Decision **PROPOSED DECISION OF ALJ KENNEY** (Mailed 5/18/2012)

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 APPROVING SETTLEMENT AGREEMENT

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DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

This decision conditionally approves a settlement agreement between the Commission's Consumer Protection and Safety Division and the following Respondents: AT&T Mobility LLC, Sprint Telephony PCS, L.P., and Cellco Partnership LLP, d/b/a Verizon Wireless ("the Settling Respondents"). The settlement resolves all issues in this proceeding regarding the Settling Respondents' involvement with the Malibu Canyon Fire in October of 2007.

The approved settlement agreement requires the Settling Respondents to pay $12 million, with the amount divided equally among them in one-third shares. Of this amount, $6.9 million will be paid to the State of California General Fund and $5.1 million to the Enhanced Infrastructure and Inspection Fund (EIIF) that will be established pursuant to the settlement agreement. The money paid to the EIIF will be used to strengthen utility poles in Malibu Canyon and to conduct a statistically valid survey of joint-use poles in Southern California Edison Company's (SCE) service territory for compliance with General Order (GO) 95 safety factor requirements. Any money remaining in the EIIF will escheat to the State of California General Fund.

Our approval of the Settlement Agreement is subject to the following conditions:

1. The Settling Respondents shall each pay $2.3 million to the General Fund within 30 days from the effective date of today's decision, for a total payment of $6.9 million.
2. The Settling Respondents shall (a) establish a stand alone bank account to receive and disburse funds for the EIIF, and (b) deposit $5.1 million into the EIIF bank account within 45 days from the effective date of today's decision.

3. If $5.1 million is not adequate to accomplish the objectives of the EIIF that are specified in the settlement agreement, the Settling Respondents shall deposit sufficient additional funds into the EIIF to complete these objectives. The additional amount, if any, shall be shared equally among the Settling Respondents.
4. The following activity required by the Settlement Agreement shall be completed within 18 months from the effective date of today's decision: Conducting a statistically valid survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements.
5. The following activity required by the Settlement Agreement shall be completed within 30 months from the effective date of today's decision: Upgrading the safety factor for all utility poles along 3.38 miles of Malibu Canyon Road.
6. The EIIF shall only pay for material, labor, and services that are directly related to Items 4 and 5 above. The EIIF shall not pay for internal administrative and overhead costs incurred by the Settling Respondents.

The approved settlement agreement does not include SCE and NextG Networks of California, Inc. (NextG). This proceeding remains open to resolve allegations that SCE and NextG violated the California Public Utilities Code and Commission decisions, rules, and general orders with respect to their involvement with the Malibu Canyon Fire.

2. Background

On October 21, 2007, strong Santa Ana winds swept through Malibu Canyon in Los Angles County. Three utility poles located next to Malibu Canyon Road fell to the ground 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. There were no reported injuries or fatalities.

The Commission issued Order Instituting Investigation (OII) 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: Pacific Bell Telephone Company d/b/a/ AT&T California and AT&T Mobility LLC (together, AT&T); NextG Networks of California (NextG); Southern California Edison Company (SCE); Sprint Communications Company, LP (Sprint), and Cellco Partnership LLP, d/b/a Verizon Wireless (Verizon Wireless). The Respondents had facilities attached to the fallen poles, and several Respondents were joint owners of the fallen poles.

The Commission's Consumer Protection and Safety Division (CPSD) conducted an investigation 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 two prehearing conferences (PHCs). The first was held on May 13, 2009, and the second was held on October 26, 2011. The assigned Commissioner issued a scoping memo after each PHC. The first scoping memo was issued on October 22, 2009, and the second 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): CPSD, AT&T, Sprint, and Verizon Wireless ("the Settling Parties"). The settlement agreement was appended to the motion ("the Settlement Agreement"). SCE and NextG are not parties to the settlement.

Evidentiary hearings were scheduled to start on March 5, 2012, and continue for five weeks. The hearings were suspended after the Settlement Agreement was filed on February 3, 2012.

The Settling Parties convened two settlement conferences pursuant to Rule 12.1(b). The first was held on February 3, 2012, and the second on March 13, 2012. NextG and SCE participated in both settlement conferences.

On February 24, 2012, the Settling Parties filed a pleading that responded to questions from the assigned Administrative Law Judge (ALJ) regarding the Settlement Agreement. The Settling Parties filed a second pleading on April 2, 2012, that responded to additional questions from the assigned ALJ. SCE filed a response to the second pleading on April 5, 2012.

Hans Laetz (Laetz)[1] filed comments regarding the Settlement Agreement on February 23, 2012, pursuant to Rule 12.2. NextG and SCE filed comments regarding the Settlement Agreement on March 5, 2012. Reply comments were filed on March 20, 2012, by NextG, SCE, and the Settling Parties.

On March 27, 2012, the Settling Parties filed a motion to admit into the record of this proceeding the public versions of their previously served testimony in order to provide a basis for the Commission to consider if the Settlement Agreement satisfies the Commission's criteria for a approval of settlements set forth in Rule 12.1. The unopposed motion was granted in a ruling issued by the assigned ALJ on April 27, 2012.

