

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
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Adjudicatory

## TO PARTIES OF RECORD IN INVESTIGATION 09-01-018:

This is the proposed decision of Administrative Law Judge (ALJ) Timothy Kenney. This item is targeted to appear on Agenda No. 3322 for the Commission's September 19, 2013 Business Meeting, but may appear on a later agenda. Interested persons may monitor the Business Meeting agendas, which are posted on the Commission's website 10 days before each Business Meeting, for notice of when this item may be heard. The Commission may act on the item at that time, or it may hold an item to a later agenda.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ DOROTHY DUDA for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:gd2

Attachment

Decision PROPOSED DECISION OF ALJ KENNEY (Mailed 8/16/2013)

**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)

**DECISION CONDITIONALLY APPROVING  
THE SOUTHERN CALIFORNIA EDISON COMPANY  
SETTLEMENT AGREEMENT REGARDING THE MALIBU CANYON FIRE**

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APPENDIX A - Settlement Agreement

**DECISION CONDITIONALLY APPROVING  
THE SOUTHERN CALIFORNIA EDISON COMPANY  
SETTLEMENT AGREEMENT REGARDING THE MALIBU CANYON FIRE**

**1. Summary**

This decision conditionally approves a Settlement Agreement between the Commission's Safety and Enforcement Division (SED) and Southern California Edison Company (SCE). The settlement resolves all issues in this proceeding regarding SCE's involvement with the Malibu Canyon Fire in October of 2007.

The Malibu Canyon Fire occurred when three utility poles fell to the ground during a Santa Ana windstorm. In the Settlement Agreement, SCE admits that one of these poles was overloaded in violation of General Order (GO) 95 due to the facilities that were attached to the pole by another utility. SCE also admits that it violated Public Utilities Code Section 451 when it failed to take prompt action to prevent the pole overloading. SCE further admits that it violated Rule 1.1 of the Commission's Rules of Practice and Procedure when SCE withheld pertinent information from SED and the Commission.

SCE agrees to pay a fine of \$20 million to the State of California General Fund. SCE also agrees to provide \$17 million to assess utility poles in the Malibu area for compliance with GO 95 safety factors and SCE's internal standards. Substandard poles found by the assessment will be remediated. The combined settlement payments of \$37 million (\$20 million + \$17 million) will be borne by SCE's shareholders; SCE's customers will not bear any costs.

Our approval of the settlement is subject to the conditions in the Ordering Paragraphs of this decision. The most significant conditions are listed below:

1. SCE shall complete pole assessments conducted pursuant to the Settlement Agreement no later than 18 months from the effective date of this decision.
2. SCE shall submit bi-monthly reports to SED regarding the status of pole assessments, remediation, and related expenditures. SED may specify the content, format, and other details of the bi-monthly reports. The reports submitted by SCE shall conform to SED's specifications.
3. After the final bi-monthly report is submitted, SED shall prepare a report that summarizes the results of the pole assessments; identifies any significant safety issues found by the assessments; and provides any recommendations that SED deems appropriate. SED shall file and serve its report no later than 6 months after the final bi-monthly report is submitted by SCE. SED shall also post its report online at the Commission's website, with appropriate redactions, in accordance with Resolution L-436, dated February 14, 2013.
4. SCE shall verify that the poles in Malibu Canyon which are upgraded pursuant to the Carrier Settlement Agreement meet SCE's internal standards for high-wind areas. If the upgraded poles do not meet SCE's internal standards, SCE shall upgrade the poles to meet its standards.
5. SCE may not recover from ratepayers any costs that SCE incurs to comply with this decision.

The Settlement Agreement, with the conditions adopted by today's decision, will enhance public safety considerably. Among other things, SCE will assess approximately 1,453 poles in the Malibu area for compliance with GO 95 safety factors and SCE's internal standards. Substandard poles found by the assessment will be repaired or replaced, as necessary. The significant fine

that SCE is required to pay by the Settlement Agreement will deter SCE and others from future violations of Public Utilities Code Section 451 and GO 95.

The approved Settlement Agreement resolves all remaining issues in this proceeding. Accordingly, this proceeding is closed.

## **2. Background**

On October 21, 2007, strong Santa Ana winds swept across Malibu Canyon in Los Angeles County. Three utility poles located next to Malibu Canyon Road fell and ignited a fire. The resulting fire (the Malibu Canyon Fire) burned 3,836 acres, destroyed 14 structures and 36 vehicles, and damaged 19 other structures. The Los Angeles County Fire Department estimated the dollar loss from the fire was \$14,528,300. There were no reported injuries or fatalities.

The Commission issued Order Instituting Investigation 09-01-018 on January 29, 2009, to determine if the following Respondents violated any provisions of the California Public Utilities Code and/or Commission decisions, rules, or general orders with respect to their facilities that were involved in the ignition of the Malibu Canyon Fire:

- AT&T Communications of California, Inc. (AT&T).
- NextG Networks of California, Inc. (NextG).<sup>1</sup>
- Southern California Edison Company (SCE).
- Sprint Communications Company, LP (Sprint).
- Cellco Partnership LLP, d/b/a Verizon Wireless (Verizon).

Each Respondent had an ownership interest in the fallen poles and/or facilities attached to at least one of the fallen poles.

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<sup>1</sup> NextG is now Crown Castle NG West, Inc. For consistency with the record of this proceeding, this decision will use "NextG Networks of California, Inc." or NextG.

The Commission's Safety and Enforcement Division (SED), formerly known as the Consumer Protection and Safety Division (CPSD), investigated the incident and served testimony on May 3, 2010, April 29, 2011, and August 29, 2011. The Respondents served testimony, both individually and jointly, on November 18, 2010, June 29, 2011, and August 29, 2011.

There were three prehearing conferences. The first was held on May 13, 2009, the second on October 26, 2011, and the third on November 20, 2012. The assigned Commissioner issued two scoping memos. The first was issued on October 22, 2009. The second was issued on November 23, 2011.

On February 3, 2012, the following parties filed a joint motion for approval of a settlement agreement pursuant to Rule 12.1(a) of the Commission's Rules of Practice and Procedure (Rule): SED, AT&T, Sprint, and Verizon. The settlement agreement was appended to the motion (the "Carrier Settlement Agreement"). The Commission conditionally approved the Carrier Settlement Agreement in Decision (D.) 12-09-019. The approved settlement agreement resolved all issues in this proceeding with respect to AT&T, Sprint, and Verizon.

On February 21, 2013, SED and NextG filed a joint motion for approval of a settlement agreement pursuant to Rule 12.1(a) that resolves all issues in this proceeding with respect to NextG. The settlement agreement was appended to the motion (the "NextG Settlement Agreement"). A proposed decision that conditionally approves the NextG Settlement Agreement is pending.

On May 20, 2013, SED and SCE filed a joint motion for approval of a settlement agreement pursuant to Rule 12.1(a). The settlement agreement was appended to the motion (the "SCE Settlement Agreement" or the "Settlement Agreement"). SED and SCE also convened a settlement conference on May 20, 2013, as required by Rule 12.1(b).



On May 20, 2013, SED and SCE (hereafter, the Settling Parties) filed a motion to (1) admit into the record SCE's previously served testimony and accompanying exhibits; (2) identify previously admitted testimony and exhibits as relevant to the Commission's review of the SCE Settlement Agreement; and (3) admit into the record two new exhibits. The motion was granted in a ruling issued by the assigned Administrative Law Judge (ALJ) on June 28, 2013.

On May 24, 2013, the assigned ALJ sent an email to the service list that directed the Settling Parties to provide specified information regarding the SCE Settlement Agreement. The Settling Parties provided the information in a response filed on July 3, 2013. AT&T, Sprint, and Verizon filed joint comments regarding the SCE Settlement Agreement on July 3, 2013, pursuant to Rule 12.2. Pacific Bell Telephone Company (d/b/a/ AT&T California) and Verizon California Inc. (Verizon California) filed a joint amicus curiae brief on July 3, 2013.<sup>2</sup> SCE filed reply comments pursuant to Rule 12.2 on July 18, 2013.<sup>3</sup>

On July 16, 2013, the assigned ALJ sent an email to the service list that directed the Settling Parties to provide additional information regarding the SCE Settlement Agreement. The Settling Parties provided the information in a response filed on July 24, 2013.

### **3. Litigation Positions**

SED alleged that at least one of the poles which fell was overloaded in violation of General Order (GO) 95 and California Public Utilities Code

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<sup>2</sup> AT&T California and Verizon California's motion dated July 3, 2013, to submit a joint amicus brief was granted in a ruling issued by the assigned ALJ on July 24, 2013. The amicus brief was attached to the motion.

<sup>3</sup> SED did not file reply comments pursuant to Rule 12.2.

Section 451 (Pub. Util. Code § 451 or § 451). SED believes the violation was due, in part, to the Respondents interpreting the Southern California Joint Pole Committee (SCJPC) rules in a way that neglected compliance with GO 95. SED further alleged that each Respondent violated § 451 and GO 95 by installing facilities in Malibu Canyon that could not withstand Santa Ana winds which are a known local condition. In addition, SED alleged that a replacement pole installed after the fire had a lower safety factor<sup>4</sup> than required by GO 95 for new construction. Finally, SED alleged that the Respondents violated Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule 1.1) by providing accident reports, data responses, and testimony that were incomplete and/or misleading.

SED recommended fines totaling \$99,232,000 for the alleged violations.

The recommended fine for each Respondent is shown below:

<b>Respondent</b>	<b>Proposed Fine</b>
SCE	\$49,539,500
NextG	\$24,789,500
AT&T	\$7,759,500
Sprint	\$7,732,000
Verizon	\$9,411,500
<b>Total Fine:</b>	<b>\$99,232,000</b>

The Respondents denied all of SED's allegations. The Respondents claimed that every utility pole at issue in this proceeding complied with all applicable regulations. They further asserted that they did not provide incorrect information to SED or did so unintentionally.

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<sup>4</sup> The term "safety factor" is defined by Rule 44 of GO 95 as "the minimum allowable ratios of ultimate strengths of materials to the maximum working stresses."

All issues in this proceeding pertaining to AT&T, Sprint, and Verizon (together, the Carriers) were resolved by the Carrier Settlement Agreement that was conditionally approved by D.12-09-019. Briefly, the approved settlement requires the Carriers to pay \$6.9 million to the State General Fund and \$5.1 million for specified remedial measures, for a total of \$12 million.

All issue pertaining to NextG are resolved by the pending NextG Settlement Agreement. In summary, the NextG Settlement Agreement requires NextG to pay a fine of \$8.5 million to the State General Fund, to provide \$6 million for a safety audit of all of NextG's poles and pole attachments in California, and to remediate any deficiencies found by the audit.

#### **4. Summary of the SCE Settlement Agreement**

The SCE Settlement Agreement resolves all issues in this proceeding with respect to SCE. A copy of the Settlement Agreement is attached to this decision as Appendix A.

The SCE Settlement Agreement contains the following admissions by SCE:

- SCE admits that Pole No. 1169252E (Pole 252E) did not comply with GO 95 safety factor requirements as a result of NextG's attachment of fiber optic cable facilities to the pole and at the time of the Malibu Canyon Fire.
- SCE admits that it violated § 451 by not taking prompt action to prevent NextG from attaching facilities to joint poles in Malibu Canyon after an SCE employee determined that NextG's proposed attachments would overload several poles.
- SCE admits that an SCE employee concluded that Replacement Pole 4557608E (Replacement Pole 608E), which SCE installed to replace the failed Pole 252E, did not comply with GO 95 safety factor requirements for new construction. This information should have caused SCE to verify the pole-loading inputs for Replacement Pole 608E and remedy any identified deficiencies.

