

**SETTLEMENT AGREEMENT BETWEEN THE CONSUMER PROTECTION
AND SAFETY DIVISION OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND SAN DIEGO GAS & ELECTRIC COMPANY REGARDING
I.08-11-006 AND I.08-11-007; THE ORDERS INSTITUTING INVESTIGATION
("OII") INTO THE WITCH, RICE AND GUEJITO FIRES**

RECITALS

A. The Parties to this Settlement Agreement are the Consumer Protection and Safety Division of the California Public Utilities Commission ("CPSD") and San Diego Gas & Electric Company ("SDG&E").

B. The CPSD is a Division of the California Public Utilities Commission charged with enforcing compliance with the Public Utilities Code and other relevant utility laws, the Commission's rules, regulations, orders and decisions. CPSD is also responsible for investigations of utility incidents, including fires, and assisting the Commission in promoting public safety.

C. SDG&E is a public utility that provides gas and electric service to 3.4 million consumers in San Diego and southern Orange counties. The utility's service area spans 4,100 square miles.

D. CPSD has reported that on October 21, 2007, SDG&E's 69 kV overhead conductors between SDG&E poles Z416675 and Z416676 contacted each other during Santa Ana wind conditions, starting a fire. The resultant fire came to be known as the Witch Fire. According to the CPSD Report issued on September 2, 2008, SDG&E was in violation of General Order ("GO") 95, Rules 31.1 and 38 at the time of the fire.

E. CPSD has also reported that on October 22, 2007, a sycamore tree limb broke and fell on SDG&E's 12 kV overhead conductors between SDG&E poles 213072 and 112340, causing the conductors to break and fall to the ground. The resultant fire

came to be known as the Rice Fire. According to the CPSD Report issued on September 2, 2008, SDG&E was in violation of GO 95, Rule 31.1, at the time of the fire.

F. CPSD has also reported that on October 22, 2007, a Cox Communications lashing wire contacted SDG&E's 12 kV conductor between SDG&E poles P196387 and P196394. The resultant fire came to be known as the Guejito Fire.

G. According to the CPSD Report issued on September 2, 2008, regarding all of the fires, CPSD reported that SDG&E had failed to cooperate with the CPSD investigation as required by law.

H. In the Report that was issued on September 2, 2008, CPSD made the following recommendations based on its investigations: 1) formal Order Instituting Investigations ("OII's") be opened by the CPUC in regards to the Witch, Rice and Guejito Fires, 2) a formal Order Instituting Rulemaking ("OIR") be opened by the CPUC in order to clarify and revise safety rules related to utility infrastructure, and 3) a survey of transmission and distribution facilities be conducted, along with other procedural reviews, by SDG&E.

I. On November 6, 2008, the Commission issued I.08-11-007, an OII into the Guejito Fire to determine whether Cox and/or SDG&E violated any provision of the Public Utilities Code, general orders, other rules, or requirements in regards to: 1) utility facilities which have been linked to the October 2007 Guejito Fire; and 2) failure to cooperate with CPSD. The Commission ordered both respondents (Cox and SDG&E) to appear and show cause as to why they have not committed the alleged violations and/or allowed the unsafe conditions to occur. The Commission ordered both respondents to respond to the questions contained in the OII, as well as an attached Data Request.

J. On November 6, 2008, the Commission issued I.08-11-006, an OII into the Witch and Rice Fires to determine whether SDG&E violated any provision of the Public Utilities Code, general orders, other rules, or requirements in regards to: 1) utility facilities which have been linked to the October 2007 Witch and Rice Fires; and 2) failing to cooperate with the CPSD. The Commission ordered SDG&E to appear and show cause as to why it should not be found in violation of the alleged violations and/or allowing the unsafe conditions to occur. The Commission ordered SDG&E to respond to the questions contained in the OII, as well as an attached Data Request.

K. The OIIs put SDG&E on notice that the Commission could invoke the provisions of Public Utilities Code §§ 2107 and 2108.

L. On November 6, 2008, the Commission issued R.08-11-005, a statewide OIR, to consider whether the Commission's existing rules and regulations designed to protect the public from potential hazards associated with electric lines and Communication Infrastructure Provider ("CIP") facilities on joint use transmission and distribution poles, including GOs 95, 128 and 165, should be revised or clarified and whether any new rules should be adopted to address fire safety and the requisite level of cooperation with a CPSD investigation. On August 25, 2009, the Commission issued its Phase 1 Decision in the statewide Electric Safety OIR. CPSD believes that the safety improvements occurring due to the Commission's OIR process are addressing some aspects of the issues identified in the Witch, Rice, and Guejito investigations.

M. On January 8, 2009, SDG&E responded to the questions posed in both OIIs (I.08-11-006 and I.08-11-007) as well as the OIIs' attached data requests. SDG&E denied the allegations that it violated the safety General Orders and other laws and rules.

N. The testimony submitted in this matter by CPSD and SDG&E is referenced in Appendix A.

DEFINITION

In this agreement, Final Approval refers to the date that this Settlement Agreement is approved by the Commission, and does not include any additional time that may be required to address any applications for rehearing or appeals.

AGREEMENT

In order to avoid the risks and costs of further litigation, SDG&E and CPSD have agreed to the following terms and conditions as a complete and final resolution of all disputed issues in these investigations.

1) **Intent of Settlement Agreement.** This Settlement Agreement embodies the entire understanding of the Settling Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements, or understandings among the Settling Parties. The Settlement Agreement may be amended only by a written agreement signed by all the Settling Parties. The Settling Parties have bargained in good faith to achieve this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. Each of the Settling Parties has contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of the Settlement Agreement shall be construed against any party because that party or its counsel drafted the provision.

2) **Apology Regarding Lack of Cooperation.** SDG&E acknowledges and understands its obligation and duty to respond promptly to Commission requests for

access to information and utility employees. SDG&E admits that its efforts fell short of meeting this obligation and duty in connection with the CPSD's investigations into the Witch, Rice, and Guejito fires and apologizes for permitting this to happen. As stated in the Remedial Measures section of this Agreement, SDG&E will conduct additional training to reinforce this obligation and duty.