NextG and SCE requested a hearing on the Settlement Agreement pursuant to Rules 12.2 and 12.3. On March 28, 2012, the assigned ALJ informed

[1] Laetz's motion for party status was granted by the Assigned Commissioner's Ruling and Scoping Memo issued on October 22, 2009.

the parties by e-mail that NextG's and SCE's request for a hearing would be addressed in a future ruling.[2] The request is denied by today's decision for the reasons set forth below.

3. Litigation Positions

CPSD alleges that one of the poles which fell and ignited the Malibu Canyon Fire was overloaded in violation of General Order (GO) 95 and California Public Utilities Code Section 451 (§ 451) because the pole had a lower safety factor than required by Rule 44 of GO 95.[3] CPSD further alleges that one of the replacement poles installed by SCE has a lower safety factor than required by GO 95 for new construction. CPSD believes the substandard safety factors are due, in part, to the Respondents interpreting the Southern California Joint Pole Committee (SCJPC) rules in a way that circumvents compliance with GO 95. Finally, CPSD alleges the Respondents violated Rule 1.1 of the Commission's Rules of Practice and Procedure by providing accident reports, data responses, and written testimony that contained incorrect information.

CPSD recommends financial penalties of $99,232,000 for the alleged violations. The recommended penalty for each Respondent is shown below:

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[2] The informal ruling on March 28, 2012, was affirmed in a formal ruling issued on March 30, 2012.

[3] 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."

Respondent	Proposed Penalty
SCE	$49,539,500
NextG	$24,789,500
AT&T	$7,759,500
Sprint	$7,732,000
Verizon	$9,411,500
Total Fine:	**$99,232,000**

The above table shows that CPSD recommends financial penalties totaling $24,903,000 for AT&T, Sprint, and Verizon Wireless.

The Respondents deny all of CPSD's allegations. The Respondents assert that the three poles which fell were toppled by extreme winds in excess of 100 miles per hour (mph). They also claim that the utility poles which fell and the replacement poles comply with all safety requirements. The Respondents further assert that they did not knowingly provide incorrect information to CPSD. While there were mishaps in responding to CPSD's numerous data requests, the Respondents corrected mistakes as soon as they came to light.

4. The Settlement Agreement

The Settlement Agreement requires AT&T, Sprint, and Verizon Wireless ("the Settling Respondents") to pay $12 million, with the amount divided equally among them. From the settlement payment of $12 million, $6.9 million will be paid to the State of California General Fund and $5.1 million will be available to the Enhanced Infrastructure and Inspection Fund (EIIF) that is described below.

The Settlement Agreement establishes the EIIF to fund two objectives. First, with one caveat described below, the EIIF will pay for the costs to upgrade all utility poles on 3.38 miles of Malibu Canyon Road to a minimum safety factor

of 4.0 for wood poles and the equivalent safety factor for other materials.[4] For comparison, Rule 44 of GO 95 requires joint-use wood poles[5] to have a minimum safety factor of 4.0 at the time of installation, and to be repaired or replaced when the safety factor falls below 2.67 due to age or other factors.

The poles to be upgraded include one of the replacement poles installed by SCE which CPSD alleges has a safety factor lower than the 4.0 that is required by GO 95 for new installations. After completion of upgrades, the Settling Respondents will provide a report to CPSD that includes all pole-loading calculations and an accounting of the funds expended.

Importantly, the EIIF will not pay to upgrade existing poles that have to be replaced under GO 95. The Settling Respondents will work with the other joint owners of such poles to have these poles replaced.

The second purpose of the EIIF is to fund a statistically valid survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements. The poles included in the survey will support power lines and at least one attachment by AT&T, Sprint, or Verizon Wireless. The surveyed poles will be randomly selected based on a methodology agreed upon by the Settling Parties. The Settling Parties anticipate the survey will inspect more than 2,000 poles. If a pole is found to have a lower safety factor than required by GO 95, the Settling Respondents who are joint owners of the pole will work with the other joint owners to bring the pole into compliance with GO 95. EIIF funds will not be used for such work. After completion of the survey, the Settling

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[4] The 3.38-mile segment of Malibu Canyon Road is from Mesa Peak Tractor Way to Potter Drive.

[5] Joint-use poles support both power-line facilities and communications facilities.

Respondents will provide a report to CPSD that includes the inspection results and an accounting of the funds expended.

The EIIF will only be used to fund pole upgrades in Malibu Canyon and a survey of joint-use poles. Any funds that remain in the EIIF after these objectives are completed will escheat to the State of California General Fund.

CPSD will not seek penalties against the Settling Respondents and other pole owners for substandard poles discovered by the survey, provided that such poles are brought into compliance with GO 95 within a reasonable time. This provision does not supersede CPSD's statutory authority to seek penalties and other remedies for poles that are linked to accidents and/or reliability issues. For example, if the survey finds a pole that does not meet GO 95 safety factor requirements, CPSD does not waive its right to seek penalties if that pole is later involved in an accident or outage, regardless of whether the pole was brought into compliance within a reasonable period of time.

The Settling Respondents accept CPSD's position that the SCJPC rules cannot be used to avoid compliance with GO 95. The Settling Respondents agree that when they seek to attach to a pole and they receive a safety objection within, or after, the 45-day deadline in the SCJPC Routine Handbook, the Settling Respondents will take appropriate action to address the safety concern.