- SCE admits that its October 25, 2007 letter to the Commission pursuant to Pub. Util. Code § 315 violated Rule 1.1 in that it did not identify pole overloading and termite damage as possible contributing causes of the pole failures in addition to high winds.
- SCE admits that it violated Rule 1.1 by not providing SED with a true and correct copy of an SCE employee's field notes regarding the replacement poles.
- SCE admits that it violated Rule 1.1 by failing to make it clear on multiple occasions that not all physical evidence from the three failed poles had been preserved at an SCE warehouse.

SCE acknowledges that its approach to providing information may have impaired SED's investigation. SCE agrees that henceforth it will seek to provide all facts that are relevant and material to SED's inquiries. SCE will also provide notice of privileged material that is responsive to an SED inquiry so that SED may challenge the asserted privilege. In addition, SCE will prepare an Evidence Retention protocol that is subject to SED's approval.

SCE agrees to pay \$37 million. From this amount, SCE will pay a fine of \$20 million to the State General Fund pursuant to Pub. Util. Code §§ 2107 – 2019. The remaining \$17 million will be used for the following purposes: (1) assess utility poles in the Malibu area for compliance with GO 95 safety factor requirements and, if applicable, SCE's internal standards for high-wind areas; and (2) remediate substandard poles found by the assessment.

The Settlement Agreement establishes the Malibu Area Safety Enhancements Protocol (MASEP) to prioritize the expenditure of the \$17 million in a systematic and objective manner. Under the MASEP, the assessment and remediation of poles in the Malibu area will proceed in the following order:

1. All poles along Malibu Canyon Road from the Pacific Coast Highway (PCH) to Mulholland Highway not covered by the Carrier Settlement. This area includes approximately 151 poles.

2. Poles along Topanga Canyon Boulevard from PCH to Old Topanga Road, and then along Old Topanga Road to Mulholland Highway. This area includes approximately 232 poles.
3. Poles along Mulholland Highway between Malibu Canyon Road and Old Topanga Road. This area includes approximately 335 poles.
4. Other poles in the Malibu area in the following order: Latigo Canyon Road from PCH to Kanan Dume Road; Kanan Dume Road from PCH to Mulholland Highway; and Mulholland Highway from Kanan Dume Road to Malibu Canyon Road. These areas include approximately 735 poles.
5. If the \$17 million is not exhausted after completion of Items 1–4 above, SCE will prioritize pole assessments in the Malibu area based on wind and fire risk, including poles in residential areas.
6. If the \$17 million is not exhausted after completion of Items 1–5 above, SCE will prioritize areas outside Malibu based on the following criteria: intersection of high wind, high fire, and canyon areas will be assessed first; other high wind, high fire areas will be assessed next with the areas subject to highest winds assessed first; high fire areas not designated as high wind will be assessed next; and high wind areas not designated as high fire will be assessed last.

SCE will only assess and remediate as many poles as is possible with the \$17 million provided by the Settlement Agreement. SCE expects the \$17 million will be more than sufficient for the approximately 1,453 poles in Items 1 through 4 above, but there is no guarantee. SCE expects the \$17 million will be exhausted before all poles in Items 1 - 6 have been assessed and remediated.

SCE will remediate all deficiencies found by the assessments except for guy wires owned by other entities. SCE will notify the owner of the guy wire of the deficiency. SCE expects other joint-pole owners to share in pole-remediation costs, as such work will be for the mutual benefit of all pole owners.

Remediation work identified by the assessments will be planned, scheduled, and completed using SCE's existing procedures. Repairs will be scheduled for corrective action within 24 months of an assessment. Pole replacements may be scheduled for completion up to 59 months from an assessment, depending upon the severity of the condition. Scheduled due dates may be modified to perform all work in a particular area at the same time. Exceptions will be noted for any pole that is not remediated within 59 months from identification (e.g., permits denied, environmental review, etc.).

Importantly, the SCE Settlement Agreement notes that SCE has designated high-wind areas where SCE's internal standards require a higher wind pressure to be used for pole-loading calculations than the minimum GO 95 requirement. SCE will apply its internal standards for pole assessments and remediation under the Settlement Agreement to the extent the MASEP encompasses SCE-designated high-wind areas. SCE reserves the right to modify the location of its designated high-wind areas prior to starting the assessments.<sup>5</sup>

If the pole assessments find a pole that does not meet the minimum GO 95 safety factor requirement or, if applicable, SCE internal standards for high-wind areas, SED will not seek penalties against SCE or other pole owners based solely on the assessment, provided the pole is brought into compliance within a reasonable period of time. This provision in the Settlement Agreement does not supersede SED's statutory authority to seek penalties and other

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<sup>5</sup> The pole assessments under the Settlement Agreement are limited to wind loads on poles and guys. The pole assessments will include other line elements (e.g., crossarms) to the extent they transfer wind loads to poles and guys, but SCE will not assess if other line elements meet the safety factors in GO 95 or SCE's standards for high-wind areas. (SCE-SED Response dated July 24, 2013, at 1-3.)

remedies for utility facilities that endanger public safety or are linked to accidents and/or reliability issues. For example, if a pole is identified by an assessment as not complying with the minimum GO 95 safety factor requirement or, if applicable, SCE's internal standards, SED does not waive its right to seek penalties if that pole is later involved in an accident or outage, regardless of whether the pole is brought into compliance within a reasonable period of time.

SCE will establish work orders for settlement-related pole assessments and remediation. These work orders will record charges from contractors, time charges and expenses from SCE employees, material costs, and other settlement-related costs. The charges will be offset by credits received from joint-pole owners. The work orders will clear to below-the-line accounts.<sup>6</sup> SCE will monitor charges and credits on a monthly basis. The below-the-line accounts will continue to record costs and offsetting credits until the \$17 million is spent.

SCE pledges to take all practical steps to ensure that no costs of the Malibu Canyon Fire are recovered from ratepayers, including the \$37 million of settlement payments described above, all costs incurred in connection with civil litigation arising from the Malibu Canyon Fire, and any increased insurance costs attributable to the Malibu Canyon Fire.

Finally, the Carrier Settlement Agreement requires the Carriers to upgrade the safety factor of Replacement Pole 608E and other poles in Malibu Canyon to 4.0. SCE agrees to cooperate with the Carriers' efforts.

SCE and SED believe the SCE Settlement Agreement reasonably resolves the Commission's Malibu Canyon Fire investigation with respect to SCE. They

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<sup>6</sup> Below-the-line accounts record revenues and expenses that accrue entirely to shareholders.

aver that the settlement is reasonable in light of the record of this proceeding, consistent with the law, and in the public interest.

## **5. Responses to the Settlement Agreement and SCE's Reply**

### **5.1. Responses**

NextG did not express a position on the SCE Settlement Agreement. The Carriers (AT&T, Sprint, and Verizon) and the amici curiae (AT&T California and Verizon California) oppose the provisions in the SCE Settlement Agreement that contemplate SCE may recover from other joint-pole owners a proportionate share of the costs that SCE incurs to bring poles into compliance with SCE's internal standards for SCE-designated high-wind areas. The Carriers and the amici curiae (together, the Responding Parties) assert these settlement provisions are contrary to the Southern California Joint Pole Agreement (SCJPA). Most of the parties to the SCJPA have not had notice of the SCE Settlement Agreement.<sup>7</sup>

The Responding Parties state that the SCJPA require the joint owners of a pole to share the costs to repair or replace the pole if the costs benefit all the owners. However, before any joint-pole owner can cause others to share the costs to repair or replace a pole, all the joint owners must agree. That is not the case here, according to the Responding Parties. They argue that SCE cannot use

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<sup>7</sup> The Carriers represent that the current members of the Southern California Joint Pole Committee are ATC Outdoor DAS, LLC; AT&T; AT&T California; AT&T Local Services/TCG; AT&T Mobility; CA-CLEC LLC; City of Anaheim; City of Azusa; City of Banning; City of Burbank; City of Colton; City of Glendale; City of Lompoc; City of Los Angeles; City of Pasadena; City of Riverside; City of Vernon; Crown Castle NG West, Inc. ExteNet Systems (California) LLC; Frontier Communications; Golden State Water Co.; MCI Metro/ATS; MCI Telecommunications; MetroPCS California, LLC; M-Power/Telepacific Communications; NewPath Networks; Southern California Edison; Sprint Communications LP; Sprint Nextel Corporation; Time Warner Cable; T-Mobile USA Inc.; Verizon California; Verizon Wireless; and XO Communications.



its Settlement Agreement to obtain the unilateral right to designate high-wind areas or the appropriate design standards for poles in high-wind areas. The Responding Parties declare that if SCE desires to remediate poles to an internal standard, all costs of such remediation should be paid from the \$17 million provided by the SCE Settlement Agreement – not just SCE’s share of the costs.

## **5.2. SCE’s Reply**

SCE asserts that the concerns of the Responding Parties are unfounded. Their proposal, if adopted, would result in fewer poles being assessed and remediated under the SCE Settlement Agreement. SCE also contends that the remediation of poles to conform to SCE’s internal standards for high-wind areas will be for the mutual benefit of all joint-pole owners. As such, all joint-pole owners must share the cost of remediation pursuant to the SCJPA.

SCE states that it has retained an engineering firm to identify high-wind areas in its service territory. SCE intends to use this information to designate areas where SCE will propose higher wind-load standards for utility poles than required by GO 95.<sup>8</sup> SCE recognizes that it cannot impose new standards on other joint owners under the SCJPA. SCE plans to share its high-wind designations and their factual basis with other joint owners. SCE will reconsider the designations based on information received prior to remediation of poles.

SCE opposes the Responding Parties’ request to make SCE responsible for all costs of remediation that are based on SCE’s high-wind designations. SCE contends this request is unnecessary because SCJPA procedures include a process for resolving disputes over the sharing of pole-remediation costs. SCE is

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<sup>8</sup> SCE states that it has designated high-wind areas in its service territory since 1977.

confident that all joint-pole owners will work out any objections to SCE's remediation decisions on a case-by-case basis.

If disputes regarding the sharing of remediation costs cannot be resolved within the SCJPA process, SCE states there will be no delay in the remediation of poles under the SCE Settlement Agreement. SCE will remediate to the standards it believes are GO 95 compliant and, if necessary, will seek guidance from the Commission regarding the appropriate allocation of costs.

## **6. Discussion**

The ultimate issue we must decide is whether to approve the SCE Settlement Agreement. The relevant standard is provided by Rule 12.1(d) of the Commission's Rules of Practice and Procedure, which states that the Commission will not approve a settlement agreement unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. In general, the Commission does not consider if a settlement reaches the optimal outcome on every issue. Rather, the Commission determines if the settlement as a whole is reasonable. A settlement agreement should also provide sufficient information to enable the Commission to implement and enforce the terms of the settlement.

The SCE Settlement Agreement addresses matters that affect public safety. Therefore, a paramount factor in our evaluation of the Settlement Agreement is Pub. Util. Code § 451, which requires every public utility in California to "furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." The edicts of § 451 are a cornerstone of today's decision.

**6.1. Reasonable in Light of the Whole Record****6.1.1. Summary of the Record**

The record of this proceeding shows that the Malibu Canyon Fire occurred when three interconnected wood utility poles fell to the ground during a Santa Ana windstorm on October 21, 2007. Pole 252E was an unguyed tangent pole. Pole 1169253E (hereafter, Pole 253E) was an inline pole with three span guys attached to Pole 2279212E (hereafter, Pole 212E). Pole 212E was a stub pole that provided structural support for Pole 253E via span guys. Pole 212E also had two down guys attached to a concrete anchor.

Poles 252E and 253E had electric facilities and communications facilities attached in the following chronological order:

- SCE: 66 kilovolt electric cables/conductors (prior to 1990).
- Verizon: communications cables/conductor (1994-1995).
- AT&T: communications cables/conductor (1995-1996).
- Edison Carrier Solution: communications cables/conductor (1996).
- Sprint: communications cables/conductor (1998).
- Sprint: antennas and related equipment (Pole 253E only, 2003).
- NextG: communications cables/conductor (2004-2005).

