an agreement this time. We ask that Your Honor intervene and order the following schedule:

December 17, 2010 -- Respondents serve testimony and discovery propounded to Respondents lifted

February 23, 2011 -- CPSD serves rebuttal testimony; all other Respondents may serve rebuttal testimony that addresses other respondent and intervenor testimony; moratorium on discovery to CPSD lifted.

March 2, 2011 -- Discovery closes

March 14, 2011 -- Last day for Motions

We request that Your Honor convene a teleconference call on **Monday, October 11, 2010 or on Tuesday October 12, 2010** to discuss this motion for an extension. We are available at your convenience. We would be happy to establish a conference bridge for this purpose.

This e-mail motion is being send to all parties listed on the service list for I.09-01-018.

Respectfully submitted,
Peter Hanschen
On behalf of the Joint Respondents.

ATTACHMENT 23

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]

Sent: Monday, October 11, 2010 3:07 PM

To: Reed, Jacqueline A.

Cc: Morris, Harvey Y.; Hanschen, Peter W.; brian.cardoza@sce.com; matthew@turn.org; anna.kapetanakos@att.com; greta.banks@att.com; stephen.h.kukta@sprint.com; tmacbride@goodinmacbride.com; selbytelecom@gmail.com; anitataffrice@earthlink.net; cindy.manheim@att.com; bill.wallace@verizonwireless.com; jordan.white@pacificorp.com; skuhn@counsel.lacounty.gov; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; ccread@jonesday.com; craig.hunter@wilsonelser.com; hanslaetz@qmail.com; jesus.g.roman@verizon.com; case.admin@sce.com; james.lehrer@sce.com; Robert.F.Lemoine@sce.com; scaine@cainelaw.com; LUrick@SempraUtilities.com; CLDavis@SempraUtilities.com; KO'Beirne@SempraUtilities.com; Greg.Grizzel@fire.ca.gov; michael.bagley1@verizonwireless.com; csimon@bergerkahn.com; smuncey@bergerkahn.com; edward.mcgah@verizonwireless.com; elaine.duncan@verizon.com; bhc4@pge.com; RegRelCPUCCases@pge.com; ELK3@pge.com; hugh.osborne@att.com; keith.krom@att.com; Kristin.L.Jacobson@sprint.com; lhj2@pge.com; CPUCCases@pge.com; rdj@att.com; thomas.selhorst@att.com; info@tobiaslo.com; deyoung@caltel.org; wjp@ghlaw-llp.com; mariacarbone@dwt.com; cem@newsdata.com; cem@newsdata.com; cem@newsdata.com; rdelsman@nextgnetworks.net; californiadockets@pacificorp.com; heide.caswell@pacificorp.com; Daye, Fadi; Tong, Kan Wai; Robertson, Michael; Stepanian, Raffy; bds@cpuc.ca.gov; Reed, Jacqueline A.; Halligan, Julie; Woods, Linda J.; Moshfegh, Pejman; Elliott, Robert A.; Mason, Robert; Simon, Timothy A.; Kenney, Timothy

Subject: RE: Motion for Extension of Time - I.09-01-018

Attachments: I.09-010-018: Request of CPSD and Joint Respondents for Modification of Schedule

Dear ALJ Reed:

CPSD lodges its vigorous objection to the Respondents' motion for an additional "30 day extension" to the procedural schedule for I.09-01-018, i.e.: the Malibu Canyon Fire Investigation. CPSD's opposition to said motion is primarily based on the critical importance of protecting Californians from utility-caused incidents such as the Malibu Canyon Fire. Promptly holding utilities accountable for such incidents is an important component of that goal.

Respondents point to an unspecified notion of "complexity" regarding the failed utility poles that caused the Malibu Canyon Fire, that they apparently have interpreted from CPSD's showing. CPSD notes that it served the Respondents with its testimony on May 3, 2010, over five months ago. CPSD has provided all of its witnesses for depositions and has answered numerous data requests. There is a certain point in time when the Respondents need to answer the charges that have been made against them. Undue delay serves no public good.

Respondents try to further justify their request by complaining about the outcome of the depositions of CPSD's witnesses (which were taken at the request of Respondents). CPSD notes that the reason why not all transcript corrections were provided by the date of the Respondents' motion is because not all of the corrections were due (pursuant to joint stipulations). As a courtesy, CPSD notes that it will be providing Respondents with depositions corrections for its remaining witnesses today, even though some of those corrections are not yet due. It also bears noting that many of the questions asked at the depositions by Respondents were compound and confusing. That manner of questioning necessitated the record clarifications that Respondents "need more time" to address.

CPSD is also disagrees with Respondents' implication that CPSD has not worked with them in terms of scheduling. CPSD notes for the record that the Respondents have omitted a significant extension that CPSD already agreed to based on the Respondents' request. As shown in the attached email, October 15, 2010 was the previously agreed-upon date for the Respondents to serve their testimonies. Subsequent to that agreement, Respondents wanted to ensure that a "deposition specialist" would be available to assist them in their depositions of CPSD's witnesses. That specialist had scheduling constraints that Respondents believed would have impacted their ability to present their cases under the

agreed-upon schedule. Thus, CPSD agreed to an extension that allowed the Respondents to serve their testimonies on November 18, 2010. Now the Respondents want even more time, and as explained at the last meet and confer, the instant request is not justified. CPSD has to draw the line somewhere.