The Settlement Agreement contains several provisions regarding the Settling Parties' testimony and witnesses. Specifically, if litigation continues in this proceeding with respect to NextG and SCE, the Settling Respondents will not object to CPSD calling any witness who sponsored testimony on behalf of the Settling Respondents. The Settling Respondents also waive cross-examination of CPSD's witnesses. In addition, the Settling Respondents had co-sponsored with NextG and SCE the testimony of Messrs. Peterka, Rosenthal, and Schulte. The

Settling Respondents agree to withdraw their sponsorship of this testimony. They further admit that Schulte's testimony is incorrect with respect to Schulte's assertion that CPSD's investigation of the Malibu Canyon Fire was inadequate.

The Settling Parties submit that the Settlement Agreement appropriately resolves the Malibu Canyon Fire investigation with respect to AT&T, Sprint, and Verizon Wireless. They aver that the settlement is reasonable in light of the record, consistent with the law, and in the public interest, and should be approved by the Commission.

5. Comments on the Settlement Agreement

5.1. Laetz

Laetz recommends several amendments to the Settlement Agreement. First, Laetz asserts that the problem of overloaded poles is widespread. He recommends that the Settlement Agreement be amended to require an inspection of all overhead power-line facilities in the Malibu-Santa Monica Mountains region for compliance with GO 95.

Second, Laetz believes the EIIF should fund a meteorological survey in the Malibu-Santa Monica Mountains region to identify areas where Santa Ana winds may exceed 92 mph. This wind data should then be combined with historical fire data to designate high risk areas. Next, every pole in the high risk areas should be upgraded to a safety factor of 4.0 for wood poles and the equivalent safety factor for non-wood poles. Pole owners should be required to maintain these safety factors for the life of the poles.

Third, Laetz proposes that SCE be ordered to administer a statewide program to install aviation hazard markers on all power lines and communications lines that are more than 200 feet above ground level, consistent with Federal Aviation Administration regulations. Laetz raises this issue

because he observed that fire fighting aircraft were affected by unmarked cables during the 2007 Malibu Canyon Fire.

Fourth, Laetz recommends the Settlement Agreement be amended so that the survey of joint-use poles includes several sub-categories, such as the type of attachments (e.g., power lines, communications lines, and streetlights) and vertical alignment (i.e., whether the pole is bent, warped, or leaning). If the survey finds substandard poles, CPSD should be required to notify pole owners immediately upon the discovery of unsafe conditions, and pole owners should have 30 days to complete repairs from the date they are notified.

Fifth, Laetz anticipates there may be disagreements between CPSD and the Settling Respondents. Laetz recommends that CPSD have authority to decide all matters regarding (1) the survey of poles that is undertaken pursuant to the Settlement Agreement, and (2) upgrades, repairs, and replacements of poles that are performed pursuant to the Settlement Agreement.

Sixth, Laetz observes that the Settlement Agreement does not specify what will be done with the data that is gathered by the survey. Laetz believes the survey data should be made available to the public, shared with lawmakers, and used by the Commission in other proceedings.

Finally, Laetz does not believe the $5.1 million that the Settlement Agreement provides for the EIIF will be sufficient to pay for the safety improvements sought by Laetz. To provide more funding, Laetz recommends that the entire settlement payment of $12 million be deposited into the EIIF, as well as any fines that NextG and SCE may be required to pay in this proceeding. Laetz further recommends that all costs incurred by utilities to comply with today's decision should be borne by the utilities, including all costs associated with Laetz's recommendations.

5.2. NextG

NextG claims that its desire to reach a settlement was frustrated by the Settling Parties' failure to comply with Rule 12.1(b), which states as follows:

> Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding.

NextG describes the settlement conference that was held on February 3, 2012, as little more than a summary of the Settlement Agreement and an invitation to ask questions. NextG alleges there were no "settlement discussions" as required by Rule 12.1(b), and that NextG had no opportunity to join the Settlement Agreement as required by Rule 12.1(b).

NextG identifies several problems with the Settlement Agreement itself. One flaw is that key provisions are vague; the Settlement Agreement does not state when the actions required by agreement will occur. Nor does the Settlement Agreement indicate what rights the non-settling parties have with respect to the written testimony and witnesses sponsored by the Settling Respondents. While the Settlement Agreement gives CPSD the right to call these witnesses, it is not clear if the same right extends to the non-settling parties. In addition, the Settlement Agreement does little to reduce the time and expense of litigation because it leaves the Commission and the remaining parties to address the same issues that existed before the Settlement Agreement was filed.

5.3. SCE

SCE is concerned about the provision in the Settlement Agreement that calls for a survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements. The survey will necessarily require a pole-loading calculation for each surveyed pole.

SCE states there are a variety of methods for pole-loading calculations. SCE opines that because it and the other joint owners of poles will be asked to share the cost of remedial work depending on the results of the pole-loading calculations, the methodology should be acceptable to all joint owners. Otherwise, the joint owners may dispute the results of the pole-loading calculations and on that basis refuse to share the cost of remedial work.

SCE is also concerned about the provision in the Settlement Agreement that states CPSD will not seek penalties against the owners of substandard poles found by the survey if the poles are brought into compliance within a reasonable time. SCE believes this is too vague a standard for determining what could be large fines against SCE. SCE states that the scope of remedial work will have to be decided by all the joint owners of a pole, the difficult issue of allocating remedial costs among the joint owners will have to be resolved, and the actual work will have to be planned and completed. The Settlement Agreement does not indicate at what point during this long process the elapsed time will be deemed unreasonable by CPSD.