Poles 252E and 253E each had an attached streetlight, but it is unclear when the streetlights were attached. The only attachments to Pole 212E were the span guys and down guys.

The three poles were classified as Grade A poles. GO 95 requires Grade A wood poles in Malibu Canyon to bear a horizontal wind load<sup>9</sup> of eight (8) pounds

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<sup>9</sup> The wind load on a utility pole is the force of the wind hitting the pole directly plus the force of the wind on the facilities attached to the pole (*e.g.*, crossarms and

*Footnote continued on next page*

per square foot (psf) multiplied by a prescribed safety factor.<sup>10</sup> Newly installed Grade A wood poles in Malibu Canyon must have a safety factor of at least 4.0, or 32 psf. The safety factor can degrade to 2.67, or 21 psf. Such poles must be repaired or replaced before the safety factor drops below 2.67.<sup>11</sup>

SED alleged that SCE violated § 451, GO 95, and Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule 1.1). The following table summarizes the alleged violations and SED's proposed fine for each violation.

<b>Violation</b>	<b>Summary of Alleged Violation</b>	<b>Proposed Fine</b>
<ul style="list-style-type: none"> <li>• P.U. Code § 451</li> </ul>	In 2003 and 2004, SCE denied NextG's request to attach facilities to poles in Malibu Canyon based on SCE's determination that NextG's facilities would overload several poles. When NextG attached facilities, despite SCE's denial, SCE failed to follow up.	\$10,766,000
<ul style="list-style-type: none"> <li>• P.U. Code § 451</li> <li>• GO 95, Rules 12.2, 43.2, 44.3, and 48</li> </ul>	In 2005, NextG attached facilities that overloaded at least one of the three subject poles (i.e., Poles 212E, 252E, and 253E). By overloading at least one pole, the Respondents - including SCE - failed to provide safe service.	\$6,538,000

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conductors). The wind load on a pole is magnified at ground level where the pole acts as lever and the ground as a fulcrum.

<sup>10</sup> The GO 95 wind load standard of 8 psf applies to line elements with cylindrical surfaces. The wind load standard for line elements with flat surfaces is 13 psf.

<sup>11</sup> GO 95, Rules 12.2, 31.1, 43.2, 44.1, 44.3, and 48.

<b>Violation</b>	<b>Summary of Alleged Violation</b>	<b>Proposed Fine</b>
<ul style="list-style-type: none"> <li>• P.U. Code § 451</li> <li>• GO 95, Rule 31.1</li> </ul>	In 2007, the three subject poles failed during a Santa Ana windstorm. The Respondents - including SCE - failed to provide safe service by installing facilities that could not withstand Santa Ana windstorms, a known local condition for Malibu Canyon.	\$6,538,000
<ul style="list-style-type: none"> <li>• P.U. Code § 451</li> <li>• GO 95, Rules 43.2, 44.1, and 48</li> </ul>	Replacement Pole 608E installed by SCE in 2007 after the fire did not have the minimum safety factor of 4.0 required by GO 95 for new construction.	\$507,500
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	SCE's Accident Report to the Commission failed to provide accurate information regarding the cause of the incident.	\$12,040,000
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	SCE's investigator lied under oath about his knowledge of the potential causes of the incident in SCE's Accident Report.	\$1,040,000
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	SCE did not respond accurately to SED's November 8, 2007 data request that asked for a list of all damaged facilities.	\$1,091,000
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	Despite knowing about the spoliation of certain facilities attached to the failed poles, SCE misled the Commission in its April 20, 2009 report, by stating that the poles and attachments had been retained as evidence.	\$6,040,000
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	Despite its knowledge of the spoliation of certain facilities attached to the failed poles, SCE's April 5, 2010 response to SED's motion to compel was misleading in that it implied that SED had access to all evidence.	\$254,000
<ul style="list-style-type: none"> <li>• Rule 1.1</li> </ul>	Despite its knowledge of the spoliation of certain facilities attached to the failed poles, SCE's December 10, 2010 response an SED data request stated twice that all physical evidence was stored at an SCE warehouse.	\$200,000

Violation	Summary of Alleged Violation	Proposed Fine
• Rule 1.1	The November 18, 2010, prepared written testimony of William R. Schulte, on behalf of all the Respondents, falsely implied that all evidence was preserved at an SCE warehouse.	\$540,000
• Rule 1.1	SCE did not provide an accurate response to a request regarding the existence of a messenger cable that was attached to two of the failed poles and owned by SCE's affiliate, Edison Carrier Solutions (ECS). The ECS cable had been discarded by SCE.	\$220,000
• Rule 1.1	SCE's production of an employee's field observations was misleading. On Feb. 10, 2011, SCE agreed to produce the field observations, which occurred on the same day. On March 18, 2011, SED viewed the original documents at SCE's offices, which contained field observations that were not in the documents produced on Feb. 10.	\$720,000
<b>Total Recommended Fine</b>		<b>\$49,539,500</b>
<p><b>Pub. Util. Code § 451</b> requires SCE to “furnish and maintain... service, instrumentalities, equipment, and facilities... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”</p> <p><b>GO 95, Rules 12.2, 43.2, 44.2, and 48</b> together require the joint-use Grade A wood poles in Malibu Canyon to withstand a wind load of 8 psf multiplied by a safety factor of 4.0 for new construction, which may degrade to a safety factor no lower than of 2.67.</p> <p><b>GO 95, Rule 31.1</b> requires facilities to “be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.”</p> <p><b>Rule 1.1</b> requires any “person who... offers testimony at a hearing... [to] never to mislead the Commission or its staff by an artifice or false statement of fact or law.”</p>		

SED served written testimony supporting its allegations. The Respondents denied all of SED's allegations. The Respondents together served written testimony which asserted that none of the subject poles was overloaded; that

Replacement Pole 608E complied with GO 95; and that the Respondents complied with Rule 1.1. SCE also served testimony which asserted that it was not responsible for ensuring that NextG's attachment of facilities to the subject poles complied with GO 95; that the three subject poles complied with Rule 31.1; that extreme winds caused the poles to fail, not overloading; that SED's calculation that Replacement Pole 608E was overloaded was likely incorrect; and that there was no merit to the alleged Rule 1.1 violations with respect to SEC.

### **6.1.2. Analysis**

We next consider if the SCE Settlement Agreement's resolution of the alleged violations is reasonable in light of the whole record. Our primary concern is whether the Settlement Agreement resolves the alleged violations in a way that protects public safety as required by Pub. Util. Code § 451. We find the SCE Settlement Agreement, with the conditions adopted by today's decision, achieves this objective.

#### **6.1.2.1. Alleged Safety Violations**

##### **6.1.2.1.1. Unsafe Practices and Overloaded Poles**

In 2003, NextG requested permission from SCE to attach fiber-optic cable facilities to poles in Malibu Canyon that were jointly owned by SCE and other Respondents. SCE denied NextG's request based on SCE's determination that NextG's proposed attachments would overload at least four poles (i.e., Pole 212E, Pole 252E, Pole 253E, and Pole 1169259E (Pole 259E)).<sup>12</sup> Three of these poles failed during the Santa Ana windstorm on October 21, 2007.<sup>13</sup>

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<sup>12</sup> Exhibit CPSD-1, Chapter 4; and Exhibit SCE-2.

<sup>13</sup> Pole 259E did not fail during the Santa Ana windstorm on October 21, 2007.

SED alleged that at least one of the failed poles was overloaded in violation of Pub. Util. Code § 451 and GO 95; that SCE engaged in unsafe practices, and thereby violated § 451, when SCE failed to prevent NextG from attaching its facilities to poles in Malibu Canyon; and that Replacement Pole 608E which SCE installed after the fire had a lower safety factor than required by GO 95 for new construction.

In the Settlement Agreement, SCE admits that: (1) it violated Pub. Util. Code § 451 by not taking prompt action to prevent NextG from attaching its facilities to joint-use poles in Malibu Canyon after SCE determined NextG's proposed attachments would overload several poles; (2) Pole 252E was overloaded after NextG attached its facilities to the pole and at the time of the Malibu Canyon Fire; and (3) an SCE employee concluded that Replacement Pole 208E did not comply with GO 95 safety factor requirements for new construction, which should have caused SCE to review the pole-loading calculation for the replacement pole and remedy any identified deficiencies.

It is not necessary to rectify the purported overloading of Poles 212E and 253E, and the admitted overloading of Pole 252E, as these poles failed during the Santa Ana windstorm on October 21, 2007, and were replaced. The purported overloading of Pole 259E and Replacement Pole 608E will be rectified by the Carrier Settlement Agreement, which will upgrade the safety factor for poles in Malibu Canyon to at least 4.0. SCE is required by its Settlement Agreement to cooperate with the Carriers.

We find the SCE Settlement Agreement and the Carrier Settlement Agreement will together rectify the purported, alleged, and admitted overloading of poles. The \$20 million fine that SCE will pay under its settlement provides significant deterrence against pole overloading in the future.



**6.1.2.1.2. Known Local Condition**

The SCE Settlement Agreement does not contain any provisions that explicitly address SED's allegation that SCE violated Pub. Util. Code § 451 and Rule 31.1 of GO 95 by installing facilities in Malibu Canyon that could not withstand Santa Ana windstorms that are known to occur in the area.

We find that the Settlement Agreement's silence on this matter is consistent with the record. Although three poles failed during a Santa Ana windstorm on October 21, 2007, the failure may be explained by Pole 252E having a lower safety factor than required by GO 95. The failure of Pole 252E may have caused a cascading failure of two interconnected poles (Poles 253E and 212E). If Pole 252E had the requisite safety factor, it is possible that all three poles would have survived the Santa Ana windstorm, like all other poles in Malibu Canyon. Thus, the applicable violation was the failure of Pole 252E to comply with GO 95 safety factor requirements. SCE admits this violation.

**6.1.2.2. Alleged Rule 1.1 Violations**

SED alleged that SCE violated Rule 1.1 on nine occasions. SCE admits the gist of the alleged violations as follows:

1. SCE admits that its October 25, 2007, letter to the Commission pursuant to Pub. Util. Code § 315 violated Rule 1.1 in that it did not identify pole overloading and termite damage as possible contributing causes of the pole failures in addition to high winds.
2. SCE admits that it violated Rule 1.1 by not providing SED with a true and correct copy of an SCE employee's field notes.
3. SCE admits that it violated Rule 1.1 by failing to make clear on multiple occasions that not all of the evidence from the subject poles had been preserved at an SCE warehouse.
4. SCE acknowledges that its approach to providing information to SED may have impaired SED's investigation.

The Settlement Agreement includes the provision that SCE will henceforth seek to provide all facts that are relevant and material to SED's inquiries and will promptly advise SED if SCE discovers that any information previously provided to SED was incorrect. SCE will also notify SED of privileged material that is relevant to an SED inquiry so that SED may decide if it wishes to challenge the asserted privilege. Additionally, SCE will prepare an Evidence Retention protocol that will be subject to SED's approval.

We find the Settlement Agreement's resolution of the Rule 1.1 violations, with the \$20 million fine discussed below, is reasonable in light of the record.

#### **6.1.2.3. The Settlement Payments**

SCE agrees to pay a fine of \$20 million pursuant to Pub. Util. Code §§ 2107 - 2019, and to provide \$17 million to assess and remediate poles. Although the combined settlement payments of \$37 million are 75% of the \$49,539,500 fine recommended by SED, we conclude this is a reasonable compromise that is within the range of likely litigated outcomes for the alleged violations of § 451, GO 95, and Rule 1.1. We recognize that SCE admits the alleged violations are mostly true, which suggests that a larger fine might be appropriate. However, SCE's admissions were made in the context of a settlement. SCE previously denied everything it now admits. A fully litigated outcome might have produced a better or worse result for SCE than the Settlement Agreement.