Respondents also point to Mr. Marmalefsky's vacation as a basis for delaying this proceeding. While CPSD appreciates that counsel do take vacations, and hopes that Mr. Marmalefsky has a restful trip, this fact has no bearing on the issue at hand. Morrison and Foerster, the firm that Verizon has apparently retained, has a huge staff and significant resources. The absence of one lawyer does not prevent the firm from representing its client.

CPSD sees no need to engage in an oral argument about this topic as suggested by the Respondents. Respondents have laid out their position, as has CPSD, in the emails that have been sent to Your Honor. Of course, if Your Honor believes that a discussion is necessary, CPSD will certainly make itself available in the near future.

Accordingly, the November 18, 2010 deadline for Respondents to submit their testimonies should not be extended.

Respectfully submitted,
Edward Moldavsky
On Behalf of CPSD and CPUC Legal Division Management

From: Hanschen, Peter W. [mailto:PHanschen@mofo.com]
Sent: Friday, October 08, 2010 3:51 PM
To: Reed, Jacqueline A.
Cc: brian.cardoza@sce.com; Moldavsky, Ed; matthew@turn.org; anna.kapetanakos@att.com; greta.banks@att.com; Hanschen, Peter W.; stephen.h.kukta@sprint.com; tmacbride@goodinmacbride.com; selbytelecom@gmail.com; anitataffrice@earthlink.net; cindy.manheim@att.com; bill.wallace@verizonwireless.com; jordan.white@pacificorp.com; skuhn@counsel.lacounty.gov; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; ccread@jonesday.com; craig.hunter@wilsonelser.com; hanslaetz@qmail.com; jesus.g.roman@verizon.com; case.admin@sce.com; james.lehrer@sce.com; Robert.F.Lemoine@sce.com; scaine@cainelaw.com; LUrick@SempraUtilities.com; CLDavis@SempraUtilities.com; KO'Beirne@SempraUtilities.com; Greg.Grizzel@fire.ca.gov; michael.bagley1@verizonwireless.com; csimon@bergerkahn.com; smuncey@bergerkahn.com; edward.mcgah@verizonwireless.com; elaine.duncan@verizon.com; bhc4@pge.com; RegRelCPUCCases@pge.com; ELK3@pge.com; hugh.osborne@att.com; keith.krom@att.com; Kristin.L.Jacobson@sprint.com; lhj2@pge.com; CPUCCases@pge.com; rdj@att.com; thomas.selhorst@att.com; info@tobiaslo.com; deyoung@caltel.org; wjp@ghlaw-llp.com; mariacarbone@dwt.com; cem@newsdata.com; cem@newsdata.com; cem@newsdata.com; rdelsman@nextgnetworks.net; californiadockets@pacificorp.com; heide.caswell@pacificorp.com; Daye, Fadi; Tong, Kan Wai; Robertson, Michael; Stepanian, Raffy; bds@cpuc.ca.gov; Reed, Jacqueline A.; Halligan, Julie; Woods, Linda J.; Moshfegh, Pejman; Elliott, Robert A.; Mason, Robert; Simon, Timothy A.; Kenney, Timothy
Subject: Motion for Extension of Time - I.09-01-018

Dear Judge Reed:

In accordance with Rule 11.6 of the Commission's Rules of Practice and Procedure, which allows motions for extension of time to be made orally, by e-mail, or by letter, Joint Respondents, Southern California Edison Company, Verizon Wireless, AT&T, Sprint and NextG Networks, respectfully request that you approve a 30 day extension to the procedural schedule currently being followed by the respective parties in the current investigation (albeit never formally adopted). The schedule currently being followed calls for Joint Respondents' testimonies to be filed on November 18, 2010; CPSD's rebuttal testimony would be due on January 10, 2011, subject to further adjustments yet to be agreed upon by the parties to take into account the effect of the holiday season on the schedule. Joint Respondents request that the procedural schedule be extended by 30 days so that Joint Respondents' testimonies would be due on December 17, 2010 and CPSD's (as well as any other rebuttal testimonies) would be due on February 23, 2011, which represents a 30 day extension plus two weeks to take into account the effect of the holiday season. Discovery on such rebuttal testimonies would close one week later on March 2, 2011. All motions would have to be filed on or before March 14, 2011 and hearings could start anytime thereafter.

ATTACHMENT 24

Hanschen, Peter W.

From: Hanschen, Peter W.

Sent: Monday, October 11, 2010 5:52 PM

To: 'jar@cpuc.ca.gov'; 'Moldavsky, Ed'; 'Morris, Harvey Y.'