SCE is worried about its ability to fund remedial work if the survey finds a large number of substandard poles. SCE declares that its ability to repair and replace poles is limited by the funding authorized in its most recent general rate case (GRC). Unless additional revenue is identified, SCE warns that it might not be able to complete both the remedial work indentified by the survey and the infrastructure work that was authorized in its most recent GRC.

SCE questions the provision in the Settlement Agreement that limits pole upgrades in Malibu Canyon to a single 3.38-mile segment of Malibu Canyon Road. SCE believes the Settling Respondents should explain the basis for selecting 3.38 miles versus a longer or shorter segment. SCE also criticizes the

related provision that requires the EIIF to fund the entire cost for upgrading wood poles in Malibu Canyon to a safety factor of 4.0. SCE believes that pole owners should pay the theoretical cost to bring each pole's safety factor to 2.67, the minimum required by GO 95, and the EIIF should pay the incremental cost to raise each pole's safety factor from 2.67 to 4.0.

SCE sees little justification for the provision that calls for a random survey of joint-use poles throughout SCE's 50,000 square mile service territory. In SCE's opinion, the public interest would be better served if the survey focused on joint-use poles in the Malibu area and other high risk areas.

SCE disputes the statement in Recital G of the Settlement Agreement that AT&T and Verizon Wireless used "the same pole loading analysis and methodology" as CPSD. SCE maintains that AT&T and Verizon Wireless used different groundline circumference data than CPSD. Thus, the implication that the Settling Respondents agree with CPSD's approach to pole loading is wrong.

SCE has several concerns with the provisions in the Settlement Agreement regarding witnesses and testimony. First, the Settling Respondents waive their right to cross-examine CPSD's witnesses, but the Settlement Agreement is silent about the Settling Respondents' right to cross-examine SCE's and NextG's witnesses. SCE believes the Settlement Agreement should be clarified on this point. Second, the Settling Respondents will not object to their witnesses being called by CPSD. SCE asserts that it must have the same right as CPSD to call the Settling Respondents' witnesses. Lastly, the Settling Respondents admit that Schulte's testimony is incorrect and agree to withdraw their sponsorship of Schulte's testimony. SCE states that it continues to sponsor Schulte's testimony, and SCE does not agree that Schulte's testimony is incorrect.

Finally, SCE disputes the statement in the joint motion for approval of the Settlement Agreement that the settlement will reduce litigation and conserve Commission resources. SCE contends that because SCE and NextG are not parties to the settlement, the Commission will be faced with essentially the same contested proceeding.

6. Discussion

Rule 12.1(d) provides 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.

6.1. Reasonable in Light of the Whole Record

Prior to the Settlement Agreement, CPSD recommended that the Settling Respondents pay monetary penalties totaling $24.903 million, consisting of $3.452 million for alleged violations of Rule 1.1 and $21.451 million for alleged safety-related violations of § 451 and GO 95.

To resolve CPSD's allegations, the Settling Respondents agree to pay $12 million, of which $6.9 million will be paid to the State of California General Fund and $5.1 million will be available to the EIIF. As an additional remedy for the alleged safety-related violations, the Settling Respondents will take a number of actions to protect and enhance public safety. To reduce the risk that Santa Ana winds will again topple utility poles in Malibu Canyon and ignite another fire, the Settling Respondents will upgrade all wood utility poles on 3.38 miles of Malibu Canyon Road to a safety factor of at least 4.0. The upgraded

safety factor of 4.0 exceeds the minimum safety factor of 2.67 required by GO 95 for the existing joint-use wood poles in Malibu Canyon. The poles to be upgraded include the replacement pole installed by SCE in 2007 that CPSD alleges is below the required safety factor of 4.0 for new installations.

To address the potential risk of systemic non-compliance with GO 95 safety factor requirements, the Settling Respondents will conduct a statistically valid survey of thousands of joint-use poles in SCE's service territory. Any surveyed poles that do not meet the safety factor requirements will be brought into compliance. In addition, the survey will provide an accurate assessment of system wide compliance of joint-use poles with GO 95 safety factor requirements. This information will be used by the Settling Respondents to improve their maintenance practices and by CPSD for enforcement purposes.

The Settling Respondents will make $5.1 million available to the EIIF established by the Settlement Agreement to pay for the survey and to upgrade the safety factor of the poles in Malibu Canyon. Any funds that remain in the EIIF after completing these activities will escheat to the State of California General Fund. With one minor exception, the EIIF will not pay for any work that would be required in the absence of the Settlement Agreement. We address this exception below.

Finally, to address CPSD's allegation that the Respondents have applied SCJPC rules in a way that avoids compliance with GO 95, the Settlement Respondents agree that when they seek to attach to a pole governed by the SCJPC, and they receive a safety objection before or after the 45-day deadline specified in the SCJPC Routine Handbook, they will take appropriate action to address the safety concern. They further agree that the SCJPC rules do not take precedence over GO 95 and other laws and regulations.