#### **6.1.3. Adopted Conditions**

Rule 12.4(c) of the Commission's Rules of Practice and Procedure provides that the Commission may propose alternative terms to the parties of a settlement which are acceptable to the Commission. We conclude that in order to find the SCE Settlement Agreement is reasonable in light of the whole record and in the public interest, it is necessary to adopt the conditions set forth below.

**6.1.3.1. Timeframe for Assessments and Remediation**

The SCE Settlement Agreement establishes the Malibu Area Safety Enhancements Protocol (MASEP) pursuant to which SCE will provide \$17 million to (1) assess SCE's utility poles in the Malibu area for compliance with GO 95 safety factors and SCE's internal standards for pole loadings, and (2) remediate deficiencies found by the assessment. The MASEP provides significant public-safety benefits and is a key reason we find the Settlement Agreement is reasonable in light of the record and in the public interest.

Disappointingly, the Settlement Agreement does specify a deadline for completing pole assessments under the MASEP. The timeframe for remediating deficiencies is 24 to 59 months, depending on the nature of the deficiency. Assuming the pole assessments take 12 - 60 months complete, it could take 6 to 10 years to complete both assessments and remedial activities under the MASEP. The public-safety benefits of the SCE Settlement Agreement will be diminished if the MASEP is not completed within a reasonable timeframe. The absence of a firm deadline for completing the MASEP could also hinder our ability to enforce the MASEP should that become necessary. Therefore, we will approve the SCE Settlement Agreement with the following condition:

- SCE shall complete assessments of utility poles under the MASEP within 18 months from the effective date of this decision.

The above condition ensures that MASEP-related activities will be completed within 77 months from the date of this decision, with certain exceptions identified in Tenet 4 of the MASEP (e.g., permits denied).

### 6.1.3.2. Monitoring and Oversight

The \$17 million that the Settlement Agreement provides for the MASEP are shareholder funds. SCE will retain possession of the \$17 million and have complete control of MASEP money and activities.

We are concerned about the lack of procedures in the SCE Settlement Agreement for monitoring and oversight of the MASEP.<sup>14</sup> The lack of such procedures reduces our confidence that all of the \$17 million will be used in a cost effective and reasonable manner.

We assume that SED intends to monitor SCE's implementation of the MASEP and use of the \$17 million. So that SED has the basic tools needed for monitoring and oversight, we will approve the Settlement Agreement with the following conditions:

- SCE shall submit bi-monthly reports to SED regarding the status of MASEP-related pole assessments, remediation, and expenditures. SED may specify the content, format, and other details of the bi-monthly reports. The reports submitted by SCE shall conform to SED's specifications. SCE shall submit bi-monthly reports for as long as SED deems necessary.
- SCE shall retain for 10 years records of all MASEP expenditures, activities, documents (*e.g.*, invoices, contracts, accounting records, inspections, loading calculations, photographs, and communications with pole owners).

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<sup>14</sup> Section III.F.9 of the Settlement Agreement states that "SCE shall provide periodic reports to SED on the results of its pole loading inspection program, which will cover all poles in the service territory." This section is not related to the MASEP. Rather, it memorializes SCE's agreement to provide periodic reports to SED regarding its pole-loading inspection program that SCE will propose in its 2015 General Rate Case. (Joint SCE-SED Response dated July 3, 2013, at Item 1.a.ii.)

After the final bi-monthly report is submitted by SCE, we will require SED to prepare a report that (1) summarizes the results of the MASEP (*e.g.*, number of poles assessed, the number and types of defects found, the number of poles upgraded to conform to SCE's internal standards for high-wind areas, etc.); (2) lists and describes any significant safety issues found by the assessments and what remedial actions were taken, if any; and (3) provides any recommendations or other information that SED deems appropriate. SED shall file and serve its report no later than 6 months after the final bi-monthly report is submitted. SED shall also post its report on the Commission's website, with appropriate redactions, in accordance with Resolution L-436, dated February 14, 2013.<sup>15</sup>

#### **6.1.3.3. Safety Factors for Malibu Canyon**

The Carrier Settlement Agreement that was approved by D.12-09-019 will upgrade the safety factor of joint-use wood poles in Malibu Canyon Road to at least 4.0.<sup>16</sup> SCE will not assess and remediate these poles under the MASEP.<sup>17</sup> Superficially, it is logical that the MASEP would exclude poles that will be upgraded pursuant to the Carrier Settlement Agreement in order to avoid duplication of work. However, excluding these poles from the MASEP raises potential public-safety issues for the reasons described below.

The record of this proceeding shows unequivocally that Santa Ana windstorms pose a fire hazard for utility poles in Malibu Canyon. To protect public safety, Pub. Util. Code § 451 and Rule 31.1 of GO 95 together require

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<sup>15</sup> Resolution L-436 at 13 - 14.

<sup>16</sup> This provision in the Carrier Settlement Agreement applies to the 3.38-mile segment of Malibu Canyon Road between Potter Drive and Mesa Peak Tractor Way.

<sup>17</sup> SCE Settlement Agreement, Exhibit A, Page 3, Item 1.

utility poles in Malibu Canyon to be designed, built, and maintained to withstand Santa Ana windstorms. If the minimum wind-load safety factor for utility poles in Rule 44 of GO 95 is not adequate to withstand Santa Ana windstorms, a higher safety factor must be used pursuant to § 451 and Rule 31.1.

Consistent with § 451 and Rule 31.1, the MASEP states that “SCE designates certain areas of its service territory as high wind areas. In those areas, SCE’s internal standards require that a higher wind pressure be used in the pole loading calculation than the minimum GO 95 requirement. SCE will apply its wind loading standards for high wind areas for the assessments and the remediations required by [the MASEP].<sup>18</sup>” SCE has designated Malibu Canyon as a high-wind area where SCE’s internal standards apply.<sup>19</sup>

SED and SCE state that the poles in Malibu Canyon Road which are upgraded to a safety factor of at least 4.0 pursuant to the Carrier Settlement Agreement “may meet SCE’s standard for high wind areas. If the upgrade to a safety factor of at least 4.0 for any pole covered by the Carrier Settlement falls short of SCE’s standard for high wind areas, SCE will be responsible for the incremental additional cost to upgrade the pole to meet its standard.<sup>20</sup>”

(Emphasis added.) We are concerned that there is no provision in the SCE Settlement Agreement to ensure that poles upgraded pursuant to the Carrier

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<sup>18</sup> SCE Settlement Agreement, Exhibit A, Tenet 5.

<sup>19</sup> Joint SCE-SED Response dated July 3, 2013, at 5 and 6; and Joint SCE-SED Response dated July 24, 2013, at 3.

<sup>20</sup> Joint SCE -SED Response dated July 3, 2013, at 6. A safety factor of 4.0 equates to a wind load of 32 psf. SCE’s internal standard for new Grade A wood poles in Malibu Canyon is 36 psf, which may degrade to 32 psf, at which time the poles must be remediated or replaced. (SCE-SED Joint Response dated July 3, 2013, at 5 - 6)

Settlement Agreement will, in fact, meet SCE's internal standards for high-wind areas. In light of the record of this proceeding that Santa Ana windstorms pose a fire hazard for utility poles in Malibu Canyon, we will approve the SCE Settlement Agreement with the following condition:

- SCE shall verify that the poles in Malibu Canyon which are upgraded pursuant to the Carrier Settlement Agreement meet SCE's internal standards for high-wind areas. If the poles do not meet SCE' internal standards, SCE shall upgrade the poles to meet its standards. SCE will be responsible for the incremental cost to upgrade poles in Malibu Canyon to meet its standards. The bi-monthly reports that SCE submits to SED pursuant to this decision shall include progress reports on SCE's implementation this condition.

#### **6.1.3.4. Overlapping Safety Factors**

The assessment and remediation of poles in the Malibu area under the MASEP may overlap with (1) the safety audit and associated remedial work that will occur under the NextG Settlement Agreement, and (2) the statistical survey and associated remedial work of joint-use poles in SCE's service territory that will occur under the Carrier Settlement Agreement. We strongly encourage the Respondents to coordinate the work they perform under their respective Settlement Agreements. If these multiple endeavors result in situations where there are overlapping safety factors for a particular line element, the highest safety factor shall apply.<sup>21</sup>

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<sup>21</sup> For example, the safety audit that NextG will conduct under its Settlement Agreement might find a Grade A wood pole with a safety factor of less than 2.67, the minimum required by GO 95. NextG, in conjunction with the pole owner(s), would increase the safety factor of this pole to at least 2.67 under its Settlement Agreement. However, if this pole is in a "high-wind area" designated by SCE, the pole would be upgraded to higher safety factor under the SCE Settlement Agreement. In this case,

*Footnote continued on next page*

**6.1.3.5. Clarification of the MASEP First Priority**

The \$17 million that the SCE Settlement Agreement provides to assess and remediate poles in the Malibu area will be spent based on the descending order of priorities listed in the MASEP. The first priority is to assess all poles along Malibu Canyon Road from Pacific Coast Highway to Mulholland Highway not covered by the Carrier Settlement Agreement. However, maps of the area show that Malibu Canyon Road, before it connects with Mulholland Highway, merges with, and becomes, Las Virgenes Road. In response to a question from the assigned ALJ, the Settling Parties clarified that the scope of this priority includes Las Virgenes Road between Malibu Canyon Road and Mulholland Highway.

To ensure that the ambit of the first priority is clear, we will approve the settlement with the following condition:

- The first priority for the MASEP listed in the Settlement Agreement in Exhibit A, at 3, includes Las Virgenes Road between Malibu Canyon Road and Mulholland Highway.

**6.1.3.6. Cost Recovery**

The SCE Settlement Agreement provides that SCE will not seek to recover from its ratepayers any costs associated with either the Malibu Canyon Fire or the Settlement Agreement, including the \$37 million of settlement payments, costs for civil litigation arising from the Malibu Canyon Fire, and any increased insurance costs attributable to the Malibu Canyon Fire.

Consistent with the Settlement Agreement, SCE may not recover any costs that it incurs to comply with this decision.

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the higher safety factor would apply and be implemented by SCE under its Settlement Agreement, and not by NextG under its Settlement Agreement.



**6.1.4. Issues Raised by the Responding Parties**

The Responding Parties contend that SCE cannot use its Settlement Agreement to arrogate for itself the right to (1) designate high-wind areas, (2) determine design standards for poles in high-wind areas, and (3) recover from other joint-pole owners a proportionate share of the costs that SCE incurs to upgrade poles to comply with SCE's internal standards for high-wind areas.

We agree with the Responding Parties. The Responding Parties are not parties to the SCE Settlement Agreement and, therefore, have no duties or obligations under the agreement. SCE has no authority pursuant to the Settlement Agreement or today's decision to compel the Responding Parties to share any costs that SCE may incur to upgrade joint-use poles to conform with SCE's internal standards for high-wind areas.<sup>22</sup>

At the same time, the joint owners of poles are required by Pub. Util. Code § 451 and Rule 31.1 of GO 95 to design, build, and maintain utility poles to withstand high winds that are known to occur in a particular area. If SCE determines pursuant to its activities under the Settlement Agreement that high winds require the safety factor for joint-use poles in particular areas to be increased in order to protect public safety and comply with § 451 and Rule 31.1, and other joint owners decline to contribute their proportionate share of costs to comply with § 451 and Rule 31.1, SCE may raise this matter in a complaint or other formal Commission proceeding, as appropriate.

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<sup>22</sup> The issue of whether, and to what extent, the SCJPA enables SCE to recover from other joint-pole owners a proportionate share of the pole-remediation costs that SCE incurs under its Settlement Agreement is beyond the scope of this decision, as is the question of the Commission's jurisdiction to interpret and enforce the SCJPA.