Cc: 'brian.cardoza@sce.com'; 'edm@cpuc.ca.gov'; 'matthew@turn.org'; 'anna.kapetanakos@att.com'; 'greta.banks@att.com'; Hanschen, Peter W.; 'stephen.h.kukta@sprint.com'; 'tmacbride@goodinmacbride.com'; 'selbytelecom@gmail.com'; 'anitataffrice@earthlink.net'; 'cindy.manheim@att.com'; 'bill.wallace@verizonwireless.com'; 'jordan.white@pacificorp.com'; 'skuhn@counsel.lacounty.gov'; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; 'rosana.miramontes@doj.ca.gov'; 'thomas.heller@doj.ca.gov'; 'ccread@jonesday.com'; 'craig.hunter@wilsonelser.com'; 'hanslaetz@qmail.com'; 'jesus.g.roman@verizon.com'; 'case.admin@sce.com'; 'james.lehrer@sce.com'; 'Robert.F.Lemoine@sce.com'; 'scaine@cainelaw.com'; 'LUrick@SempraUtilities.com'; 'CLDavis@SempraUtilities.com'; 'KO'Beirne@SempraUtilities.com'; 'Greg.Grizzel@fire.ca.gov'; 'michael.bagley1@verizonwireless.com'; 'csimon@bergerkahn.com'; 'smuncey@bergerkahn.com'; 'edward.mcgah@verizonwireless.com'; 'elaine.duncan@verizon.com'; 'bhc4@pge.com'; 'RegRelCPUCCases@pge.com'; 'ELK3@pge.com'; 'hugh.osborne@att.com'; 'keith.krom@att.com'; 'Kristin.L.Jacobson@sprint.com'; 'lhj2@pge.com'; 'CPUCCases@pge.com'; 'rdj@att.com'; 'thomas.selhorst@att.com'; 'info@tobiaslo.com'; 'deyoung@caltel.org'; 'wjp@ghlaw-llp.com'; 'mariacarbone@dwt.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'cem@newsdata.com'; 'rdelsman@nextgnetworks.net'; 'californiadockets@pacificorp.com'; 'heide.caswell@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'; 'ljw@cpuc.ca.gov'; 'pm2@cpuc.ca.gov'; 'rae@cpuc.ca.gov'; 'rim@cpuc.ca.gov'; 'tas@cpuc.ca.gov'; 'tim@cpuc.ca.gov'

Subject: RE: Motion for Extension of Time - I.09-01-018

Dear Judge Reed,

Respondents are in receipt of the Response by CPSD to Respondents' motion for a 30-day extension to the procedural schedule. We request leave from Your Honor to file this brief reply and request Your Honor convene a telephonic conference to discuss the motion. For the reasons set forth below, CPSD's opposition to the request for an extension of time is unpersuasive and should be disregarded.

First, CPSD asserts that its opposition is primarily based on the critical importance of protecting Californians from what CPSD alleges are "utility caused" incidents and promptly holding utilities accountable. CPSD's argument is not well founded. First, CPSD prematurely and incorrectly assumes the final outcome of this investigation. CPSD also fails to point out that in the mid-September discussions between the Respondents and CPSD regarding a possible extension, CPSD itself proposed a so-called "hybrid" approach that, while denying the Respondents' request for any extension, proceeded to extend its own reply testimony for 30 days, or until February 9, 2011. CPSD's interest in an extension of time for itself is plainly inconsistent with the reasons that it gives for its opposition to Respondents' request.

Second, CPSD states that the Respondents' point to an unspecified notion of "complexity." However, in its own motion of January 14, 2010 in which it sought a three month extension of the due date for filing its testimony (3 times more than Respondents are seeking here), CPSD itself argued: "CPSD notes the **complexity of this matter**. 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." (Footnote omitted; emphasis added) The same argument is true from the Respondents' perspective. Thousands of pages of depositions must be reviewed to ensure accuracy and the preparation of rebuttal testimony. The case remains complex. If anything, it has grown far more complex that it was nine months ago, before CPSD distributed its testimony and before its witnesses were deposed.

Third, CPSD admits that it is providing corrections to the transcripts even as this response is being written. What it doesn't point out is that some of the corrections and explanations are very substantive in nature and in some instances change the very nature of the testimony given at the time of deposition. Respondents must have the opportunity to evaluate these substantive changes and their effect on the overall testimony and discovery. Indeed, this afternoon CPSD circulated three pages' worth of changes to its experts' deposition testimony. The changes were provided in a highly irregular, and in Respondents'

experience, unprecedented manner as a narrative set of purported explanations, rather than line by line or word by word corrections of the transcribed deposition. The effect is more in the nature of supplemental testimony, than transcript corrections. The significance of this highly irregular approach has yet to be analyzed and evaluated.

Fourth, CPSD states that it already has granted Respondents a "significant" extension to allow its deposition specialist to depose its witnesses. This is not the complete story. CPSD fails to point out that Respondents noticed the deposition of all of the witnesses in a timeframe that would not have required any additional time. CPSD, however, stated that some its witnesses would not be available at the noticed time; that they would have to be re-scheduled. Unfortunately this happened to be to a time when Respondents' counsel had made vacation plans and thus the depositions were extended. Moreover, however, CPSD misses the point. The fact of the matter is that the depositions of CPSD's witnesses had to be delayed. As a result, the information that was needed to understand CPSD's case was also delayed. Now that it has been gathered, Respondents need an additional 30 days to understand it and prepare their respective rebuttal cases. In view of the duration of this proceeding to date, the 30-day extension is fully reasonable and proper.

Finally, CPSD argues that an extension should not be granted to accommodate Mr. Marmalefsky's long-planned November vacation because Morrison & Foerster is a large firm that has significant resources. Mr. Marmalefsky has been Verizon Wireless's lead counsel in matters related to the 2007 Malibu Fire since even before the CPSD commenced this proceeding; his active involvement is essential to the preparation of Verizon Wireless's case. It is unreasonable for the CPSD to suggest that one respondent should replace its lead counsel rather than consent to an extension. The parties accommodated Mr. Moldavsky when he requested additional time (in his case 90 days) to get up to speed; the extension requested here is for a far shorter time period.