We find the Settlement Agreement is reasonable in light of the whole record, as it provides a comprehensive remedy for the safety-related issues that were raised in CPSD's testimony with respect to the Settling Respondents. Although the Settlement Agreement requires the Settling Respondents to pay $12 million, or 48% of the $24.903 million recommended by CPSD, we conclude this is a reasonable compromise that is within the range of likely litigated outcomes for the alleged violations of Rule 1.1, § 451, and GO 95.

We next address several provisions in the Settlement Agreement that are vague or incomplete. We also address issues related to the reasonableness of the Settlement Agreement that were raised by Laetz, NextG, and SCE.

6.1.1. Sufficient Funding for the EIIF

Our finding that the Settlement Agreement is reasonable in light of the record is predicated, in part, on the establishment of the EIIF to (1) upgrade the safety factor for all poles along 3.38 miles of Malibu Canyon Road, and (2) conduct a statistically valid survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements. Our finding presumes that the $5.1 million which the Settlement Agreement provides for the EIIF will be (i) be sufficient to achieve these goals, (ii) available on a timely basis, and (iii) used only for purposes that are directly related to these goals. We also presume there will adequate accounting and record keeping of EIIF expenditures to allow CPSD to oversee and audit the EIIF.

To ensure that the Settlement Agreement is reasonable in light of the record, we will approve the Settlement Agreement with the following conditions:

- If $5.1 million is not adequate to (1) upgrade the safety factor for all poles along 3.38 miles of Malibu Canyon Road, and (2) conduct a statistically valid survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor

requirements, the Settling Respondents shall deposit sufficient additional funds into the EIIF to complete Items (1) and (2), with the shortfall shared equally among them.

- The Settling Respondents shall establish a stand alone bank account to receive and disburse EIIF funds. The Settling Respondents shall each deposit $1.7 million into the EIIF bank account (for a total of $5.1 million) within 45 days from the effective date of today's decision.
- EIIF funds shall only be used to pay for the actual costs of material, labor, and services that are directly related to Items (1) and (2) above. EIIF funds shall not be used for internal overhead and administrative costs incurred by the Settling Respondents.
- The Settling Respondents shall keep records of all EIIF deposits, disbursements, and supporting documents (e.g., contracts and invoices) for at least 10 years, consistent with Rule 18A(1)(b) of GO 95.

6.1.2. Deadlines for Settlement Activities

Our finding that the Settlement Agreement is reasonable in light of the record is based, in part, on our assumption that the activities required by the Settlement Agreement will be completed within a reasonable period of time. However, the Settlement Agreement does not specify any deadlines for completing these activities. We are concerned that the lack of deadlines could hinder our ability to enforce the Settlement Agreement should that become necessary. Therefore, we will approve the Settlement Agreement with the condition that the following activities required by the Settlement Agreement shall be completed by the deadlines specified below:

Activity (Paragraph in the Settlement Agreement)	Deadline (From the Effective Date of Today's Decision)
Each Settling Respondent pays $2.3 million to the State of California General Fund. (Para. 1)	30 Days
Conducting a statistically valid survey of joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements. (Para. 8)	18 Months
Upon completion of the survey, providing a report to CPSD that includes the inspection results and an accounting. (Para. 8)	18 Months
Upgrading the safety factor for all poles on 3.38 miles of Malibu Canyon Road. (Paras. 6 & 7)	30 Months
Upon completion of the upgrades, providing a report to CPSD that includes all pole-loading calculations and an accounting. (Paras. 6 & 7)	30 Months
Escheatment to the State of California General Fund of any funds remaining in the EIIF. (Para. 10)	30 Months

If necessary, the Settling Respondents may use Rule 16.6 of the Commission's Rules of Practice and Procedure to request an extension of time to comply with the deadlines established by today's decision. So that we may monitor compliance, we will require the Settling Respondents to file and serve a notice when they complete an activity in the above table. The notice shall be due 10 days after the activity is complete.

6.1.3. Clarifications

The Settlement Agreement uses the terms "safety factor" and "equivalent [safety factor] for other materials," but the Settlement Agreement does not define these terms. To ensure the Settlement Agreement is clear, we will approve the Settlement Agreement with the conditions that (1) the term "safety factor" as used by the Settlement Agreement is defined by Rule 44 of GO 95, and (2) the

term "equivalent [safety factor] for other materials" as used by the Settlement Agreement is defined by Table 4 and Footnote (c) of Rule 44.

We also note that Paragraph 9 of the Settlement Agreement states that if a pole does not meet the minimum safety factor required by GO 95, "the Settling Party (or Settling Parties) that is a joint owner of the pole will work with all pole owners to bring the pole into compliance." The term "Settling Party (or Settling Parties)" is incorrect because it includes CPSD, which does not own any poles. Therefore, we will approve the Settlement Agreement with the condition that the term "Settling Party (or Settling Parties)" in Paragraph 9 is replaced with "Settling Respondent (or Settling Respondents)."

6.1.4. The Pole-Loading Survey

The Settlement Agreement does not indicate what will happen if the survey of joint-use poles in SCE's service territory finds significant non-compliance with GO 95 safety factor requirements. However, we are confident that CPSD will notify the Commission if the survey finds a systemic safety issue. We will decide on the appropriate course of action at that time.