3) **Admissions Regarding the Accident Reporting Requirements.** SDG&E admits that it failed to provide the Commission with a 20-day follow-up letter, as required by the Accident Reporting Requirements, regarding the Witch, Rice, and Guejito fires. Although SDG&E and CPSD disagree as to whether SDG&E failed to comply with the two-hour reporting requirement, SDG&E will provide its employees with additional training regarding the two-hour reporting requirement. The training will also address the required 20-day follow-up report and the Accident Reporting Requirements generally. The Accident Reporting Requirements referenced in this Settlement Agreement are contained in D.06-04-055, Appendix B, as modified by Resolution E-4184.

4) **No Admission.** The Settling Parties agree that by entering into this settlement SDG&E does not admit to any violations of the safety General Order provisions or related statutory requirements.

5) **Without Prejudice to the Catastrophic Event Memorandum Account ("CEMA") Proceeding.** SDG&E and CPSD enter into this Settlement Agreement without prejudice to any positions, including positions related to OII-related evidence, that any party might take in any other proceeding, including but not limited to SDG&E's CEMA proceeding (A.09-03-011) and any Commission proceedings relating in any way

to the Witch, Rice, and Guejito fires or to the remedial measures contained in this Settlement Agreement.

6) **Without Prejudice to the Civil Litigation related to the Witch, Rice, and Guejito Fires.** SDG&E and CPSD enter into this Settlement Agreement without prejudice to positions that any party, including civil plaintiffs, might take in the civil litigation related to the Witch, Rice, and Guejito fires. Thus, this Settlement Agreement is without prejudice to SDG&E or any other person or party in any other pending or potential civil actions.

7) **Remedial Measures.**

a. **Estimated Costs of Remedial Measures.** The fire-related safety remedial measures described below have an estimated cost of approximately several million dollars on an annual basis. This cost estimate is non-binding for both CPSD and SDG&E for positions they might take in future proceedings.

b. **Training Regarding Responding to CPSD Investigations and the Accident Reporting Requirements.** SDG&E will conduct training regarding responding to CPSD investigations. SDG&E also commits to provide additional training for its employees to ensure that the mandates of the Accident Reporting Requirements are followed. Successful completion of the trainings shall be mandatory for relevant staff. The investigation training shall remind employees about the need to respond to CPSD investigations in a thorough, timely, and complete manner with follow-up as necessary, including trainings on measures that were adopted in the Electric Safety OIR, R.08-11-005, D.09-08-029 (i.e.: General Order 95, Rule 19: "Cooperation with Commission Staff and Preservation of Evidence"). The Accident Reporting Requirements training shall

remind SDG&E employees of their duty (1) to report a reportable incident to CPSD within two to four hours as specified in the Accident Reporting Requirements and (2) their duty to submit the necessary follow up report regarding the incident as specified in the Accident Reporting Requirements. A lesson plan, all other training materials, and the identities of training personnel shall be provided to CPSD.

c. **Vegetation Management and General Order 95 Training.** SDG&E commits to provide additional training for its employees and agents (such as Davey Tree) to ensure that its employees and agents are familiar with the tree inspection/trimming and vegetation management processes and additional requirements developed for reporting and resolution of safety hazards discovered (as set forth in R.08-11-005, D.09-08-029, pp. 17-22, Section 5.3). SDG&E commits to provide additional training for its employees and agents to ensure that safety hazards, including clearance violations and broken lashing wires, on electric and CIP facilities are identified and remedied in order to ensure public safety. Successful completion of the training shall be mandatory for relevant staff. A lesson plan, all other training materials, and the identities of training personnel shall be provided to CPSD.

d. **Compliance Inspection, Supplemental Quality Assurance/Quality Control Inspections and Wind Loading Criteria.**

(1) Pursuant to the CPSD recommendation in the CPSD Report dated September 2, 2008, SDG&E conducted ground patrols and aerial inspections of overhead transmission and distribution facilities within the Highest Risk Fire Areas (“HRFAs”) of its service territory and repaired infractions.

(2) Until the end of 2016, SDG&E shall conduct Supplemental Quality Assurance/Quality Control inspections on a three-year cycle in the HRFAs for its distribution and transmission systems commencing with inspections completed in 2008. In the event that an HRFA is new, or had been removed in a given year, and then brought back in a subsequent year, that HRFA shall be subject to a Supplemental Quality Assurance/Quality Control inspection that year. A Supplemental Quality Assurance/Quality Control inspection is a "Detail" inspection that seeks to identify and correct numerous conditions including, but not limited to, slack span/sag, inadequate phase separation, crossarm damage, tree clearances, damaged poles, equipment, or conductors, and other conditions that could pose a potential safety or reliability impact to the fire risk areas.

(3) For 69 kV transmission lines, three-dimensional laser scanning surveys ("LiDAR") focused on ensuring compliant conductor clearances in the HRFAs shall also be conducted on a three-year cycle (two cycles from 2010-2016). Each year approximately 1/3 of the 69 kV transmission lines within the HRFAs will be surveyed using LiDAR and analyzed for potential conductor clearance issues. As transmission lines are hardened, the need to perform aerial surveys of those lines shall be reassessed.