Respondents' request for a short 30 day extension is reasonable and should be granted. We urge Your Honor to grant this request.

Respectfully submitted,

Peter Hanschen

From: Moldavsky, Ed [mailto:ed.moldavsky@cpuc.ca.gov]
Sent: Monday, October 11, 2010 3:07 PM
To: Reed, Jacqueline A.
Cc: Morris, Harvey Y.; Hanschen, Peter W.; brian.cardoza@sce.com; matthew@turn.org; anna.kapetanakos@att.com; greta.banks@att.com; stephen.h.kukta@sprint.com; tmacbride@goodinmacbride.com; selbytelecom@gmail.com; anitataffrice@earthlink.net; cindy.manheim@att.com; bill.wallace@verizonwireless.com; jordan.white@pacificorp.com; skuhn@counsel.lacounty.gov; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; ccread@jonesday.com; craig.hunter@wilsonelser.com; hanslaetz@qmail.com; jesus.g.roman@verizon.com; case.admin@sce.com; james.lehrer@sce.com; Robert.F.Lemoine@sce.com; scaine@cainelaw.com; LUrick@SempraUtilities.com; CLDavis@SempraUtilities.com; KO'Beirne@SempraUtilities.com; Greg.Grizzel@fire.ca.gov; michael.bagley1@verizonwireless.com; csimon@bergerkahn.com; smuncey@bergerkahn.com; edward.mcgah@verizonwireless.com; elaine.duncan@verizon.com; bhc4@pge.com; RegRelCPUCCases@pge.com; ELK3@pge.com; hugh.osborne@att.com; keith.krom@att.com; Kristin.L.Jacobson@sprint.com; lhj2@pge.com; CPUCCases@pge.com; rdj@att.com; thomas.selhorst@att.com; info@tobiaslo.com; deyoung@caltel.org; wjp@ghlaw-llp.com; mariacarbone@dwt.com; cem@newsdata.com; cem@newsdata.com; cem@newsdata.com; rdelsman@nextgnetworks.net; californiadockets@pacificorp.com; heide.caswell@pacificorp.com; Daye, Fadi; Tong, Kan Wai; Robertson, Michael; Stepanian, Raffy; bds@cpuc.ca.gov; Reed, Jacqueline A.; Halligan, Julie; Woods, Linda J.; Moshfegh, Pejman; Elliott, Robert A.; Mason, Robert; Simon, Timothy A.; Kenney, Timothy
Subject: RE: Motion for Extension of Time - I.09-01-018

Dear ALJ Reed:

CPSD lodges its vigorous objection to the Respondents' motion for an additional "30 day extension" to the procedural schedule for I.09-01-018, i.e.: the Malibu Canyon Fire Investigation. CPSD's opposition to said motion is primarily based on the critical importance of protecting Californians from utility-caused incidents such as the Malibu

ATTACHMENT 25

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]

Sent: Tuesday, October 12, 2010 1:13 PM

To: Reed, Jacqueline A.; Morris, Harvey Y.

Cc: brian.cardoza@sce.com; Hanschen, Peter W.; matthew@turn.org; anna.kapetanakos@att.com; greta.banks@att.com; stephen.h.kukta@sprint.com; tmacbride@goodinmacbride.com; selbytelecom@gmail.com; anitataffrice@earthlink.net; cindy.manheim@att.com; bill.wallace@verizonwireless.com; jordan.white@pacificorp.com; skuhn@counsel.lacounty.gov; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; ccread@jonesday.com; craig.hunter@wilsonelser.com; hanslaetz@qmail.com; jesus.g.roman@verizon.com; case.admin@sce.com; james.lehrer@sce.com; Robert.F.Lemoine@sce.com; scaine@cainelaw.com; LUrick@SempraUtilities.com; CLDavis@SempraUtilities.com; KO'Beirne@SempraUtilities.com; Greg.Grizzel@fire.ca.gov; michael.bagley1@verizonwireless.com; csimon@bergerkahn.com; smuncey@bergerkahn.com; edward.mcgah@verizonwireless.com; elaine.duncan@verizon.com; bhc4@pge.com; RegRelCPUCCases@pge.com; ELK3@pge.com; hugh.osborne@att.com; keith.krom@att.com; Kristin.L.Jacobson@sprint.com; lhj2@pge.com; CPUCCases@pge.com; rdj@att.com; thomas.selhorst@att.com; info@tobiaslo.com; deyoung@caltel.org; wjp@ghlaw-llp.com; mariacarbone@dwt.com; cem@newsdata.com; cem@newsdata.com; cem@newsdata.com; rdelsman@nextgnetworks.net; californiadockets@pacificorp.com; heide.caswell@pacificorp.com; Daye, Fadi; Tong, Kan Wai; Robertson, Michael; Stepanian, Raffy; bds@cpuc.ca.gov; Reed, Jacqueline A.; Halligan, Julie; Woods, Linda J.; Moshfegh, Pejman; Elliott, Robert A.; Mason, Robert; Simon, Timothy A.; Kenney, Timothy

Subject: RE: Motion for Extension of Time - I.09-01-018

Dear ALJ Read:

With Your Honor's permission, CPSD would like to lodge its opposition to the Respondents being granted leave to reply, and notes that it disagrees strongly with all of the Respondents' arguments. However, rather than point out the numerous errors in the Respondents' arguments, CPSD would like the Commission to focus its resources on the basic public safety argument. The Respondents have raised no valid points to counter the proposition that protecting Californians from utility-caused incidents is critical and time-sensitive. CPSD does not doubt that Respondents will want to raise all kinds of arguments in mitigation of their conduct, and has given them ample time to do just that. But we have to draw the line somewhere and we have to move to the accountability stage of this proceeding as expeditiously as possible.