**6.2. Consistent with the Law**

We find the SCE Settlement Agreement is consistent with the law, including the California Public Utilities Code and the Commission's decisions, rules, and General Orders. However, there are several legal issues regarding the Settlement Agreement that we address below.

**6.2.1. Compliance with GO 95**

In the Settlement Agreement, SCE agrees to provide \$17 million of shareholder funds to assess and remediate poles in the Malibu area in accordance with the MASEP. SCE must comply with GO 95 when carrying out these activities. Among other things, if SCE finds substandard poles, the poles must be repaired or replaced in accordance with the priority levels and deadlines in Rule 18-A(2). New or reconstructed poles must be marked in conformance with Rule 51.6A (high-voltage marking), Rule 56.9 (guy marker), Rule 86.9 (guy marker), Rule 91.5 (ownership), and Rule 94.5 (antennas). SCE must retain records of all assessments and remedial work conducted pursuant to the MASEP for at least 10 years pursuant to Rule 18-A(1)(b).

**6.2.2. Conformance with Fine Criteria**

SCE admits that it violated Pub. Util. Code § 451 and Rule 1.1; that Pole 252E was overloaded in violation of GO 95; and that SCE did not take appropriate actions when an SCE employee found that Replacement Pole 608E did not comply with GO 95 safety factor requirements for new installations. The SCE Settlement Agreement stipulates that SCE will pay a penalty of \$20 million to the State General Fund to resolve these violations. SED and SCE agree that the

\$20 million penalty is a fine under Pub. Util. Code §§ 2107 - 2109.<sup>23</sup> These laws state, in relevant part, as follows:

**§ 2107:** Any public utility that violates or fails to comply... with any... order, decision, decree, rule, direction, demand, or requirement of the commission... is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.<sup>24</sup>

**§ 2108:** Every violation... by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

**§ 2109:** In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility.

We concur that SCE should pay a fine for its admitted violations. The Commission has long held that the primary purpose of fines is to deter future violations.<sup>25</sup> Therefore, to deter future violations by SCE and others, it is necessary to fine SCE for its admitted violations.

To determine if the settlement fine of \$20 million is reasonable, we will rely on the following criteria adopted by the Commission in D.98-12-075:

- (1) physical harm;
- (2) economic harm;
- (3) harm to the regulatory process;

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<sup>23</sup> Joint SCE-SED Response dated July 3, 2013, at 8.

<sup>24</sup> During much of the time period relevant to the admitted violations, the maximum penalty per offense was \$20,000.

<sup>25</sup> D.01-08-058 at 80, and D.04-09-062 at 62.

- (4) the number and scope of violations;
- (5) the utility's actions to prevent a violation;
- (6) the utility's actions to detect a violation;
- (7) the utility's actions to disclose and rectify a violation;
- (8) the need for deterrence;
- (9) constitutional limit on excessive fines;
- (10) the degree of wrongdoing;
- (11) the public interest; and
- (12) consistency with precedent.<sup>26</sup>

As we consider each criterion below, it is important to keep in mind that the SCE Settlement Agreement is one of three settlements in this proceeding that together will result in an overall settled amount of \$63.5 million (\$35.4 million to the State General Fund and \$28.1 million for remedial measures), of which SCE's share is \$37 million (\$20 million fine to the State General Fund and \$17 million for the MASEP).

The SCE Settlement Agreement does not allocate the \$20 million fine among the admitted violations. As we consider each criterion below, we will assume that a material portion of the fine is allocable to each admitted violation.

#### **6.2.2.1. Physical Harm**

The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following. The physical harm in this case was caused by the Malibu Canyon Fire, which burned 3,836 acres, destroyed 14 structures and 36 vehicles, and damaged 19 other

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<sup>26</sup> D.98-12-075, 84 CPUC2d at 188-190.

structures. There were no reported injuries or fatalities from the fire. There was no physical harm from SCE's violations of Rule 1.1.

The three Settlement Agreements in this proceeding will together result in payments to the State General Fund of \$35.4 million, of which SCE's share is \$20 million. It is not possible to state with precession how much of the \$35.4 million, or SCE's fine of \$20 million, is allocable to the physical harm. Nonetheless, the allocation is undoubtedly substantial and, in our judgment, proportionate to the significant physical harm caused by the Malibu Canyon Fire.

#### **6.2.2.2. Economic Harm**

The severity of a violation increases with (1) the level of costs imposed on the victims of the violation, and (2) the unlawful benefits gained by the offender. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.

The Malibu Canyon Fire undoubtedly caused substantial economic harm. The Settling Parties aver that everyone who suffered economic harm appears to have been compensated. Specifically, the five Respondents in this proceeding have signed a Settlement Agreement with Cal Fire that requires the Respondents to pay \$4 million to Cal Fire for fire suppression costs associated with the Malibu Canyon Fire. The Respondents have also reached confidential settlements with the victims of the Malibu Canyon Fire. All court proceedings outside of the Commission stemming from the fire have, to SCE's knowledge, been settled. SCE opines that Cal Fire and all victims have been made whole

through their respective settlements, as the plaintiffs have dropped their claims against the Respondents.<sup>27</sup>

The Settling Parties state the unlawful economic benefits gained by SCE were far less than the economic harm. SCE believes the unlawful economic benefit was limited to the avoided cost of a new pole to replace the overloaded Pole 252E. SCE estimates the cost of the new pole at “a few thousand dollars.”

Based on the previously summarized representations of the Settling Parties, we find the economic harm from the Malibu Canyon Fire has been largely mitigated by the Respondents. There was no significant economic harm from SCE’s failure to comply with Rule 1.1. Accordingly, we conclude that the settlement fine of \$20 million equals or exceeds any remaining uncompensated economic harm or unlawful benefits associated with SCE’s violations.

#### **6.2.2.3. Harm to the Regulatory Process**

A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements. SCE admits several violations of Rule 1.1, all of which involved the withholding of relevant information from SED and/or the Commission.

We view the admitted violations as a serious offense. The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times. Accordingly, this criterion weighs in favor of a significant fine.

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<sup>27</sup> SCE represents that new claims are barred by the statute of limitations.

**6.2.2.4. The Number and Scope of Violations**

A single violation is less severe than multiple offenses. A widespread violation that affects many people is worse than one that is limited in scope.

SCE admits several violations. We judge the violations to be widespread because of the multiple violations of Rule 1.1, the substantial physical harm caused by the Malibu Canyon Fire, and the substantial economic harm. Consequently, this criterion weighs in favor of a significant fine.<sup>28</sup>

**6.2.2.5. Actions to Prevent a Violation**

Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. A utility's past record of compliance may be considered in assessing a fine.

Today's decision is not the first time that SCE has been found to have violated applicable laws and regulations. We are aware of the following violations in recent years:

- D.08-09-038 ordered SCE to pay a fine of \$30 million for violations of the Public Utilities Code, Commission decisions, and Rule 1.1 related to SCE's submittal of false and misleading information to boost the monetary awards that SCE received under Performance Based Ratemaking.
- D.04-04-065 ordered SCE to pay a fine of \$0.712 million for 86 violations of GOs 95, 128, and 165.

In light of SCE's previous violations, this criterion weighs in favor of a significant fine.

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<sup>28</sup> Although the Respondents have largely mitigated the substantial economic harm from the Malibu Canyon Fire, the fact that substantial economic harm occurred weighs in favor of a significant fine.

**6.2.2.6. Actions to Detect a Violation**

Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level of management's involvement in, or tolerance of, the offense will be considered in determining the amount of a fine.

In the case before us, SCE employees detected safety-related violations, but SCE did not correct the violations. It appears that the Rule 1.1 violations bordered on deliberate wrongdoing. We do not reach any conclusions at this time regarding management's involvement in, or tolerance of, the violations.

We find that this criterion weighs in favor of a significant fine.

**6.2.2.7. Actions to Disclose and Rectify a Violation**

Utilities are expected to promptly bring a violation to the Commission's attention. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing a fine.

SCE did little to disclose the violations at issue in this proceeding. To the contrary, SCE denied all the violations prior to the Settlement Agreement. On the other hand, the inclusion of SCE's admissions in the Settlement Agreement, instead of litigating all issues to conclusion, shows a belated willingness to disclose. The \$17 million of shareholder funds that SCE has agreed to provide for the MASEP nearly six years after the Malibu Canyon Fire occurred constitutes an overdue but meaningful effort to rectify the safety-related violations. SCE has also agreed to reform its internal practices to avoid future violations of Rule 1.1.

After carefully considering the factors above, we conclude that this criterion weighs in favor of a significant fine.



**6.2.2.8. Need for Deterrence**

Fines should be set at a level that deters future violations. Effective deterrence requires the size of a fine to reflect the financial resources of the utility. To assess SCE's financial resources at the time of the Malibu Canyon Fire and during the period encompassing SCE's violations, SCE provided annual reports that were prepared pursuant to the Securities Exchange Act of 1934 (Form 10-Ks). These annual reports show that SCE had total operating revenues of \$10.6 billion in 2011 and \$10.5 billion in 2007, and net income of \$1.1 billion in 2011 and \$1.4 billion in 2007.

We find that the settlement fine of \$20 million, when viewed as part of the total shareholder payments of \$37 million, is sufficiently material in relation to SCE's financial resources to provide deterrence against future violations.

**6.2.2.9. Constitutional Limits on Excessive Fines**

The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources. SCE, by reaching a settlement with SED, has implicitly agreed that the settlement fine of \$20 million is not excessive.

**6.2.2.10. The Degree of Wrongdoing**

The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

The relevant facts applicable to this criterion were addressed previously in today's decision. In general, we find the settlement fine of \$20 million is consistent with the degree of wrongdoing.

**6.2.2.11. The Public Interest**

The public interest is always considered in determining the size of a fine. Here, we accord great weight to SED's judgment that the settlement fine of

\$20 million is in the public interest. SED is the public's representative in Commission enforcement proceedings and has extensive experience with both litigated outcomes and negotiated settlements. SED is intimately familiar with the facts and circumstances of this case, as well as the strengths and weaknesses of its own position and SCE's. Moreover, it would undermine SED's ability to negotiate fines if the counterparty lacked confidence in the Commission's willingness to approve the negotiated fine. This situation would virtually guarantee that every enforcement proceeding would be fully litigated, resulting in an inefficient use of scarce public resources.

For the preceding reasons, we hesitate to second guess a fine negotiated by SED without good cause. We see no good cause here.

#### **6.2.2.12. Consistency with Commission Precedent**

Any decision that approves a fine should address previous Commission decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome. For the reasons explained below, we find the settlement fine of \$20 million is consistent with Commission decisions that approved fines for (1) safety violations that resulted in deaths, injuries, and/or property damage, and (2) violations of Rule 1.1.

##### **6.2.2.12.1. Precedent Regarding Safety Violations**

The SCE Settlement Agreement is consistent with the two previous Settlement Agreements in this proceeding. The Carrier Settlement Agreement required AT&T, Sprint, and Verizon to pay \$6.9 million to the State General Fund, divided equally among them (i.e., \$2.3 million each). The pending NextG Settlement Agreement requires NextG to pay a fine of \$8.5 million to the State General Fund. It is reasonable for SCE to pay more to the State General Fund

than each of the Carriers (\$20 million vs. \$2.3 million) and NextG (\$20 million vs. \$8.5 million) because SED recommended a larger fine for SCE.<sup>29</sup>

D.11-11-001 levied a fine of \$38 million on Pacific Gas and Electric Company (PG&E) for several violations related to a natural gas explosion in Rancho Cordova that killed one person, injured several more people, destroyed one house, and damaged another. Although the Malibu Canyon Fire caused far more property damage than the Rancho Cordova gas explosion, a larger fine was appropriate in the Rancho Cordova case due to the fatality and injuries.