(4) On a going forward basis, SDG&E shall adopt the application of National Electric Safety Code ("NESC") 250C design criteria for its steel poles and supported facilities within the HRFAs. The criteria ensure that facilities are designed to withstand the wind load associated with a basic wind speed of 85 miles per hour. While the NESC 250C criteria contain an exclusion for structures less than 60 feet high, SDG&E shall not apply that exclusion. This requirement is supplemental to SDG&E's already existing

obligations regarding GO 95 and other relevant safety provisions. SDG&E will also evaluate existing steel poles that were installed prior to the adoption of the NESC 250C criteria and make feasible upgrades to the existing poles as appropriate (such as installing wind guys).

e. **Clarification Regarding Documents and Information that will be Made Available in Future Commission Investigations.** SDG&E agrees with CPSD that in future Commission investigations, documents, portions of documents and information that are factual in character and do not reflect an attorney's impressions, conclusions, opinions, legal research, or theories fall outside the scope of the attorney work product doctrine. The fact that an attorney ordered that such documents be created or information be gathered does not in and of itself mean that the attorney work product doctrine applies. A non-exclusive list of examples that will in most instances fall outside the scope of the attorney work product doctrine includes: logs, outage reports, photographs, surveys, the identity and location of physical evidence, and the identity and location of witnesses. This provision shall not be considered a waiver of SDG&E's or CPSD's right to assert the attorney work product doctrine or the attorney client privilege. This provision shall not have any application outside the context of Commission investigations and proceedings.

f. **Coordination with Communication Infrastructure Providers ("CIPs").**

SDG&E will develop and implement protocols to improve communication and coordination with CIPs regarding inspection and maintenance of facilities on joint use

poles. Any adopted protocols related to CIPs shall be consistent with the Electric Safety OIR (R.08-11-005) requirements.

8) **Settlement Payment.** Within 60 days of Commission approval of the Settlement Agreement, SDG&E will pay \$14,350,000 to the General Fund of the State of California. Within 10 days of its remittal, SDG&E shall provide photocopies of the settlement payment check to CPSD. SDG&E shall reimburse CPSD up to an additional \$400,000 in order to implement a computer work module designed to assist CPSD in future audits and investigations of utility safety hazards and incidents. SDG&E shall remit any unused balance of the \$400,000 established for that purpose to the General Fund of the State of California within 60 days of being directed to do so by CPSD.

9) **Testimony.** The Settling Parties agree that the prepared testimony and other documents identified in Appendix A should be identified as exhibits in these proceedings and received in evidence. Receipt of the testimony into evidence in these proceedings shall not be deemed an admission by SDG&E in any other proceeding. SDG&E expressly reserves its right to object to the admission of any testimony identified in Appendix A in any other proceeding, including in any civil litigation related to the Witch, Guejito, and Rice fires. In the event that this Settlement Agreement is not approved by the Commission and the issues in these proceedings go to evidentiary hearings, the Settling Parties reserve the right to object to the admissibility of any party's testimony or portion thereof.

10) **Approvals.** After signing this Settlement Agreement, Parties shall actively support prompt approval of the Settlement Agreement, including written filings, appearances, and other means as may be needed to obtain the necessary approvals. The

Settling Parties agree that if the Commission does not approve the Settlement Agreement unconditionally and without modification, any party may, in its sole discretion, elect to terminate the Settlement Agreement. If the Settlement Agreement is terminated, the Settling Parties shall request that the issues in these OIIs be heard at the earliest convenient time.

11) **Compromise.** The Settling Parties agree that this Settlement Agreement represents a compromise, not agreement or endorsement of disputed facts and law, and the Settlement Agreement does not constitute a precedent regarding any principle or issue in these proceedings or any future proceeding.

12) **Agreement Not to Seek Ratepayer Reimbursement.** SDG&E will not seek to recover any portion of the settlement payment described in Paragraph 8 above in any future application, including applications it might make to recover in rates payments in connection with the civil fire litigation over and above its insurance coverage.

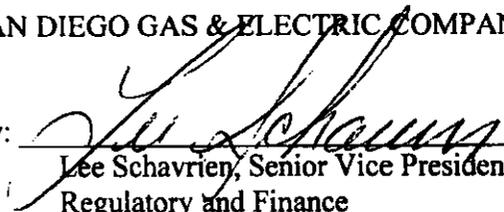
13) **Governing Law.** This Settlement Agreement shall be governed by the laws of the State of California.

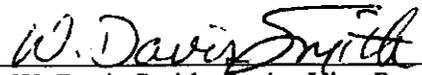
14) **Successors and Assigns.** The rights conferred and obligations imposed on any party by this Settlement shall inure to the benefit of or be binding on that party's successors in interest or assignees as if such successor or assignee was itself a party hereto.

15) **Counterparts.** This Settlement Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

Dated: October 30, 2009 SAN DIEGO GAS & ELECTRIC COMPANY

By: 
Lee Schavrien, Senior Vice President
Regulatory and Finance

By: 
W. Davis Smith, Senior Vice President
and General Counsel

Dated: _____ CONSUMER PROTECTION & SAFETY DIVISION

By: _____
Richard W. Clark, Director

By: _____
Ed Moldavsky, Staff Counsel

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this
Settlement Agreement.

Dated: _____ SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Lee Schavrien, Senior Vice President
Regulatory and Finance

By: _____
W. Davis Smith, Senior Vice President
and General Counsel

Dated: October 30, 2008 CONSUMER PROTECTION & SAFETY DIVISION

By: _____
Richard W. Clark, Director

By: Edward Moldavsky
Ed Moldavsky, Staff Counsel

APPENDIX A

I.08-11-006 (Witch/Rice) and I.08-11-007 (Guejito)

CPSD/SDG&E TESTIMONY LIST FOR SETTLEMENT AGREEMENT

PARTY	DESCRIPTION	DATE
SDG&E	SDG&E Responses to Witch/Rice Oil Questions	1/8/09
SDG&E	SDG&E Responses to Guejito Oil Questions	1/8/09
SDG&E	SDG&E Supplemental Responses to Witch/Rice Oil Questions	1/23/09
SDG&E	SDG&E Supplemental Responses to Guejito Oil Questions	1/23/09
SDG&E	SDG&E Second Supplemental Responses to Witch/Rice Oil Questions	1/26/09
SDG&E	SDG&E Second Supplemental Responses to Guejito Oil Questions	1/26/09
SDG&E	SDG&E Corrected Response to Guejito Oil Question	2/25/09
CPSD	CPSD Supplemental Direct Testimony -- Guejito	3/6/09
CPSD	CPSD Supplemental Direct Testimony -- Witch/Rice	3/20/09
SDG&E	SDG&E Direct Testimony -- Guejito	5/18/09
SDG&E	SDG&E Direct Testimony -- Witch/Rice	6/5/09
CPSD	CPSD Rebuttal Testimony -- Guejito	6/8/09
CPSD	CPSD Rebuttal Testimony -- Witch/Rice	6/22/09

(END OF ATTACHMENT I)

ATTACHMENT II

**SETTLEMENT AGREEMENT BETWEEN
COXCOM, INC., COX CALIFORNIA TELCOM, L.L.C. AND THE
CONSUMER PROTECTION AND SAFETY DIVISION OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

In order to avoid the costs and risks of further litigation and to facilitate the more rapid implementation of additional measures designed to address potential safety hazards, the parties to this agreement have agreed to the following terms and conditions as a complete and final resolution of all issues between CPSD and Cox in I.08-11-007, the California Public Utilities Commission's pending investigation regarding the Guejito Fire.