Given that CPSD submitted its testimony on May 3, 2010, the November 18, 2010 deadline for Respondents to submit their testimonies should not be extended. Furthermore, CPSD does not believe that an oral argument would be a good use of resources for this issue, but will make itself available at Your Honor's discretion.

Respectfully submitted,
Edward Moldavsky
Counsel for CPSD

From: Hanschen, Peter W. [mailto:PHanschen@mofo.com]
Sent: Monday, October 11, 2010 5:52 PM
To: Reed, Jacqueline A.; Moldavsky, Ed; Morris, Harvey Y.
Cc: brian.cardoza@sce.com; Moldavsky, Ed; matthew@turn.org; anna.kapetanakos@att.com; greta.banks@att.com; Hanschen, Peter W.; stephen.h.kukta@sprint.com; tmacbride@goodinmacbride.com; selbytelecom@gmail.com; anitataffrice@earthlink.net; cindy.manheim@att.com; bill.wallace@verizonwireless.com; jordan.white@pacificorp.com; skuhn@counsel.lacounty.gov; Marmalefsky, Dan; Peterson, Matthew; Comeau, Michelle N.; rosana.miramontes@doj.ca.gov; thomas.heller@doj.ca.gov; ccread@jonesday.com; craig.hunter@wilsonelser.com; hanslaetz@qmail.com; jesus.g.roman@verizon.com; case.admin@sce.com; james.lehrer@sce.com; Robert.F.Lemoine@sce.com; scaine@cainelaw.com;

ATTACHMENT 26

Hanschen, Peter W.

From: Moldavsky, Ed [ed.moldavsky@cpuc.ca.gov]

Sent: Tuesday, November 30, 2010 7:22 PM

To: Brian Cardoza; Charles Read; TMacBride; Joffe, Steve; Robert Millar

Cc: anna kapetanakos; cindy manheim; Hunter, Craig; Marmalefsky, Dan; kristin l jacobson; Hanschen, Peter W.; Nick.Selby; Morris, Harvey Y.

Subject: Upcoming Depositions in I.09-01-018

Dear Respondents:

Rather than serving deposition notices today, I am sending this note in order to coordinate the upcoming depositions in I.09-01-018. On that topic, I had been contacted on Wednesday, November 24, 2010 (before the Thanksgiving Holiday) by Charlie, Tom and Peter to facilitate the scheduling of said depositions. In response, I can offer the following information:

First, please be aware that the focus shall be on NextG and SCE. To that end, all of the SCE witnesses need to be deposed, including Fred McCollum and Arthur Peralta. Other SCE personnel may also need to be deposed as well, based on information received (or not received). Casey Doherty also needs to be deposed, and CPSD is reviewing the need to depose other NextG witnesses. Mike Bogner and Lupe Hernandez also need to be deposed. Jointly-sponsored witnesses may not get deposed, though a final determination on that has not yet been made.

Second, regarding timing, CPSD would like to have the opportunity to review the responses to the currently-pending data requests, prior to the depositions commencing. CPSD would also like to have the opportunity to review a given prior deponent's rough transcript, before commencing the next deposition. CPSD would like to begin with the SCE witnesses, starting with Fred McCollum. The only exception to this would be Arthur Peralta, who CPSD envisions as being the final deponent.

Third, please be aware that the Respondents' testimonies are still being evaluated, and CPSD may need to depose a second wave of deponents based on information received (or not received). The persons identified above do not constitute an exhaustive list of every individual who may be deposed by CPSD.

Thus, CPSD would like to request that it be provided with dates of availability (in December and January) for the witnesses who have been identified above at your earliest convenience. In providing said dates, please be mindful of the need for CPSD to be given a fair opportunity to review all of the currently-pending data request responses prior to the depositions commencing. Please also be mindful of Rule 13.1(a) of the Commission's Rules of Practice and Procedure which requires ten days notice prior to the date of a hearing, unless public necessity requires a hearing at an earlier date. Of course the end-of-the-year holidays should also be considered. CPSD notes that it has no intention of interfering with anyone's holiday plans, and would certainly not require depositions between December 23, 2010 and January 3, 2011.

Respectfully,

Ed Moldavsky
Staff Counsel
California Public Utilities Commission

ATTACHMENT 27

Direct Number: (213) 243-2818
ccread@jonesday.com

December 3, 2010

Via E-Mail (ed.moldavsky@cpuc.ca.gov) and U.S. Mail

Ed Moldavsky, Esq.
Staff Counsel
California Public Utilities Commission
320 West 4th Street, Suite 50
Los Angeles, CA 90013

Re: Malibu Canyon Fire, OII.09-01-018

Dear Ed:

I write on behalf of Southern California Edison Company and all other Respondents to this proceeding ("Joint Respondents") regarding the schedule for this proceeding.