D.10-04-047 approved a Settlement Agreement between SED and the two respondents in that proceeding, San Diego Gas & Electric Company (SDG&E) and Cox Communications (Cox), regarding alleged violations pertaining to the respondents' involvement with the Witch, Rice, and Guejito Fires that ignited on October 21, 2007, during a Santa Ana windstorm. Those fires were far larger and vastly more destructive than the Malibu Canyon Fire. The settlement agreement approved by D.10-04-047 required SDG&E to pay \$14.35 million to the State General Fund and up to \$400,000 for reimbursement of SED's cost. Cox paid \$2 million to the State General Fund.

Compared to D.10-04-047, the current proceeding will result in the five Respondents (AT&T, NextG, SCE, Sprint, and Verizon) paying \$35.4 million to the State General Fund. A larger payment is appropriate in the current proceeding relative to D.10-04-047 because it has taken much longer for the Respondents in the current proceeding to reach a settlement with SED, thereby reducing one of the key benefits of a settlement (i.e., avoiding the time and

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<sup>29</sup> SED recommended a fine of \$49,539,500 for SCE, \$7,759,500 for AT&T, \$7,732,000 for Sprint, \$9,411,500 for Verizon, and \$24,789,500 for NextG.

expense of litigation). Moreover, unlike the current proceeding, the settlement agreement approved by D.10-04-047 did not include admissions of safety violations,<sup>30</sup> which further explains the lower payments to the State General Fund approved by D.10-04-047 compared to the current proceeding.<sup>31</sup>

D.06-02-003 approved a settlement agreement regarding a fire at PG&E's Mission Substation in 2003. PG&E agreed to pay \$500,000 to the State General Fund, but the settlement also included the parties' stipulation that PG&E did not commit any violations.<sup>32</sup> In contrast, today's decision approves a Settlement Agreement wherein SCE admits multiple violations. Consequently, it is appropriate for today's decision to approve a much larger payment to the State General Fund compared to D.06-02-003.

Lastly, D.04-04-065 concerned a Commission investigation of SCE's electric line construction, operation, and maintenance practices during 1998 - 2000. D.04-04-065 ordered SCE to pay a fine of \$712,000 for 86 violations, including 30 violations involving fatalities, injuries, and/or property damage. The fine of \$20 million approved by today's decision is much larger compared to D.04-04-065 primarily because today's decision reflects SED's recommendation to levy fines based on continuing violations pursuant to Pub. Util. Code § 2108, which allows each day to count as a new violation. In contrast, D.04-04-065 did

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<sup>30</sup> SDG&E admitted that it failed to provide the Commission with a 20-day follow-up letter required by the Accident Reporting Requirements for the Witch, Rice, and Guejito Fires.

<sup>31</sup> The NextG Settlement Agreement and the SCE Settlement Agreement include admissions of safety-related violations. The Carrier Settlement does not include admissions of safety violations.

<sup>32</sup> D.06-02-003, Appendix A, at 3, Paragraph 1.

not count each day as a new violation because the period of non-compliance could not be determined.<sup>33</sup>

#### **6.2.2.12.2. Precedent Regarding Rule 1.1 Violations**

Commission decisions adopting fines for violations of Rule 1.1 are similar in that such precedent necessarily involves instances where a party was less than forthright in its dealings with the Commission. Examples of recent decisions where the Commission has approved a fine for violations of Rule 1.1 include D.11-04-009 (fine of \$12,000), D.11-03-030 (fine of \$195,000), D.10-12-011 (fine of \$5,000), and D.10-06-033 (fine of \$11,000).

In the case before us, SED and SCE have agreed to a settlement fine of \$20 million, but the SCE Settlement Agreement does not specify how much of the \$20 million is attributable to SCE's admitted violations of Rule 1.1. This is consistent with Commission precedent where the Commission has adopted a single fine for multiple violations, with no disaggregation of the fine among the violations. For example, D.08-09-038 ordered SCE to pay a fine of \$30 million for violations of several statutes, Commission decisions, and Rule 1.1, with no disaggregation of the fine among the violations.

#### **6.2.2.13. Conclusion**

In deciding whether the settlement fine of \$20 million is reasonable, we do not consider the question of whether the Commission would have reached the exact same fine as the Settling Parties. Rather, our task is to apply the criteria established by D.98-12-075 to the record of this proceeding to determine whether the settlement fine is consistent with the criteria. Based on the facts of this case

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<sup>33</sup> D.04-04-065 at 5, 39, 40, 44, and 55-56.

and the criteria established by D.98-12-075, we conclude that the SCE settlement fine of \$20 million is reasonable, significant, and consistent with Commission precedent. We will approve the fine in order to deter future violations by SCE and others. We emphasize that the fine we approve today reflects the unique facts before us in this proceeding. We may adopt larger or smaller fines in other proceedings if the facts so warrant.

### **6.3. In the Public Interest**

The Commission has long favored the settlement of disputes. This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.<sup>34</sup> The SCE Settlement Agreement achieves these goals.

The SCE Settlement Agreement, with the conditions adopted by today's decision, provides substantial public benefits. Among other things, the Settlement Agreement will enhance public safety by providing \$17 million to assess utility poles in the Malibu area for compliance with GO 95 safety factors and, where applicable, SCE's higher internal standards. The settlement fine of \$20 million is a significant amount that will deter SCE and others from future violations. The total settlement payments of \$37 million are within a range that fairly reflects the facts of this case.

We conclude for the preceding reasons that the public interest is better served by approving the SCE Settlement Agreement, with the conditions adopted by today's decision, than continuing with litigation.

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<sup>34</sup> See, for example, D.13-05-020 at 22, 24-25; D.10-12-051 at 9; and D.10-12-035 at 56.

**7. Need for a Hearing on the SCE Settlement Agreement**

Rule 12.2 of the Commission's Rules of Practice and Procedure allows parties to request a hearing on a Settlement Agreement. Rule 12.3 provides that the Commission may decline to set a hearing if there are no material contested issues of fact. No party requested a hearing on the SCE Settlement Agreement, and there are no material contested issues of fact regarding the settlement. Accordingly, there is no need for a hearing on the SCE Settlement Agreement.

**8. Need for Evidentiary Hearings in this Proceeding**

Order Instituting Investigation 09-01-018 categorized this Investigation as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require an evidentiary hearing. The need for an evidentiary hearing was affirmed in the two scoping memos issued by the assigned Commissioner on October 22, 2009, and November 23, 2011.

All issues in this proceeding have been resolved by Settlement Agreements approved by the Commission. Accordingly, there is no need for an evidentiary hearing. The previous determination that an evidentiary hearing is necessary is revised to no hearing is necessary.

**9. Comments on the Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties pursuant to Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, by \_\_\_\_\_. Reply comments were filed on \_\_\_\_\_, by \_\_\_\_\_.

**10. Assignment of the Proceeding**

Carla J. Peterman is the assigned Commissioner for this proceeding. ALJ Timothy Kenney is the presiding officer for this proceeding.

**Findings of Fact**

1. On October 21, 2007, three interconnected utility poles located next to Malibu Canyon Road in Los Angeles County fell to the ground and ignited a fire during a Santa Ana windstorm. The resulting Malibu Canyon Fire burned 3,836 acres, destroyed 14 structures and 36 vehicles, and damaged 19 other structures. There were no reported injuries or fatalities.

2. Following an investigation of the Malibu Canyon Fire, SED alleged that SCE violated § 451, GO 95, and Rule 1.1. In the Settlement Agreement, SCE admits the following:

- i. Pole 252E did not comply with GO 95 safety factor requirements as a result of the NextG's attachment of fiber optic cable facilities to the pole and at the time of the Malibu Canyon Fire.
- ii. SCE violated Pub. Util. Code § 451 by not taking prompt action to prevent NextG from attaching facilities to joint poles after an SCE employee determined that NextG's proposed attachments would cause several poles in Malibu Canyon to be overloaded.
- iii. An SCE employee concluded that Replacement Pole 608E did not comply with GO 95 safety factor requirements for new construction. This information should have caused SCE to promptly verify the pole-loading inputs for the pole and remedy any identified deficiencies.
- iv. SCE's October 25, 2007, letter to the Commission pursuant to Pub. Util. Code § 315 violated Rule 1.1 because the letter did not identify pole overloading and termite damage as possible contributing causes of the pole failures in addition to high winds.
- v. SCE violated Rule 1.1 by not providing SED with a true and correct copy of an SCE employee's field notes.
- vi. SCE violated Rule 1.1 by failing to make it clear on multiple occasions that not all of the evidence from the subject poles had been preserved at an SCE warehouse.

3. The scope of SCE's admissions is consistent with the record of this proceeding.



4. The SCE Settlement Agreement, with the conditions adopted by today's decision, resolves the alleged violations in a way that protects public safety.

5. The total settlement payments of \$37 million are within the range of likely litigated outcomes for the alleged violations of § 451, GO 95, and Rule 1.1.

6. The Settlement Agreements in this proceeding may occasionally result in the application of two different safety factors for a particular line element.

7. There are no material contested issues of fact regarding the SCE Settlement Agreement.

8. The \$17 million that the Settlement Agreement provides for the MASEP are shareholder funds and will not be received by the Commission. SCE will have direct control of MASEP money and activities.

### **Conclusions of Law**

1. Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that the Commission will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. Rule 12.4(c) provides that the Commission may propose alternative terms to a settlement that are acceptable to the Commission.

2. The SCE Settlement Agreement should be approved with the conditions listed in the following order to (i) ensure that key provisions in the Settlement Agreement are implemented within a reasonable period of time; (ii) clarify the intent of certain provisions; and (iii) ensure that the Settlement Agreement adequately protects public safety as mandated by Pub. Util. Code § 451.

3. The SCE Settlement Agreement, with the conditions set forth in the following order, is reasonable in light of the whole record, consistent with the law, and in the public interest. Absent these conditions, the SCE Settlement Agreement does not satisfy Rule 12.1(d).

4. The Settling Parties' motion for approval of the SCE Settlement Agreement should be granted pursuant to Article 12 of the Commission's Rules of Practice and Procedure, subject to the conditions in the following order.

5. If there is a conflict between or among the Settlement Agreements in this proceeding regarding the applicable safety factor for a particular line element, the highest safety factor should apply.

6. Neither the SCE Settlement Agreement nor this decision provide SCE with authority to compel other joint-pole owners to share costs that SCE may incur under the MASEP to upgrade joint-use poles to comply with SCE's internal standards for SCE-designated high-wind areas.

7. Pub. Util. Code § 451 and Rule 31.1 together require joint-pole owners to design, build, and maintain poles and pole attachments to withstand strong winds that are known to occur in a particular area. If the minimum wind-load safety factor for a pole or pole attachment specified in Rule 44 of GO 95 is not adequate to withstand strong winds that are known to occur in a particular area, a higher safety factor must be used pursuant to § 451 and Rule 31.1.

8. There is no need for a hearing on the SCE Settlement Agreement.

9. There is no need for evidentiary hearings in this proceeding.

10. The following order should be effective immediately so that the benefits of the SCE Settlement Agreement may be obtained expeditiously.