1. RECITALS

1.1 The parties to this Settlement Agreement ("Settlement Agreement") are CoxCom, Inc. and Cox California Telecom, L.L.C. (U-5684-C) ("Cox") and the Consumer Protection and Safety Division ("CPSD") of the California Public Utilities Commission (collectively "Parties" or "Settling Parties").

1.2 The CPSD is a division of the California Public Utilities Commission with responsibility for enforcing compliance with the Commission's rules, regulations, orders, and decisions.

1.3 Cox California Telecom, L.L.C. is a telephone corporation with authority from the Commission to provide telecommunications services to the public in California. It has been assigned U number U-5684-C by the Commission. CoxCom, Inc. is the parent entity of the Cox California Telecom, L.L.C.

1.4 On October 22, 2007, a fire which has since become known as the Guejito fire ignited during Santa Ana wind conditions in the San Pasqual Valley near Guejito Creek in San Diego County. The fire ignited near the aerial facilities of Cox and San Diego Gas and Electric Company ("SDG&E").

1.5 CPSD conducted an investigation into the Guejito fire and on September 2, 2008, issued a report concerning the incident ("CPSD Report").¹ The CPSD Report asserted that the Guejito fire ignited as a result of contact between an SDG&E 12 kV conductor and a Cox lashing wire during the Santa Ana wind conditions. The CPSD Report further asserted that Cox had failed to adequately inspect and maintain the lashing wire at issue in violation of the Commission's General Order ("G.O.") 95, Rules 31.1 and 31.2. The CPSD Report also asserted that SDG&E had failed to cooperate with CPSD's investigation.

1.6 In the CPSD Report, CPSD recommended that the Commission issue an Order Instituting Investigation ("OII") to determine whether Cox violated G.O. 95, Rules 31.1 and 31.2. CPSD also recommended that the Commission issue a separate Order Instituting Rulemaking ("OIR") to consider whether G.O. 165 requirements or similar maintenance and inspection requirements should be applied to all Communications Infrastructure Providers ("CIPs").

1.7 On November 6, 2008 the Commission issued I.08-11-007,² instituting a formal investigation to determine whether Cox and/or SDG&E violated provisions of the Public Utilities Code, general orders, or other rules or requirements of the Commission and ordering Cox to show cause as to why it should not be found in violation of provisions of the California Public Utilities Code and rules and regulations of the Commission, including Public Utilities Code § 451 and G.O. 95, Rules 31.1, 31.2, and 38. Cox was also required to answer certain questions and data requests in the OII and was placed on notice that fines may be imposed pursuant to

¹ "California Public Utilities Commission Consumer Protection and Safety Division, Utilities Safety and Reliability Branch, Investigation of the Guejito Fire, San Pasqual, California, October 2007," Prepared by Mahmoud (Steve) Intably, Utilities Engineer (September 2, 2008), filed as an attachment to "Report of the Consumer Protection and Safety Division Regarding the Guejito, Witch and Rice Fires" (Sept. 2, 2008).

Public Utilities Code §§ 2107 and 2108. Cox was further put on notice that the Commission may order the implementation of operational and policy measures designed to prevent future hazards pursuant to Public Utilities Code § 761.

1.8 On November 6, 2008 the Commission also issued a separate Order Instituting Rulemaking (“OIR”), R.08-11-005,³ to consider whether the Commission’s existing rules and regulations designed to protect the public from potential hazards associated with electric lines and CIP facilities on joint use transmission and distribution poles, including G.O.s 95, 128 and 165, should be revised or clarified and whether any new rules should be adopted to address fire safety associated with joint use utility poles.

1.9 On January 8, 2009, Cox served a Response to I.08-11-007 and its answers to questions and data requests in the OII (“Response”).⁴ In its Response, Cox disagreed with the CPSD Report and the Commission’s OII and asserted, among other claims, that there was no evidence that the Cox lashing wire was broken prior to the ignition of the Guejito Fire rather than as a consequence of arcing between the SDG&E and intact Cox fiber optic cable assembly during the Santa Ana wind conditions, and that its facility’s design, construction, inspection and maintenance policies and practices were reasonable, prudent and in compliance with applicable rules and requirements of the Public Utilities Code and the Commission at the time, including G.O. 95, Rules 31.1, 31.2 and 38.

² *Investigation on the Commission’s Own Motion into the Operations and Practices of Cox Communications and San Diego Gas & Electric Company Regarding the Utility Facilities Linked to the Guejito Fire of October 2007*, I.08-11-007 (November 6, 2008).

³ *Order Instituting Rulemaking To Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities*, R.08-11-005 (November 6, 2008).

⁴ *Response of CoxCom, Inc. and Cox California Telecom L.L.C. (U-5684-C) to Questions and Data Requests in OII* (January 8, 2009).

1.10 A prehearing conference in I.08-11-007 was held on January 12, 2009 and further prehearing conferences were held in the matter on June 29, 2009 and July 13, 2009 presided over by Administrative Law Judge (“ALJ”) Jacqueline A. Reed.