It appears from your November 29, 2010 email regarding depositions that you do not share the view of Joint Respondents as well as ALJ Reed that CPSD's rebuttal testimony is due on January 10, 2011. Please refer to the statement in ALJ Reed's October 25, 2010 ruling denying Joint Respondents' request for a modification of the schedule CPSD and Respondents had last agreed upon. Our proposal would not only have extended the time for filing of our responsive testimony but would also have extended CPSD's time for filing its rebuttal testimony to February 23, 2011 (as well as certain later dates leading up to the start of hearings). However, ALJ Reed denied our proposal (which you had previously rejected) and in so doing she stated: "The Joint Respondents' request to extend by 30 days, *the procedural schedule currently being followed in Investigation 09-01-018*, is denied" (emphasis added). In other words, both Respondents and CPSD have been ordered to follow the current schedule agreed upon.

That schedule (as specifically called out in Joint Respondents' motion to ALJ Reed and not contradicted in CPSD's opposition) requires CPSD to file its rebuttal testimony on January 10, 2011. The same schedule – which ALJ Reed has ordered to remain in effect -- called for Joint Respondents to serve responsive testimony on November 18, 2010, a date you refused to extend and the date with which we complied. Had you agreed to Joint Respondents' proposed schedule change, CPSD's rebuttal testimony would have been due on February 23, 2011. But you rejected that proposal and ALJ Reed denied our motion.

Your email regarding deposition planning seems to imply that CPSD has no deadline at all for the filing of rebuttal testimony. Furthermore, your stated intention to depose Messrs McCollum and Peralta (neither of whom are testifying witnesses) suggests that CPSD may be

contemplating discovery beyond that necessary to prepare its rebuttal testimony, to which Joint Respondents will object.

If CPSD wishes to seek relief from its January 10, 2010 deadline, it should take immediate steps to do so, starting with a request to meet and confer with Joint Respondents. Otherwise, we are working to complete our DR responses by December 10 and anticipating receipt of CPSD rebuttal testimony on January 10, 2010.

Yours truly,

Charles C. Read

All Respondent Counsel

ATTACHMENT 28

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)

CONSUMER PROTECTION AND SAFETY DIVISION'S NOTICE OF TAKING DEPOSITIONS

TO ALL PARTIES ON SERVICE LIST I.09-01-018:

PLEASE TAKE NOTICE that on: Monday, December 20, 2010, Tuesday, December 21, 2010, and Wednesday, December 22, 2010, the Consumer Protection and Safety Division will take the depositions of Frederick McCollum, Lupe Hernandez, and Casey Doherty.

The deposition of Frederick McCollum will commence at 10:00 a.m. on Monday, December 20, 2010. The deposition of Lupe Hernandez will commence at 10:00 a.m. on Tuesday, December 21, 2010. The deposition of Casey Doherty will commence at 10:00 a.m. on Wednesday, December 22, 2010. These depositions shall be held at the Commission's Los Angeles Office, located at: 320 West 4th Street, Suite 500, Los Angeles, California, 90013.

All of the abovementioned depositions will continue day to day until completed. In the event that the Respondents cannot cause a named deponent to be available on the date listed above, CPSD must be informed of this fact by the close of business on

Thursday, December 9, 2010. Alternate dates for the deposition must be provided by the Respondents at that time.

CPSD requests that Respondents produce to CPSD by noon on the working day prior to each deposition, the following:

1. Each and every document that refers or relates to the utility facilities involved in the Malibu Canyon Fire at issue in this proceeding; which was generated, received and/or reviewed by the deponent.
2. Each and every document that refers to the deponent that refers or relates to the utility facilities involved in the Malibu Canyon Fire at issue in this proceeding.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

Edward Moldavsky

Attorney for the Consumer Protection and Safety Division

California Public Utilities Commission
320 W. 4th St., Suite 500
Los Angeles, CA 90013
Phone: (213) 620-2635
Email: edm@cpuc.ca.gov

December 7, 2010

ATTACHMENT 29

Hanschen, Peter W.

From: Moldavsky, Ed [edm@cpuc.ca.gov]

Sent: Monday, December 13, 2010 6:01 PM

To: KAPETANAKOS, ANNA (Legal); Brian Cardoza; Charles Read; TMacBride; Joffe, Steve; Robert Millar

Cc: cindy manheim; Hunter, Craig; Marmalefsky, Dan; kristin l jacobson; Hanschen, Peter W.; Nick.Selby; Morris, Harvey Y.

Subject: Meet and Confer Regarding I.09-01-018

Dear Respondents:

CPSD is in receipt, and is in the process of reviewing, several correspondences from you, including certain data request responses to CPSD's November 29, 2010 Data Requests. CPSD notes that Respondents objected to and/or did not provide numerous categories of data. Thus, at this time, it is becoming apparent that a meet and confer, or possibly multiple meet and confers, will be necessary to resolve several currently-pending discovery conflicts.

First, CPSD notes that the Joint Respondents have requested a 10-day extension for production of certain documents responsive to CPSD's November 29, 2010 Data Requests. That would result in a due date of December 20, 2010. While CPSD notes that it was not informed of this request prior to the Respondents' December 10, 2010 production, CPSD will nevertheless grant that extension request. CPSD notes that it would be economical and efficient for CPSD to have had the opportunity to review the entirety of the Respondents' production, prior to meeting and conferring about disputed items. Thus, CPSD will not seek a meet and confer until after it receives the Respondents' full production. Further, with the Holiday Season approaching, the meet and confer will likely need to occur in early 2011.