**O R D E R**

**IT IS ORDERED** that:

1. The attached Settlement Agreement between Southern California Edison Company (SCE) and the Commission's Safety and Enforcement Division (SED) is approved, subject to the following conditions:

- i. SCE shall complete assessments of utility poles pursuant to the Malibu Area Safety Enhancements Protocol (MASEP) within 18 months from the effective date of this order.
- ii. SCE shall retain for 10 years records of all MASEP expenditures, activities, documents (*e.g.*, invoices, contracts, accounting records, loading calculations, photographs, and communications with pole owners).
- iii. SCE shall submit bi-monthly reports to SED regarding the status of MASEP-related pole assessments, remediation, and expenditures. SED may specify the content, format, and other details of the bi-monthly reports. The reports submitted by SCE shall conform to SED's specifications. SCE shall submit bi-monthly reports for as long as SED deems necessary.
- iv. After the final bi-monthly report is submitted by SCE, SED shall prepare a report that (A) summarizes the results of the MASEP; (B) lists and describes any significant safety issues found by the MASEP and what remedial actions were taken, if any; and (C) provides any recommendations or other information that SED deems appropriate. SED shall file and serve its report no later than 6 months after the final bi-monthly report is submitted by SCE. SED shall also post its report on the Commission's website, with appropriate redactions, in accordance with Resolution L-436, dated February 14, 2013.

- v. SCE shall verify that the poles in Malibu Canyon which are upgraded pursuant to the Carrier Settlement Agreement meet SCE's internal standards for high-wind areas. If the poles do not meet SCE's internal standards, SCE shall upgrade the poles to meet its standards. SCE will be responsible for the incremental cost to upgrade poles in Malibu Canyon to meet its standards. The bi-monthly reports that SCE submits to SED pursuant to this decision shall include progress reports on SCE's implementation of this condition.
- vi. The first priority for the MASEP listed in the Settlement Agreement in Exhibit A, at Page 3, includes Las Virgenes Road between Malibu Canyon Road and Mulholland Highway.
- vii. SCE may not recover from ratepayers any costs that SCE incurs to comply with this decision.

2. If there is a conflict between or among the Settlement Agreements in this proceeding regarding the applicable safety factor for a particular line element, the highest safety factor shall apply.

3. The joint motion of Southern California Edison Company and the Safety and Enforcement Division for approval of the attached Settlement Agreement is granted, subject to the conditions in Ordering Paragraphs 1 and 2.

4. Southern California Edison Company and the Commission's Safety and Enforcement Division shall file and serve a notice within five business days from the effective date of this order that states whether they accept the conditions in the previous Ordering Paragraphs.

5. If the conditions listed in Ordering Paragraphs 1 and 2 are accepted, Southern California Edison Company (SCE) shall pay a fine of \$20 million to the State of California General Fund within 30 days from the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. SCE shall

write on the face of the check or money order "For deposit to the State of California General Fund per Decision XX-YY-ZZZ" with "Decision XX-YY-ZZZ" being the Commission-designated number for today's decision.

6. All money received by the Commission's Fiscal Office pursuant to Ordering Paragraph 5 shall be deposited or transferred to the State of California General Fund as soon as practical.

7. The Commission's previous determination on the need for an evidentiary hearing in this proceeding is revised to no hearing is necessary.

8. Investigation 09-01-018 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **APPENDIX A: Settlement Agreement**

**Note:** The attached Settlement Agreement has non-substantive pagination and formatting changes that are not reflected in the copies of the Settlement Agreement that were filed and served.

**Note:** The signatures of the Settling Parties are not included on the signature pages of the attached Settlement Agreement. The signatures are included in the Settlement Agreement that was filed at the Commission's Docket Office, copies of which were served on the parties.

**Error:** The attached Settlement Agreement contains a typographical error. Specifically, Exhibit A of the Settlement Agreement, at page 1, Tenet 5, erroneously refers to "Parts A - D." The correct reference is "Items 1 - 4."

**MALIBU CANYON FIRE OIL SETTLEMENT AGREEMENT BETWEEN  
THE SAFETY AND ENFORCEMENT DIVISION OF THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION AND  
SOUTHERN CALIFORNIA EDISON COMPANY**

Southern California Edison Company (“SCE”) and the Safety and Enforcement Division (“SED”)<sup>1</sup> of the California Public Utilities Commission (“Commission”) (hereinafter collectively referred to as the “Settling Parties”) agree to settle all claims, allegations and liabilities in the *Malibu Canyon Fire Oil*, I.09-01-018, on the following terms and conditions, which shall only become effective upon final approval by the Commission.

This Settlement Agreement (“Agreement”) is entered into as a compromise of disputed claims in order to minimize the time, expense and uncertainty of further litigation. The Settling Parties agree to the following terms and conditions as a complete and final resolution of all claims against SCE in this proceeding. This Agreement constitutes the sole agreement between the Settling Parties concerning the subject matter of this Agreement. SCE has no claims against SED.

SCE and SED shall jointly submit this Agreement to the Commission for approval. The Agreement shall be subject to termination by SCE or SED if not approved by the Commission in the form submitted and without modification through the issuance of a Commission decision that has become final and is no

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<sup>1</sup> Until January 2013, SED was known as the Consumer Protection and Safety Division (“CPSD”). Accordingly, references in this document to SED shall be read as including CPSD.

longer subject to appeal within 9 months following the date of submission to the Commission.

## **I. PARTIES**

A. The parties to this Agreement are SED and SCE. NextG Networks of California, Inc. (“NextG”), AT&T California and AT&T Mobility LLC (“AT&T”), Cellco Partnership LLP, D/B/A/ Verizon Wireless (“Verizon Wireless”), and Sprint Telephony PSC, L.P. (“Sprint”) who have also been named respondents in this proceeding, are not parties to this Agreement.<sup>2</sup>

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

C. SCE is a public utility, as defined by the California Public Utilities Code. It serves a population of nearly 14 million in a 50,000-square-mile service area within Central, Coastal and Southern California.

## **II. GENERAL RECITALS**

A. On October 21, 2007, during Santa Ana winds, three wooden utility poles (Poles 1169252E (“Pole 252”), 1169253E, and 2279212E, collectively, the “Poles”) located on Malibu Canyon Road broke and fell to the ground. According to a report by the Los Angeles County Fire Department, the resulting fire (the “Malibu Canyon Fire”) burned 3,836 acres, destroyed 14 structures and

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<sup>2</sup> Verizon Wireless, AT&T, Sprint and SED have entered in a Settlement Agreement (the “Carrier Settlement”) that was approved by the Commission in D.12-09-019 (issued on September 20, 2012). NextG and SED have entered into a Settlement Agreement (the “NextG Settlement”) that is pending approval.



36 vehicles and damaged 19 other structures. The power lines on the Poles that fell were installed, owned and operated by SCE. The telecommunications facilities that were on the Poles were installed, owned and operated by SCE, AT&T, Verizon Wireless, Sprint and NextG. The Poles were jointly owned by SCE, AT&T, Verizon Wireless, Sprint and NextG although evidence has been presented that Sprint sold all of its ownership interests in certain subject facilities to NextG, subject to a leaseback agreement.

B. The general chronological order of attachment for the Poles is as follows:

- a. SCE Cables/Conductors (Prior to 1990)
- b. Verizon Wireless Cables/Conductor (1994-1995)
- c. AT&T Cables/Conductor (1995-1996)
- d. Edison Carrier Solution Cables/Conductor (November 1996)
- e. Sprint Cables/Conductor (1998)
- f. Sprint Antennas and related equipment (Pole 1169253E only, 2003)
- g. NextG Cables/Conductor (2004-2005)

C. On October 21, 2008, SED issued its Incident Investigation Report, which included allegations that the Poles were overloaded in violation of Section 451 of the Public Utilities Code and General Order (“GO”) 95.

D. On January 29, 2009, the Commission instituted Investigation No. 09-01-018 (“I.09-01-018” or “this proceeding”) to formally investigate this matter. SCE, NextG, AT&T, Sprint and Verizon Wireless were named as Respondents in I.09-01-018.

E. The parties to this proceeding served the following testimony: (1) SED served its direct testimony on May 3, 2010; (2) Respondents served direct testimony on November 18, 2010; (3) SED served rebuttal testimony on April 29, 2011; (4) Respondents served surrebuttal testimony on June 29, 2011; and (5) on

August 29, 2011, SED served reply testimony and on the same date AT&T and Verizon Wireless jointly, as well as Sprint individually, served surrebuttal testimony.

F. Notwithstanding their respective litigation positions, as reflected in the testimony sponsored by them and included in the list above and which will be moved into the record in connection with the approval of this settlement, SED and SCE, in order to minimize the time, expense and uncertainty of further litigation, are prepared to compromise, resolve and conclude this proceeding on the terms and conditions set forth herein.

### **III. AGREEMENT**

#### **A. Safety Violation Admissions**

1. SCE admits pole 252 did not comply with GO 95's safety factor as a result of the NextG attachment to the pole and at the time of the Malibu Canyon Fire, regardless of whether that pole's termite damage is considered.
2. SCE admits it violated PU Code section 451 by not taking prompt action to prevent NextG from attaching fiber optic cable to joint poles in Malibu Canyon after an SCE planner determined in response to a Joint Pole Committee inquiry that NextG's proposed attachment would cause poles in Malibu Canyon to be overloaded.
3. SCE admits that its employee, Art Peralta, concluded that replacement pole 608 as installed did not comply with GO 95's safety factor for new construction, which information should have caused SCE to take steps as early as November 2007 to verify the pole loading inputs for the replacement pole and remedy any identified deficiencies.
4. SED's approved Settlement Agreement with AT&T, Verizon Wireless and Sprint provides for the remediation of replacement pole 608. Therefore, although this Agreement does not specifically require SCE to remediate replacement pole 608, SCE agrees to cooperate with SED, AT&T, Verizon Wireless and Sprint regarding all steps necessary to bring replacement pole 608 into compliance with GO 95.

**B. Rule 1.1 Violation Admissions**

1. SCE admits that its October 25, 2007 letter to the Commission pursuant to PU Code section 315 violated Rule 1.1 in that it did not identify pole overloading and termite damage as possible contributing causes of the pole failures in addition to high winds.
2. SCE admits that it violated Rule 1.1 by not providing SED with a true and correct copy of Mr. Peralta's field notes. The copy provided by SCE to SED lacked data observed by Mr. Peralta regarding the replacement poles.
3. SCE admits that it violated Rule 1.1 by failing to make it clear on multiple occasions that not all of the evidence from the subject poles had been preserved at an SCE warehouse. SCE failed to notify SED promptly that it had utilized the KPF switch components elsewhere in the system, that it had discarded the damaged ECS cable previously attached to the failed poles, and thus those items had not been transported to SCE's warehouse for preservation.

**C. Acknowledgements and Further Agreements Concerning Rule 1.1 Admissions**

1. SCE and SED agree that neither of them will use the facts and circumstances of those Rule 1.1 allegations which SCE has admitted and those it has not admitted in this settlement for any purpose in any other proceeding and, further, that it is not the intent of the Settling Parties that it would be appropriate for third parties to this settlement to cite to or rely on the foregoing admissions for the purpose of seeking introduction of them in other proceedings. The Settling Parties agree that this settlement does not establish a precedent for the resolution of issues regarding compliance with Rule 1.1 in other proceedings.

**D. Going Forward**

1. SCE recognizes that its approach to providing information to SED may have impaired SED's investigation in this proceeding. SCE will therefore change its approach to answering SED inquiries and, on a going forward basis, will seek to understand and provide all facts that are relevant and material to SED's inquiries and will promptly advise SED if SCE discovers that any information previously provided to SED was incorrect. If privileged material would otherwise be responsive to

an SED inquiry, SCE will provide notice so that SED can decide if it wishes to challenge the assertion of privilege.

2. SCE is preparing an Evidence Retention protocol which will be subject to SED's approval before becoming effective, which approval shall not be unreasonably withheld. SCE will preserve all evidence considered material to an investigation. In this regard, SCE will preserve specific items as requested by SED.