1.11 On March 6, 2009, CPSD served Supplemental Direct Testimony⁵ in I.08-11-007. In its Supplemental Direct Testimony, CPSD testified that the Guejito fire ignited as a result of contact between an SDG&E 12 kV conductor and Cox lashing wire during Santa Ana wind conditions and that Cox failed to adequately inspect and maintain its facilities in violation of Public Utilities Code § 451, as well as G.O. 95, Rules 31.1 and 31.2. CPSD also testified that both Cox and SDG&E violated G.O. 95 Rule 38 requirements regarding clearances between SDG&E’s conductors and Cox’s fiber optic cable assembly in the vicinity of the origin of the Guejito Fire.

1.12 On May 5, 2009, an Assigned Commissioner’s Ruling and Scoping Memo was issued setting forth the scope of the issues to be considered in I.08-11-007 and denying Cox’s motion to exclude the cause of the Guejito Fire from the proceeding.⁶

1.13 On May 18, 2009 Cox served direct testimony in I.08-11-007 in which it disputed the allegations contained in CPSD’s Supplemental Direct Testimony, including CPSD’s testimony that Cox violated Public Utilities Code § 451 and G.O. 95 Rules 31.1, 31.2, and 38.⁷

1.14 On June 8, 2009, CPSD served Rebuttal Testimony in I.08-11-007. In its Rebuttal Testimony, CPSD disputed the bases of Cox’s and SDG&E’s direct testimonies.

⁵ *Supplemental Direct Testimony of the Consumer Protection and Safety Division Regarding the Formal Guejito Fire Investigation*, I.08-11-007 (March 6, 2009).

⁶ *Assigned Commissioner’s Ruling on Motion for Clarification and Scoping Memo* (May 5, 2009).

⁷ *Direct Testimony of CoxCom, Inc. and Cox California Telcom, L.L.C. (U-5684-C)* (May 18, 2009).

2. AGREEMENT

In order to avoid the costs and risks of further litigation and to facilitate the more rapid implementation of additional measures to address potential safety hazards, the Parties agree to the following terms and conditions as a complete and final resolution of all issues in this proceeding regarding Cox.

2.1 Cox shall develop and implement enhanced inspection polices and practices as set forth below.⁸

- (a) Cox shall develop an independent, dedicated G.O. 95/128 inspection program, in addition to its existing inspections. Cox shall begin implementing these additional inspections under the new program upon approval of the Settlement Agreement by the Commission without material modification, but may, in its discretion, begin implementing such inspections prior to approval of the Settlement Agreement by the Commission.
- (b) The additional, independent, dedicated inspection program shall be auditable.⁹
- (c) Cox shall develop and implement an enhanced documentation, tracking and record keeping system for the new G.O. 95/128 inspection program by January 30, 2010. The documentation and record keeping system shall include: (i) the ability to track areas inspected down to "node" level, with street level detail; (ii) the ability to identify issues and infractions of GO 95 and GO 128 identified during the inspections; (iii) the facilities inspected, including specific identification of the facilities found to have issues or infractions of GO 95 and GO 128; (iv) the priority of each infraction for corrective action; (v) the schedule for remediation; and (vi) the resolution of each infraction.
- (d) Cox shall develop a system for reporting to the Commission on the initial implementation and findings of the new inspection program by January 30, 2010.

⁸ All commitments regarding inspections of facilities and corrective actions are subject to Cox obtaining access to property and any federal, state or local permits or other approvals that may be required for such inspections and corrective actions.

⁹ Inspections shall be auditable consistent with the documentation and record keeping commitments contained in section 2.1(c) and 2.2(c) of this Settlement Agreement.

- (e) Cox shall develop and deliver enhanced refresher G.O. 95/128 training for pertinent employees and contractors, including reporting and prioritizing safety issues by January 30, 2010.
- (f) Cox shall complete initial "Patrol" inspections in California Department of Forestry and Fire Protection Fire Resource Assessment Program ("FRAP") designated Very High and Extreme Fire Threat areas of Cox service territories under the new inspection program by October 31, 2009, or as soon after Commission approval of the Settlement Agreement as is reasonably feasible.¹⁰ The "Patrol" inspections shall be structured in a manner consistent with the "Patrol" inspections required by the Commission of electric utilities under G.O. 165, adapted as appropriate for CIP aerial facilities. They may be conducted by inspectors using a visual drive-by analysis of Cox facilities on joint use poles and shall focus on identifying any significant structural or safety hazards. Inspectors shall be equipped with appropriate inspection tools, including binoculars and measuring tools.
- (g) Cox shall complete annual "Patrol" inspections of aerial facilities in all of Cox service territories in California, with full documentation and reporting, beginning January 2010.
- (h) Cox shall conduct annual "Detailed" inspections of aerial facilities in FRAP designated Very High and Extreme Fire Threat Areas in all of Cox service territories within California beginning in 2010. The "Detailed" inspections shall be structured in a manner consistent with the "Detailed" inspections of aerial facilities required by the Commission of electric utilities under G.O. 165, adapted as appropriate for CIP facilities. They shall be conducted by inspectors using a walk-by and drive-by analysis of Cox facilities on joint use poles and shall give special emphasis on conductor clearances and other issues that may affect fire safety in addition to any significant structural or other safety hazards. Inspectors shall be equipped with appropriate inspection tools, including binoculars and measuring tools.
- (i) Issues identified in the course of inspections shall be categorized and prioritized for remediation in a tracking database.

¹⁰ All implementation dates in this Settlement Agreement are subject to potential change based upon the date of the final decision of the Commission approving the Settlement Agreement and the consent of the Parties.