We note that the survey of joint-use poles will exclude (1) joint-use poles that do not have facilities attached by AT&T, Sprint, or Verizon Wireless, and (2) single-use poles. It is conceivable that another pole-loading survey that includes (1) and/or (2) will be commissioned later in this proceeding or in another proceeding. If this occurs, the Settling Parties shall coordinate, to the extent practical, with the other pole-loading survey. It is also possible that the survey of joint-use poles conducted pursuant to the Settlement Agreement may be useful for other regulatory purposes. Accordingly, we will approve the Settlement Agreement with the condition that the survey results shall be made available, upon request, to the Commission and its staff for regulatory purposes.

6.1.5. EIIF Funding for Pole Upgrades

SCE criticizes the provision in the Settlement Agreement that requires the EIIF to upgrade of the safety factor for wood utility poles on 3.38 miles of Malibu Canyon Road to at least 4.0. SCE notes that GO 95 requires a minimum safety factor of 2.67 for vintage joint-use wood poles. SCE recommends that the Settlement Agreement be amended so that the pole owners (and not the EIIF) pay for remedial measures to bring the poles' safety factor up to 2.67, and that the EIIF pay for increasing the poles' safety factor from 2.67 to the 4.0.

We believe that SCE's proposal is largely moot. Theoretically, none of the poles on Malibu Canyon Road should have a safety factor below the minimum required safety factor of 2.67. We also note that Paragraph 7 of the Settlement Agreement states that if the safety factor for a pole is below the minimum of 2.67, and the only way to bring the pole up to 2.67 is to replace the pole, then the Settling Respondents – and not the EIIF – will pay for the new pole. Thus, SCE's recommendation applies only to the narrow situation where the safety factor for a substandard pole can be raised to 2.67 without replacing the pole.

To the extent SCE's recommendation is not moot, we decline to adopt it. We believe the potential difficulties in quantifying the hypothetical cost for remedial measures that will not occur under the Settlement Agreement could result in delays and expense that exceed the benefits of SCE's recommendation.

6.1.6. Cost Recovery

The Settlement Agreement does not address whether or how the Settling Respondents will recover the costs they incur to comply with the Settlement Agreement. This is to be expected; the Settling Respondents have deregulated rates and can set rates without the Commission's approval. However, to ensure there is no misunderstanding by customers, we will approve the Settlement

Agreement with the condition that any Settling Respondent who places a line-item charge on its customer bills to recover settlement-related costs must not state or imply that the charge is approved by the Commission.

We next address SCE's concern that the survey of SCE's poles to be conducted pursuant to the Settlement Agreement might find a significant number of poles that require remedial work. SCE warns that unless additional revenue is identified, SCE may have to defer other infrastructure work that was authorized in its most recent GRC. We remind SCE that regardless of funding authorized in its most recent GRC, SCE has an obligation under § 451 and GO 95 to repair or replace poles that do not comply with GO 95 safety requirements.

6.1.7. Recital G

Recital G of the Settlement Agreement states that AT&T and Verizon Wireless "use[d] the same pole loading analysis and methodology as that used by CPSD." SCE asserts that Recital G wrongly indicates the Settling Respondents agree with CPSD's pole-loading calculations. We find that Recital G is accurate. While AT&T and Verizon Wireless used different inputs, the record is clear that they used the same methodology as CPSD for pole-loading calculations.

6.1.8. Avoided Litigation Costs

NextG and SCE argue that the Settlement Agreement will not reduce the expense of litigation or the need for Commission resources because a hearing involving NextG and SCE will still occur. We disagree. The Settlement Agreement permits CPSD to litigate its claims against two Respondents (NextG and SCE) instead of five. This will undoubtedly reduce the time and expense of litigation for CPSD, AT&T, Sprint, and Verizon Wireless, with a corresponding reduction in the need for Commission resources.

6.1.9. Proposed Amendments

We decline to adopt Laetz's and SCE's proposed amendments to the Settlement Agreement that are summarized above. In considering a proposed settlement, we do not second guess each provision as long as the settlement as a whole is reasonable and in the public interest.[6] That is the case here.

6.2. Consistent with the Law

We have carefully reviewed the Settlement Agreement, and we find that the terms of the settlement are consistent with the law, including the California Public Utilities Code and Commission decisions, rules, and general orders. However, there are several legal issues related to the Settlement Agreement. We address these issues below.

6.2.1. Compliance with Rule 12.1(b)

NextG claims the Settling Parties did not comply with the requirement in Rule 12.1(b) to "convene at least one conference with...opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding." NextG asserts that it did not have a meaningful opportunity during a settlement conference to join the Settlement Agreement or to reach a separate deal with CPSD.

We find that the Settling Parties did comply with Rule 12.1(b). The record shows the Settling Parties held two settlement conferences and that NextG participated in both conferences. That is all the Settling Parties were required to do under Rule 12.1(b). There is nothing in Rule 12.1(b) that compels the Settling Parties together, or CPSD individually, to settle with NextG.

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[6] D.03-12-035 at 19.