Regarding the upcoming depositions, CPSD renews its request (copied below) for the dates of availability for the persons identified in CPSD's November 30, 2010 email. CPSD had wanted to receive the dates of availability requested in its November 30, 2010 email prior to sending out Notices of Depositions. However, having not received that information from the Respondents, CPSD initiated the process by noticing three depositions. Of those three, only one deposition date was verified (Frederick McCollum - December 20, 2010).

Regarding Lupe Hernandez, had CPSD received dates of availability from the Respondents in response to its November 30, 2010 email, perhaps an earlier deposition date would have been possible. However, because CPSD had not received that information from the Respondents, the deposition will clearly need to be scheduled for early next year. That deposition date may need to be coordinated with other depositions that have not yet been scheduled because CPSD has not yet received all of the requested dates of availability.

Regarding Casey Dohery, CPSD has been appraised by NextG that said witness will not be produced by the Respondents. CPSD strongly disagrees with this approach, as Casey Doherty is not only referenced in the Respondents' testimony (See SCE-3, Testimony of Larry Chow, at Exhibit 6) but was also a witness regarding SCE's allegation of NextG's pole overloading. The matter of procuring Casey Doherty's attendance at a deposition, as well as the deposition itself, will need to occur prior to CPSD's rebuttal testimony being submitted. (Regarding jurisdiction, see, e.g., Cal. Pub. Util. Code sect. 2112.)

CPSD would also note that the Respondents may have a misperception regarding the due date of CPSD's rebuttal testimony. CPSD has reviewed the Respondents' prior request for an extension and found the following language:

"The schedule currently being followed calls for Joint Respondents' testimonies to be filed on November 18, 2010; CPSD's rebuttal testimony would be due on January 10, 2011, **subject to further adjustments yet to be agreed upon by the parties to take into account the effect of the holiday season on the schedule.**

...

Third, as noted above, the year end holiday season will come in the midst of the schedule currently being followed. While CPSD and the Joint Respondents have agreed to adjust the schedule to take account of

responses prior to the depositions commencing. Please also be mindful of Rule 13.1(a) of the Commission's Rules of Practice and Procedure which requires ten days notice prior to the date of a hearing, unless public necessity requires a hearing at an earlier date. Of course the end-of-the-year holidays should also be considered. CPSD notes that it has no intention of interfering with anyone's holiday plans, and would certainly not require depositions between December 23, 2010 and January 3, 2011.

Respectfully,

Ed Moldavsky
Staff Counsel
California Public Utilities Commission

ATTACHMENT 30

Hanschen, Peter W.

From: Hanschen, Peter W.
Sent: Thursday, December 16, 2010 10:03 AM
To: 'edm@cpuc.ca.gov'
Cc: 'anna.kapetanakos@att.com'; 'cindy manheim'; 'ccread@jonesday.com'; 'Brian.Cardoza@sce.com'; 'TMacBride'; 'Joffe, Steve'; 'Hunter, Craig'; 'rmillar@nextgnetworks.net'; 'Nick.Selby'; 'kristin.l.jacobson@sprint.com'; Marmalefsky, Dan
Subject: Procedural Schedule

Dear Ed,

This e-mail addresses that portion of your December 13, 2010 e-mail regarding the due date for CPSD's reply testimony. The Joint Respondents continue to believe that the ALJ's October 25, 2010 Ruling Denying Motion to Extend Procedural Schedule directed the parties to follow the procedural schedule that is currently being followed by the respective parties and that the only agreed upon date for CPSD's reply case is January 10, 2011.

Nevertheless, we acknowledge that the parties discussed the possibility of extending the due date for the CPSD's reply testimony "to take into account the effect of the holiday season on the schedule," although we never reached a common understanding with respect to the length of such an extension. Now, however, we have the benefit of your November 30, 2010 e-mail in which you outlined your discovery plan and provided information with respect to the "holiday season" period. In that e-mail, you state that CPSD "has no intention with interfering with anyone's holiday plans, and would certainly not require depositions between December 23, 2010 and January 3, 2011." The Joint Respondents believe this eleven day period is a reasonable definition of the "holiday season." Based on your definition the Joint Respondents would be willing to agree to an extension of the due date for CPSD's reply testimony by a corresponding eleven days until January 21, 2011.

While the Joint Respondents believe that the eleven day extension is a fair resolution of our past discussions and is consistent with the ALJ's directive that the Commission will be focusing on "moving forward towards resolving this investigation" any further extension beyond that necessary "to take into account the effect of the holiday season on the schedule" would be contrary to ALJ Reed's October 25, 2010 Ruling. In this regard, we specifically note that your December 13, 2010 e-mail states that certain documents were not received by CPSD as part of the Respondents' December 10, 2010 data response. We believe that you are referring to the documents from the Joint Respondents' wind experts Dr. Peterka and Mr. Rosenthal. As previously noted, these documents are voluminous and were difficult to produce in the expedited nine working day period between CPSD's data request and the requested response date. Furthermore, the slight delay in producing these documents should not impede the preparation of CPSD's reply testimony or justify any further extension of the schedule in as much as your November 30, 2010 e-mail did not indicate that CPSD intended to depose the jointly sponsored expert witnesses. Joint Respondents would oppose any extension beyond the extension to January 21, 2011 discussed above.