2.2 Cox shall develop and implement enhanced maintenance policies and practices as set forth below.¹¹

- (a) Cox shall develop and implement an auditable corrective action program linked to the independent, dedicated G.O. 95/128 inspection program set forth above.¹²
- (b) The corrective action program shall include prioritization of conditions requiring corrective action according to a multi-level prioritization system¹³ including the following: (i) Immediate response for significant safety issues – conditions to be remedied or made safe through temporary measures within 24 hours; (ii) Safety hazard conditions as set forth in CPSD’s final proposal in Phase 1 of R.08-11-005 in Extreme and Very High fire risk zones – conditions to be remedied within 30 days;¹⁴ (iii) Potential but not imminent safety issues – conditions to be remedied within 1 to 120 days, depending upon the nature and severity of the condition; and (iv) Minor or non-safety-related issues – conditions to be remedied within 1 to 36 months, depending upon the nature of the condition.
- (c) Cox shall develop and implement an enhanced documentation and record keeping system for G.O. 95/128 compliance issues and corrective actions which shall include the following: (i) a description of issue, including the facilities involved; (ii) the date the condition is identified; (iii) the source or means by which the condition was identified; (iv) whether the condition is in a FRAP Extreme or Very High Fire Threat area; (v) the location of the condition by Cox node or other geographic area designation; (vi) the priority for corrective action; (vii) the schedule for completion of

¹¹ All commitments regarding inspections of facilities and corrective actions are subject to Cox obtaining access to property and any federal, state or local permits or other approvals that may be required for such inspections and corrective actions.

¹² Maintenance and corrective action shall be auditable consistent with the documentation and record keeping commitments contained in 2.2(c) of this Settlement Agreement.

¹³ All commitments regarding maintenance and corrective actions, including the time within which corrective action shall be completed, are subject to Cox obtaining access to property and any federal, state or local permits or other approvals that may be required for such corrective actions.

¹⁴ The potential safety hazards to which this priority shall apply are the following: (1) clearance requirements listed in columns E, F, or G of Table 1 of G.O. 95 and located in an Extreme or Very High Fire Threat Zone in Southern California; (2) pole overloading requirements in Rule 44.2 of G.O. 95 located in an Extreme or Very High Fire Threat Zone in Southern California; and (3) significant safety risks to any utility’s employees. “Extreme or Very High Fire Threat Zone” for purposes of this requirement shall be as defined by California Department of Forestry and Fire Protection’s Fire Resource Assessment Program (FRAP) Fire Threat Map, and the boundaries of this map are to be broadly construed. “Southern California” for purposes of this requirement shall be defined as: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties. A “safety hazard” for purposes of this requirement shall be defined in the same manner as in R.08-11-005, *Workshop Report*, CPSD Final Proposal, at 46, “a condition that poses a significant threat to life or property, including but not limited to the ignition of a wildland or structure fire.”

corrective action; (viii) the actual completion date of the corrective action or, if remediation is delayed, the reason for the delay; (ix) the name of the person(s) performing the repairs.

- (d) Cox shall develop a system for reporting to the Commission on implementation of the enhanced maintenance policies and practices by January 30, 2010. The reporting system shall include the ability to produce quarterly and annual reports to the Commission of outstanding and completed issues by Cox service area and FRAP fire-threat area, including the details set forth above.

2.3 The Parties agree that Cox shall be bound by the commitments set forth in sections 2.1, regarding enhanced inspection, and 2.2, regarding enhanced maintenance, for a period of seven years from the date of the Commission approves this Settlement Agreement without material change. Cox shall be bound by these commitments irrespective of the Commission's decision in R.08-11-005, or a successor rulemaking regarding CIP inspection and or maintenance requirements, except that should the Commission adopt more stringent rules or requirements applicable to all CIPs in R.08-11-005 or a successor rulemaking, Cox shall be required to comply with the more stringent requirements. The Parties further agree that after seven years, the rules and requirements applicable to inspection and maintenance by Cox of its facilities in California shall be those then in effect for CIPs generally under G.O. 95 and G.O. 128 and any successor rules and regulations that may be adopted by the Commission and made applicable to CIPs generally, and Cox shall no longer be required to comply with the separate requirements of this Settlement Agreement.

2.4 Cox agrees to use best efforts to develop and implement an enhanced means of communication and coordination with SDG&E regarding inspection and maintenance of facilities on joint use poles,¹⁵ including: (a) enhanced protocols for communication between Cox

¹⁵ All commitments in this Settlement Agreement regarding enhanced coordination and communication with SDG&E are contingent upon Cox reaching a satisfactory agreement with SDG&E consistent with these commitments.

and SDG&E regarding G.O. 95 issues on joint use poles; (b) coordinated reporting regarding nonconforming conditions using consistent descriptors and protocols; (c) a consistent and mutually acceptable scheme for prioritizing conditions requiring corrective action, with emphasis on conditions that may entail potentially significant safety hazards; (d) a consistent and mutually acceptable schedule for remedial action to address clearances at pole attachments and mid-span, pole overloading, and loose or broken lashing wire; (e) coordinated documentation and record keeping regarding corrective action; and (f) consistent reporting to the Commission regarding G.O. 95 issues identified by either or both Cox and SDG&E and the status of corrective action to remedy such conditions.

2.5 Cox shall make a settlement payment to the State of California General Fund in the amount of \$2,000,000. The settlement amount shall be paid within 60 days of the issuance of a final non-appealable decision by the Commission approving the Settlement Agreement without material change. Concurrent with its remittal, Cox shall provide a photocopy of the settlement payment check to CPSD.

2.6 Cox agrees to cooperate fully with CPSD in any further Commission investigation regarding SDG&E's alleged lack of cooperation with CPSD's investigation of the Guejito incident. Cox will reasonably cooperate by providing discovery and documentation to assist CPSD in analyzing any remaining issues regarding SDG&E's alleged lack of cooperation with CPSD's investigation in I.08-11-007, or a related successor proceeding should the Commission institute such a proceeding.

2.7 The Parties agree that the actual costs of the enhanced inspection and maintenance requirements of this Settlement Agreement cannot be precisely determined at this time, but will likely amount to several millions of dollars over the term of the Settlement Agreement.

2.8 Cox agrees that it will not seek to recover any of the costs of the inspection and maintenance requirements set forth in this Settlement Agreement through a surcharge on customer bills.

2.9 Cox agrees to take no position inconsistent with the express terms of this Settlement Agreement in either Phase I or Phase II of R.08-11-005.