6.2.2. The Settling Parties' Witnesses and Testimony

The Settlement Agreement contains several provisions regarding the Settling Parties' witnesses and written testimony.[7] These provisions apply only to the Settling Parties and do not affect any rights that NextG and SCE would have in the absence of the Settlement Agreement. For example, if there is a hearing regarding CPSD's allegations against NextG and SCE, they will have the same right as CPSD to follow applicable legal procedures to call the Settling Respondents' witnesses.[8] If the Settling Respondents' written testimony is used by CPSD against NextG and SCE, then NextG and SCE will have the right to object to the testimony and to cross-examine the witnesses sponsoring the testimony. NextG and SCE may continue to sponsor Schulte's testimony, and they may object to any use of the Settling Respondents' admission in the Settlement Agreement that Schulte's testimony is incorrect.

We remind all parties that the right to call another party's witnesses, to cross-examine another party's witnesses, and to object to another party's witnesses and testimony is subject to the usual standards of relevance, materiality, and due process. A party's request to call a witness may be denied, and a party's objections to a particular witness or testimony may be overruled.

6.2.3. Compliance with GO 95

Under the terms of the Settlement Agreement, the Settling Respondents will upgrade, inspect, repair, and/or replace thousands of joint-use poles. In carrying out these activities, the Settling Respondents shall comply with all

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[7] These provisions are in Paragraphs 3, 4, 5, 13, and 15 of the Settlement Agreement.

[8] The Settlement Agreement does not affect the Settling Respondents' right to object if SCE or NextG attempt to call any of the Settling Respondents' witnesses.

applicable laws and regulations, including GO 95. Among other things, GO 95 requires the Settling Respondents to share information needed for pole-loading calculations in conformance with Rule 44 of GO 95. If the Settling Respondents discover poles that must be repaired or replaced, the Settling Respondents are required to notify the other joint owners of the substandard poles pursuant to Rule 18B of GO 95. The substandard poles must then be repaired or replaced in accordance with the priority levels and deadlines in Rule 18A(2). Any 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). Finally, the Settling Respondents must maintain records of all inspections and remedial work for at least 10 years pursuant to Rule 18A(1)(b).

6.2.4. Public Utilities Code Section 2107

The Commission has authority under Cal. Pub. Util. Code § 2107 to levy a financial penalty in the range of $500 to $50,000 for each violation of the Public Utilities Code or any Commission order, decision, decree, rule, or requirement. Although the Settling Respondents agree to pay $6.9 million to the State of California General Fund and $5.1 million to the EIIF, there is nothing in the Settlement Agreement that suggests these payments are a financial penalty under § 2107. Rather, these payments are a compromise between CPSD and the Settling Respondents, with no admission by the Settling Respondents that they violated any laws or regulations as alleged by CPSD.

Today's decision does not determine if any laws or regulations were violated. Therefore, we do not need to consider if the total settlement payments of $12 million are consistent with § 2107 and related Commission precedent.

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. The Settlement Agreement achieves these goals. The Settlement Agreement also provides significant public benefits. Among other things, the Settling Respondents will make a substantial payment to State of California General Fund; upgrade the safety factor for all poles along 3.38 miles of Malibu Canyon Road; and conduct a statistically valid survey of joint-use poles in SCE's service area for compliance with GO 95 safety factor requirements.

We find the Settlement Agreement, with the conditions adopted by today's decision, is in the public interest. These conditions do not alter the intent of the Settlement Agreement. Rather, the conditions ensure that key provisions in the Settlement Agreement which protect public safety are clear, will be fully implemented, and will be completed within a reasonable period of time.

7. Conclusion

We conclude that the Settlement Agreement, with the conditions adopted by today's decision, is reasonable in light of the whole record, consistent with the law, and in the public interest. Therefore, we will approve the Settlement Agreement, subject to the conditions adopted by today's decision. A copy of the approved Settlement Agreement is attached to today's decision. In accordance with Rule 12.5, the Settlement Agreement is binding on the Settling Parties, but the settlement does not establish a precedent for any principle or issue.

8. Need for a Hearing on the Settlement Agreement

NextG and SCE request a hearing on the Settlement Agreement pursuant to Rules 12.2 and 12.3. The Settling Parties oppose the request.

Rule 12.2 states that if "the contesting party asserts that a hearing is required by law, the party shall provide appropriate citation and specify [in its comments on the settlement agreement] the material contested facts that would require a hearing." Rule 12.3 states that if "there are no material contested issues of fact...the Commission may decline to set hearing."

For the reasons set forth below, we find that NextG and SCE have not shown there are material contested issue of fact regarding the Settlement Agreement. We therefore deny their request for a hearing.

8.1. NextG's Request for a Hearing

NextG requests a hearing on the statement in the Settlement Motion that AT&T, Sprint, and Verizon Wireless are situated differently than NextG because CPSD has recommended a larger penalty for NextG. NextG intends to prove at the hearing that it should not be assigned more culpability than AT&T, Sprint, and Verizon Wireless.

NextG has not identified a material factual issue. It is indisputable that CPSD recommended a larger penalty for NextG compared to AT&T, Sprint, and Verizon Wireless. In this respect, NextG is situated differently. Furthermore, the issue of NextG's relative culpability is irrelevant to today's decision. Neither the Settlement Agreement nor today's decision decides if NextG is, in fact, more culpable than the Settling Respondents.[9]

[9] Assuming NextG is right – that it is not situated differently - NextG does not explain how or why the Settlement Agreement should be modified or rejected.