**E. SCE Settlement Payments and Costs to Be Incurred**

1. SCE shall make payments and incur costs (as set forth below) totaling \$37 Million to settle this proceeding.
2. As part of the \$37 Million referred to in Paragraph 1 above, SCE shall pay a penalty of \$20 Million to the General Fund.
3. The remaining \$17 Million shall be spent on pole loading assessments and resulting remediation work in Malibu Canyon and surrounding areas according to the Malibu Area Safety Enhancements Protocol attached as Exhibit A to this Agreement. SED and SCE recognize the importance of completing such similar assessments and remediation work being done system-wide as part of a prudent risk management program. Nothing in this Agreement, however, shall be read as requiring the expenditure by SCE of additional shareholder-provided funding in support of any such additional assessments after the funding provided by this Agreement has been exhausted. If the foregoing pole assessments show that a pole does not meet the minimum GO 95 safety factor requirement (as modified by any applicable SCE internal standard utilizing a wind pressure higher than called for in GO 95), SCE will work with any other pole owners to bring the pole into compliance with the minimum or, if applicable, modified GO 95 safety factor requirement. SED will not seek penalties against SCE or any other pole owners solely based on the assessment results, provided that the pole is brought into compliance within a reasonable period of time. This clause does not supersede SED's statutory authority to seek penalties, and other remedies, for any utility facilities that endanger public safety or are linked to accidents and/or reliability issues. For example, if a facility is identified as not complying with the minimum or, if applicable, modified GO 95 safety factor requirement as a result of these assessments, SED is not waiving its right to seek penalties if that facility is later involved in an accident or outage

regardless of whether or not the facility is brought into compliance in a reasonable amount of time.

**F. Miscellaneous**

1. SCE agrees to waive section 583 confidentiality on all documents produced to SED in this matter.
2. SCE agrees to produce every non-privileged document that is a part of the record in this proceeding if the CPUC receives a California Public Records Act request for such documents.
3. SCE will waive its attorney-client privilege and work product doctrine privilege with respect to the Detailed Assessment Sheets and Field Notes made available to SED.
4. SCE and SED agree that this settlement does not affect the 2007 Wind and Firestorm CEMA settlement.
5. SCE agrees to cooperate with implementation of the Carrier Settlement. SCE agrees that it will cooperate with all Commission and SED instructions and directives regarding the implementation of the Carrier Settlement approved by the Commission in D.12-09-019. SCE agrees that it will not hinder any construction or pole loading study and will promptly provide any information sought (in relation to the Carrier Settlement) by any party to the Carrier Settlement. SCE agrees that to the extent that it (or any of its preferred contractors) renders construction services for AT&T, Sprint and Verizon Wireless, per the Carrier Settlement, that it will not charge an unreasonable rate.
6. SCE agrees to cooperate with SED regarding the approval and implementation of the pending NextG settlement. SCE will not object to the approval of the NextG Settlement Agreement by the Commission, but such non-opposition to the settlement shall not be deemed acceptance by SCE of any of the factual admissions made by NextG in that Settlement Agreement. SCE agrees that it will cooperate with all Commission and SED instructions and directives regarding the implementation of the NextG Settlement. SCE agrees that it will not hinder any construction or pole loading study and will promptly provide any information sought (in relation to the NextG Settlement) by any party to the NextG Settlement.
7. SCE shall establish a single point of contact (person or group) for all safety- related matters.

8. Except as expressly provided in this settlement, SCE shall take all practical steps to ensure that no costs of the Malibu Canyon Fire are recovered from ratepayers in any CPUC or FERC proceedings, including SCE's General Rate Case, commenced after the date of this settlement to recover costs incurred by it as a result of the Malibu Canyon Fire, including but not limited to the \$37 million total settlement payment specified above, the amounts incurred in connection with defending against and resolving civil litigation arising from the Malibu Canyon Fire, and any increased insurance costs specifically attributable to the Malibu Canyon Fire to the extent such increased costs, if any, can be segregated from other factors affecting insurance premium rates. SCE agrees that it will not use a Z-Factor, advice letter, or other regulatory mechanism, for the recovery of such costs.
9. SCE shall provide periodic reports to SED on the results of its pole loading inspection program, which will cover all poles in the service territory, including information on the methodology used to compute pole-loading results. SCE also will provide SED with a copy of its Pole Loading Manual as soon as it is completed.

#### **IV. OTHER MATTERS**

A. NextG, AT&T Wireless, Verizon and Sprint have not been privy to these settlement discussions, are not Settling Parties, and have not provided any compensation or consideration towards the settlement payments. The Settling Parties agree that the settlement discussions between the parties that resulted in this Agreement are and shall remain at all times confidential. SCE agrees not to provide any materials or information from these confidential settlement discussions to the other Respondents in this proceeding regardless of the terms of the Joint Defense Agreement. This Agreement is expressly limited to this proceeding and does not prohibit SCE from exercising its rights under the Joint Defense Agreement in any civil litigation related to the Malibu Canyon Fire. SCE enters into this Agreement without prejudice to its rights or positions or any

claims that may have been asserted or may yet be asserted in any civil litigation related to the Malibu Canyon Fire.

B. The Settling Parties agree to seek expeditious approval of this Agreement and to use their reasonable best efforts to secure Commission approval of it in the form submitted and without modification, including written filings, appearances, and other means as may be needed to obtain expeditiously the necessary approval. The Settling Parties agree to actively and mutually defend this Agreement if its adoption is opposed by any other party in proceedings before the Commission. Should this Agreement be terminated by either of the Settling Parties because it has not been approved in the form submitted and without modification within the 9 months provided for in the introductory paragraphs of this Agreement, this Agreement shall become a nullity and shall not be admissible in this proceeding or in any other proceeding for any purpose, except to enforce the provisions of this sentence.

C. The Settling Parties have bargained in good faith to achieve this Agreement. The Settling Parties intend the Agreement to be interpreted as a unified, interrelated agreement. Both of the Settling Parties have contributed to the preparation of this Agreement. Accordingly, the Settling Parties agree that no provision of this Agreement shall be construed against either of them because a particular Settling Party or its counsel drafted the provision.

D. The rights conferred and obligations imposed on either of the Settling Parties by this Agreement shall inure to the benefit of or be binding on that Settling Party's successors in interest or assignees as if such successor or assignee was itself a party to this Agreement.

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

F. This Agreement may be executed in counterparts.

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

Dated: \_\_\_\_\_

Southern California Edison Company

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Safety and Enforcement Division  
(f/k/a Consumer Protection and  
Safety Division

By: \_\_\_\_\_



# Exhibit A

**Exhibit A to Malibu Canyon Fire OII Settlement Agreement  
Between the Safety and Enforcement Division of the California Public  
Utilities Commission and Southern California Edison Company**

**Malibu Area Safety Enhancements Protocol**

This protocol will be used to identify overhead structures in the Malibu area for assessment followed by any remediation as required by General Order 95 and SCE standards. This protocol anticipates that \$17 million resulting from a settlement of the Malibu Canyon Fire OII (“Safety Enhancements Fund”) will be allocated to safety enhancements defined as pole loading inspections and remediation of any deficiencies. An identification protocol is necessary to ensure that settlement funds are allocated systematically and objectively to the highest priority areas first.

The following tenets will govern this protocol:

1. The Safety Enhancements Fund will be spent on pole loading inspections and any remediation, including pole replacements or new poles, which are shown to be necessary by the assessments. SCE will expend the entire Safety Enhancements Fund, but no more than the amount of the Safety Enhancements Fund, on the assessments and the remediations. SCE will schedule the assessments to ensure that SCE’s assessment and remediation commitments do not exceed the amount of the Safety Enhancements Fund.
2. SCE commits to remediate all deficiencies identified with the exception of guy wires owned by other companies found to have below standard safety factors. In such instances, SCE commits to notify the owner of the guy wire of the deficiency.
3. SCE will follow normal business processes for completing work identified by the assessments. Joint pole owners will be expected to contribute to the remediation in the same manner as if the work were identified through SCE’s deteriorated pole program. Any work performed as a result of a pole loading assessment will be work performed for the mutual benefit of all pole owners.
4. Remediation work identified by the assessments will be planned, scheduled, and completed according to existing processes and procedures. Repairs are identified and scheduled for corrective action within 24 months of the assessment according to SCE’s Distribution Inspection and Maintenance Program. Pole replacements can be scheduled for completion up to 59 months from identification of deficiencies indicating the need for a replacement, depending upon the severity of the condition. Scheduled due dates may be modified to coordinate and complete all the pending work in a particular area at the same time. Exceptions will be noted for any pole

that is not remediated within 59 months from identification (permits denied, environmental review, etc.).

5. SCE designates certain areas of its service territory as high wind areas. In those areas, SCE's internal standards require that a higher wind pressure be used in the pole loading calculation than the minimum GO 95 requirement. SCE will apply its wind loading standards for high wind areas for the assessments and the remediations required by this protocol.<sup>1</sup> SCE reserves the right to modify the location of its high wind areas prior to beginning the assessments. In the event that SCE does modify its internal standards concerning higher wind pressures and the modifications affect the areas subject to the assessments listed below in Parts A - D, SCE shall provide a copy of the revisions to SED.
6. SCE will establish a below-the-line account or accounts to track charges to the Safety Enhancements Fund. Below-the-line accounts use shareholder funds and are not included in SCE's General Rate Case applications. SCE will then establish orders that settle to the Safety Enhancements Fund accounts. Work performed to implement the settlement will be charged to these orders. This will include charges from contractors, time charges and expenses from SCE employees, material costs, and credits received from joint pole owners. SCE will monitor charges recorded to the accounts on a monthly basis. The accounts will continue to record costs until the Safety Enhancements Fund amount is reached.
7. Once the Safety Enhancements Fund is exhausted, SCE will stop performing additional assessments based on this protocol. This protocol has been drafted to ensure that sufficient work will be available to spend the entire amount of the Safety Enhancements Fund. SCE expects that the Safety Enhancements Fund will be exhausted before all the locations mentioned in this protocol have been assessed. The mention of a location in this protocol does not guarantee that it will be assessed as part of this protocol.

The following shall govern the priority of the assessments. Refer to the maps below for locations within the Malibu area. SCE will assess the areas in the order identified until the Safety Enhancement Fund is exhausted.

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<sup>1</sup> If a pole that is to be assessed as part of this protocol (Parts A-D) is not contained in a higher wind pressure area as specified by SCE's internal standards, then that pole will be assessed and remediated (if needed) based on the minimum requirements of General Order 95.

1. SCE will first assess all the poles along Malibu Canyon road from PCH to Mulholland Hwy not covered by the telecommunications settlement. SCE estimates this includes 151 poles.



2. SCE will then assess the poles along Topanga Canyon Blvd. from PCH to Old Topanga Rd., and then along Old Topanga Rd. to Mulholland Hwy. This area includes approximately 232 poles.
3. SCE will then assess the poles along Mulholland Hwy between Malibu Canyon Rd. and Old Topanga Rd. This area includes approximately 335 poles.



4. SCE will then assess additional poles in the Malibu area in the following order: along Latigo Canyon Rd. from PCH to Kanan Dume Rd; along Kanan Dume Rd. from PCH to Mulholland Hwy; and along Mullholland Hwy from Kanan Dume Rd. to Malibu Canyon Rd. These areas include approximately 735 poles.



5. If and only if the Safety Enhancement Fund is not exhausted after completion of the assessments identified above, SCE will identify and prioritize its assessments based upon wind and fire risk within the Malibu area not covered by the locations above, including poles in residential areas.
6. If and only if the Safety Enhancement Fund is not exhausted after any assessments completed pursuant to the previous paragraph, SCE will prioritize areas outside Malibu based upon the following criteria: intersection of high wind, high fire, and canyon areas will be assessed first; other high wind, high fire areas will be assessed next with the areas subject to highest winds assessed first; high fire areas not designated as high wind will be assessed next; and high wind areas not designated as high fire will be assessed last. SCE will determine and prioritize the work within these areas at its sole discretion and shall inform SED other of the areas selected, if applicable.

**(END OF APPENDIX A)**