2.10 Should any dispute arise between the Parties regarding the manner in which the Settlement Agreement, or any term thereof, shall be implemented, the Parties agree to work in good faith to resolve such difference in a manner consistent with both the express language and intent of the Parties in entering into the Settlement Agreement. If such dispute cannot be resolved through good faith negotiation between the Parties, the dispute shall be submitted to the Commission for resolution through alternative dispute resolution and if it cannot be resolved to the mutual satisfaction of both Parties through alternative dispute resolution, then through administrative adjudication before the Commission.

2.11 The Parties agree that this Settlement Agreement represents a compromise, not an admission, agreement or endorsement of any disputed issues of facts or law, including the cause of the Guejito fire. The Parties further agree that the Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding nor does it constitute a waiver of any evidentiary protections that Cox may seek to assert with respect to civil litigation.

2.12 The Parties agree that this Settlement Agreement is a release of all claims as between CPSD and Cox relating to the Guejito Fire in I.08-11-007 and releases Cox, its officers, directors, employees, affiliates, and successors from all claims regarding this matter. This is not

a release of any claims, allegations, or assertions made by any other entity in regards to the Guejito Fire.

2.13 The Parties agree that they have independently evaluated the terms and conditions of the Settlement Agreement and notwithstanding the settlement discussions among the Parties, which shall remain confidential pursuant to Commission Rules, no Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement Agreement. The Parties acknowledge and stipulate that they are agreeing to this Settlement Agreement freely, voluntarily, and without any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement Agreement, including each Party's right to discuss this Settlement Agreement with its legal counsel, and has exercised those rights, privileges, and duties to the extent deemed necessary.

2.14 The Parties agree that this Settlement Agreement is subject to approval by the Commission. As soon as practicable after the Parties have signed the Settlement Agreement, a Motion for Commission Approval and Adoption of the Settlement Agreement will be filed.

2.15 The Parties agree to support the Settlement Agreement, to recommend that the Commission approve it in its entirety without change and to use their best efforts to secure Commission approval of it in its entirety without modification. The Parties further agree to actively and mutually defend the Settlement Agreement if its adoption is opposed by any other party in proceedings before the Commission only. Subject to Rule 12.6 of the Commission's Rules of Practice and Procedure and the rights of the Parties under other existing laws to protect confidential information from disclosure, the Parties agree to furnish such additional information, documents, and/or testimony as the Commission may require to determine whether

the Settlement Agreement is reasonable in light of the whole record, consistent with the law and in the public interest and whether the Motion for Adoption of the Settlement Agreement should be granted.

2.16 The Parties agree that, if the Commission fails to adopt the Settlement Agreement in its entirety, the Parties shall convene a settlement conference within 15 days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Settlement Agreement shall be rescinded and the Parties shall be released from their obligation to support this Settlement Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding.

2.17 The Parties intend that in accordance with the Commission Rules of Practice and Procedure, Rule 12.5, Commission adoption of this Settlement Agreement will be binding on Cox and CPSD, including their legal successors, assigns, partners, members, agents, parent or subsidiary companies, affiliates, officers, directors, and/or employees.

2.18 The Parties agree that no signatory to the Settlement Agreement or any employee thereof assumes any personal liability as a result of this Settlement Agreement.

2.19 The Parties agree that the Settlement Agreement is without prejudice to the rights of Cox or any other person or party in any other pending or potential civil actions.

2.20 The provisions of this Settlement Agreement are not severable. If the Commission or any court of competent jurisdiction overrules or modifies as legally invalid any material provision of this Settlement Agreement, this Settlement Agreement may be considered rescinded as of the date such ruling or modification becomes final at the discretion of either of the Parties. The Parties agree to adhere to the provisions of Section 2.16 of this Settlement

Agreement in the event the Commission or a court overrules or modifies any of its material provisions.

2.21 If any Party fails to perform its respective obligations under the Settlement Agreement, the other Party may come before the Commission to pursue a remedy including enforcement.

3. RECORD

3.1 The Parties agree that the reports, filings, testimony, attachments and other exhibits identified in Appendix A to this Settlement Agreement should be identified as exhibits in this proceeding and received in evidence, without cross-examination, for the sole and limited purpose of facilitating a determination by the Commission of whether the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest. In the event that this Settlement Agreement is not approved by the Commission and the issues in this proceeding proceed through further discovery and evidentiary hearings, the Parties reserve the right to object to the admissibility of any of these reports, filings, testimony, attachments and other exhibits, or any portion thereof.

4. GOVERNING LAW

4.1 This Settlement Agreement shall be governed by the laws of the State of California as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

5. EFFECTIVE DATE

5.1 This Settlement Agreement shall become effective and binding on the Parties as of the date it is approved and the Commission's decision becomes final and non-appealable.

6. CONCLUSION

6.1 This Settlement Agreement constitutes the Parties' entire agreement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.

6.2 This Settlement Agreement may be executed in separate counterparts by the different Parties hereto with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Settlement Agreement.

6.3 In executing this Settlement Agreement, the Parties agree that the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

In witness whereof, the Settling Parties have duly executed this Settlement Agreement.

Respectfully submitted,

Respectfully submitted,

Richard Clark

Director
CONSUMER PROTECTION AND SAFETY
DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

_____, 2009



William Geppert

Senior Vice President and General Manager
COXCOM, INC. and
COX CALIFORNIA TELCOM, L.L.C.
5159 Federal Blvd.
San Diego, CA 92105

Oct 30th, 2009

6. CONCLUSION

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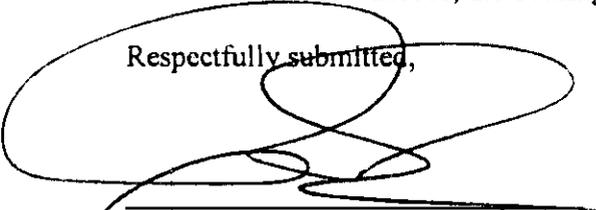
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DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA. 94102-3298

Senior Vice President and General Manager
COXCOM, INC. and
COX CALIFORNIA TELCOM, L.L.C.
5159 Federal Blvd.
San Diego, CA 92105