Regards,

Peter Hanschen
On behalf of Joint Respondents

ATTACHMENT 31

Hanschen, Peter W.

From: Morris, Harvey Y. [harvey.morris@cpuc.ca.gov]

Sent: Wednesday, December 22, 2010 11:33 AM

To: Nick.Selby; Moldavsky, Ed; Moldavsky, Ed

Cc: Charles Read; Hanschen, Peter W.; anna.kapetanakos@att.com; cindy.manheim@att.com; tmacbride@goodinmacbride.com; Joffe, Steve; Hunter, Craig; Kristin.L.Jacobson@sprint.com; Morris, Harvey Y.

Subject: meet and confer

I believe that yesterday's extensive conference call after the deposition was a meet-and –confer session on the schedule for this OII. I think that the only things we did agree on was the scheduled January 5 meet-and-confer on data requests at 2:00 p.m., the agreement that Charlie Read and I discussed to have a meet-and-confer on the motion to compel re: McCollum's deposition (after we receive the transcript) and the earlier agreement with AT&T to conduct the deposition during the first week of January. Also, after CPSD made it crystal clear yesterday of depositions that it still intended (which we thought was clear in our 11/30 e-mail), Charlie Read told us he would get back to us on availability of SCE witnesses for depositions. Notwithstanding the above, and the numerous data reponses we still had not received, CPSD was clear yesterday that we do not believe January 21 is a reasonable date to expect CPSD's rebuttal testimony as Respondents had proposed. In addition, due to our recent discovery of the spoilage of evidence issue which I discussed yesterday, by all indications the reaction I received was that a consensus could not be reached on the schedule of postponing CPSD's rebuttal until at least 3 more months, which we feel we would need. Thus, I do not believe we reached any consensus on the schedule for the remainder of the hearing, including the due date for CPSD's rebuttal testimony. Consequently, I intend to request a prehearing conference in this case in January, rather than be beholden to a January 21, 2011 date, to which we never agreed and could not possibly meet. If you want to discuss this with one more meet-and –confer session by phone, I am available today or tomorrow for up to one hour. Either way, I feel compelled to request the ALJ Reed and/or Kenney to set a prehearing conference in January, 2011.
Harvey Y. Morris
Assistant General Counsel
Representing CPSD

From: Nick.Selby [mailto:selbytelecom@gmail.com]
Sent: Tuesday, December 21, 2010 3:46 PM
To: Moldavsky, Ed; Moldavsky, Ed; Morris, Harvey Y.
Cc: 'Charles Read'; 'Hanschen, Peter W.'; anna.kapetanakos@att.com; cindy.manheim@att.com; tmacbride@goodinmacbride.com; 'Joffe, Steve'; 'Hunter, Craig'; Kristin.L.Jacobson@sprint.com
Subject: Efforts to Contact Mr. Mike Bogner

Dear Ed,

As a follow-up to the conversation we had earlier today, I am sending this email to correct certain information provided by Sprint in its December 10, 2010 Response to CPSD's November 29, 2010 Data Requests to Sprint Telephony PCS, L.P. ("Sprint's Response").

On page 39 of Sprint's Response, we provided the following number, (818) 427-7604, as the telephone number of Mr. Mike Bogner. This information, however, is not correct. The stated number is instead the number of Mr. Malcolm Brown, a witness of Verizon Wireless (a person whom Sprint has not contacted, except this afternoon in attempting to reach Mr. Bogner). It appears that the contact information was inadvertently mixed up.

We apologize for the inadvertent error. As you requested, we are attempting to locate, if at all possible, the address of Mr. Bogner. We will keep you apprised of our efforts in this regard. If we learn the correct telephone number of Mr. Bogner as well, we will also report that

information to you.

Thank you for your attention to this matter.

Nick Selby

Earl Nicholas Selby
Law Offices of Earl Nicholas Selby
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Palo Alto, CA 94301
Telephone: (650) 323-0990
Facsimile: (650) 325-9041
Email: selbytelecom@gmail.com
http://www.selbylaw.com

Attorney for Sprint Telephony PCS, L.P.

2007
2008
2009
2010
2011
2012
O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M
10-21-07 -- Fire
11-8 -- Tong inspects at SCE warehouse, formulates 92.4 mph Theory
CPSD INVESTIGATION (1YEAR)
10-21 CPSD issues its Incident Investigation Report, using 92.4 mph Theory
FIRE SEASON 1
2-2 -- CPUC releases OII, attaching CPSD Incident Investigation Report
4-20 -- Respondents respond to OII
5-20 -- Parties submit an agreed-upon schedule to ALJ
FIRE SEASON 2
CPSD PRINCIPAL DISCOVERY (18 MONTHS)
5-3 -- CPSD files its Direct Testimony, adhering to the 92.4 mph Theory
FIRE SEASON 3
11-18 -- Respondents file their Reply Testimony
CPSD REBUTTAL DISCOVERY
4-21 -- CPSD's requested extended time to file Rebuttal Testimony
FIRE SEASON 4
HEARINGS + APPEALS

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the **OPPOSITION OF JOINT RESPONDENTS TO THE CONSUMER PROTECTION AND SAFETY DIVISION'S MOTION FOR A CONTINUANCE OF SCHEDULE** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated. Executed this **8th day of January, 2011** at Rosemead, California.

/s/ Andrea Moreno

Andrea Moreno, Case Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

CPUC Home

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