10/20, 2009

_____, 2009

APPENDIX AI.08-11-007 (Guejito)TESTIMONY LIST FOR CPSD/COX SETTLEMENT AGREEMENT

EXHIBIT	DESCRIPTION	PARTY	DATE
	RESPONSE OF COX TO QUESTIONS AND DATA REQUESTS IN OII	COX	01/08/09
	SDG&E'S RESPONSES TO QUESTIONS AND DATA REQUESTS SET FORTH IN THE OII	SDG&E	01/08/09
	SUPPLEMENTAL RESPONSE OF COX TO QUESTIONS AND DATA REQUESTS IN OII RE DATA REQUEST 1.D	COX	01/23/09
	SDG&E SUPPLEMENTAL DATA REQUEST RESPONSE TO OII DATA REQUESTS DATED 11/6/08	SDG&E	01/23/09
	FURTHER RESPONSE OF COX TO REQUEST OF CPSD FOR ADDITIONAL INFORMATION REGARDING COX'S RESPONSE TO DATA REQUESTS IN OII	COX	01/26/09
	SUPPLEMENTAL PRODUCTION OF SDG&E TO OII DATA REQUEST NO. 4	SDG&E	01/26/09
	FURTHER ADDITIONAL RESPONSE OF COX TO REQUEST OF CPSD FOR ADDITIONAL INFORMATION REGARDING COX'S RESPONSE TO DATA REQUESTS IN OII	COX	01/30/09
	SUPPLEMENTAL RESPONSE OF COX TO QUESTIONS AND DATA REQUESTS IN OII	COX	02/06/09
	SUPPLEMENTAL DIRECT TESTIMONY OF THE CONSUMER PROTECTION AND SAFETY DIVISION REGARDING THE FORMAL GUEJITO FIRE INVESTIGATION	CPSD	03/06/09
	DIRECT TESTIMONY OF COX	COX	05/18/09
	DIRECT TESTIMONY AND EXHIBITS OF SDG&E WITNESSES	SDG&E	05/18/09

APPENDIX A

I.08-11-007 (Guejito)

TESTIMONY LIST FOR CPSD/COX SETTLEMENT AGREEMENT

EXHIBIT	DESCRIPTION	PARTY	DATE
	REBUTTAL TESTIMONY OF THE CONSUMER PROTECTION AND SAFETY DIVISION TO THE DIRECT TESTIMONY OF COX COMMUNICATIONS AND THE DIRECT TESTIMONY OF SAN DIEGO GAS & ELECTRIC COMPANY REGARDING THE FORMAL GUEJITO FIRE INVESTIGATION	CPSD	06/08/09
	SUPPLEMENTAL RESPONSE OF COX TO DATA REQUESTS IN OII	COX	08/14/09
	ADDITIONAL SUPPLEMENTAL RESPONSE OF COX TO DATA REQUESTS IN OII	COX	09/03/09

(END OF ATTACHMENT II)

ATTACHMENT III

EXHIBIT NO.	PARTY	DESCRIPTION	DATE IDENTIFIED	DATE RECEIVED
1-WR	SDG&E	SDG&E Responses to Witch/Rice OII Questions	1/8/09	
2-WR	SDG&E	SDG&E Supplemental Responses to Witch/Rice OII Questions	1/23/09	
3-WR	SDG&E	SDG&E Second Supplemental Responses to Witch/Rice OII Questions	1/26/09	
4-WR	CPSD	CPSD Supplemental Direct Testimony	3/20/09	
5-WR	SDG&E	SDG&E Direct Testimony: Witch/Rice	6/5/09	
6-WR	CPSD	CPSD Rebuttal Testimony: Witch/Rice	6/22/09	
1-G	SDG&E	SDG&E Responses to Guejito OII Questions	1/8/09	
2-G	SDG&E	SDG&E Supplemental Responses to Guejito OII Questions	1/23/09	
3-G	SDG&E	SDG&E Second Supplemental Responses to Guejito OII Questions	1/26/09	
4-G	SDG&E	SDG&E Corrected Response to Guejito OII Questions	2/25/09	
5-G	CPSD	CPSD Supplemental Direct Testimony – Guejito	3/6/09	
6-G	SDG&E	SDG&E Direct Testimony – Guejito	5/18/09	
7-G	CPSD	CPSD Rebuttal Testimony – Guejito	6/8/09	
8-G	COX	Response of Cox to Questions and Data Requests in OII	1/8/09	
9-G	SDG&E	SDG&E's Responses to Questions and Data Requests set forth in the OII	1/8/09	

10-G	COX	Supplemental Response of Cox to Questions and Data Requests in OII re Data Request I.D.	1/23/09	
11-G	SDG&E	SDG&E Supplemental Data Request Response to OII Data Requests dated 11/6/08	1/23/09	
12-G	COX	Further Response of Cox to Request of CPSD for Additional Information regarding Cox's Response to Data Requests in OII	1/26/09	
13-G	SDG&E	Supplemental Production of SDG&E to OII Data Request No. 4	1/26/09	
14-G	COX	Further Additional Response of Cox to Request of CPSD for Additional Information regarding Cox's Response to Data Requests in OII	1/30/09	
15-G	COX	Supplemental Response of Cox to Questions and Data Requests in OII	2/6/09	
16-G	CPSD	Supplemental Direct Testimony of CPSD regarding the formal Guejito Fire Investigation	3/6/09	
17-G	COX	Direct Testimony of Cox	5/18/09	
18-G	SDG&E	Direct Testimony and Exhibits of SDG&E witnesses	5/18/09	
19-G	COSD	Rebuttal Testimony of CPSD to the Direct Testimony of Cox and the Direct Testimony of SDG&E regarding the formal Guejito Fire Investigation	6/8/09	
20-G	COX	Supplemental Response of Cox to Data Requests in OII	8/14/09	
21-G	COX	Additional Supplemental Response of Cox to Data Requests in OII	9/3/09	

(END OF ATTACHMENT III)