8.2. SCE's Request for a Hearing

SCE requests a hearing on three issues. First, the Settlement Agreement does not specify the methodology for the pole-loading calculations that will be an integral part of the pole-loading survey that is conducted pursuant to Paragraphs 8 and 9 of the Settlement Agreement. SCE states that because it could incur costs to repair and replace poles as a result of the pole-loading calculations, there should be a hearing on the proper methodology for pole-loading calculations.

We disagree. Although the Settlement Agreement does not specify a methodology for pole-loading calculations, this does not constitute a material contested factual issue. Pole-loading calculations are performed routinely and do not need to be specified in the Settlement Agreement.[10] The Settling Respondents will retain an independent contractor to conduct the survey[11] who is experienced in performing pole-loading calculations in accordance with accepted industry practices. Furthermore, CPSD will oversee the survey, and CPSD will approve the method and details of the pole-loading calculations.[12] In essence, the Settlement Agreement extends CPSD's ability to inspect additional poles, paid for by the EIIF.[13] If CPSD were conducting the pole inspections itself,

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[10] GO 95 requires pole-loading calculations for every new pole and for significant new attachments to an existing pole.

[11] Settlement Agreement at Paragraph 8.

[12] Settling Parties' reply comments on the Settlement Agreement at 3, and Settling Parties' compliance filing on April 2, 2012, at 2.

[13] In response to the Settling Parties' reply comments on the proposed decision, today's decision adopts the following condition for our approval of the Settlement Agreement: The inspections conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement shall be conducted by an independent contractor or

Footnote continued on next page

SCE would not have an opportunity to object in advance to CPSD's methodology for pole-loading calculations. SCE should have no greater right here. SCE will have an opportunity to object to CPSD's methodology if and when CPSD commences an enforcement action.

Second, SCE requests a hearing on the process and timeframe for implementing remedial work deemed necessary by the pole-loading survey, as the this work will likely involve SCE and other entities who are not parties to the Settlement Agreement. This is not a factual issue because the process and timeframe for remedial work are set forth in GO 95. Rule 31 of GO 95 provides the Settling Respondents with authority to conduct a pole-loading survey. If the survey finds substandard facilities, the Settling Respondents must notify the owners of the facilities in accordance with Rule 18B of GO 95. The owners must then bring the substandard facilities into compliance with GO 95 within the timeframes specified in Rule 18(A)(2) of GO 95.

We recognize there may be disputes among joint owners about the need for remediation and who will bear the costs for remediation. However, this is no different from what can occur today; the Settlement Agreement does not raise any new issues in this regard. If all joint owners cannot agree on the need for remedial actions required by GO 95, those joint owners who take remedial actions can file a complaint at the Commission, and the Commission can commence an enforcement action.

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contractors retained by the Settling Respondents. Such contractor(s) shall not be (i) NextG or SCE, (ii) currently employed exclusively by NextG or SCE, or (iii) an affiliate of the entities identified in (i) and (ii). CPSD shall maintain oversight of the selection of the contractor(s).

Finally, SCE requests a hearing on the rationale for upgrading poles on 3.38 miles of Malibu Canyon Road versus a longer or shorter segment. We deny the request. SCE's desire for more information about a provision in the Settlement Agreement does not constitute a contested factual issue.

9. Comments on the Proposed Decision

The proposed decision 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 June 5, 2012, by CPSD, Laetz, NextG, SCE, and the Settling Respondents. Reply comments were filed on June 15, 2012, by SCE and the Settling Parties. The following revisions were made to today's decision in response to the comments:

- The deadline for completing the safety-factor upgrade for the utility poles on Malibu Canyon Road and the escheatment of any remaining funds in the EIIF is revised from 18 months to 30 months from the effective date of today's decision.
- A new condition for our approval of the Settlement Agreement is added. The new condition requires the inspections conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement to be performed by one or more independent contractors retained by the Settling Respondents. Such contractor(s) shall not be (i) NextG or SCE, (ii) a contractor currently employed exclusively by NextG or SCE, or (iii) an affiliate of the entities identified in (i) and (ii). CPSD shall maintain oversight of the selection of the contractor(s).
- A new condition for our approval of the Settlement Agreement is added. The new condition requires the results of the inspections and survey conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement to be made available, upon request, to the Commission and its staff for regulatory purposes.
- Today's decision is revised to clarify that any joint owner of a utility pole, and not just SCE, may file a complaint at the

Commission against other joint owners who refuse to share responsibility for remedial actions required by GO 95.

Today's decision does not adopt two significant revisions proposed by certain parties. First, we decline to adopt SCE's proposal to require all pole-loading calculations undertaken pursuant to the Settlement Agreement to take into account SCE's design standards. Today's decision does not require the Settling Respondents to do anything more than what is required by the Settlement Agreement and GO 95 with respect to pole-loading calculations. However, if SCE wishes to upgrade and/or remediate poles to a higher pole loading standard than required by today's decision, SCE may do so using its own funds. We will require the Settling Respondents to cooperate with SCE in this regard.

Second, we decline to adopt the Settling Parties' proposal to delete the provision in the Settlement Agreement that requires the Settling Respondents to upgrade the safety factor for all utility poles on 3.38 miles of Malibu Canyon Road. This provision 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. The record of this proceeding shows indisputably that strong Santa Ana winds contributed to the failure of three utility poles in Malibu Canyon and the subsequent ignition of the Malibu Canyon Fire. The provision in the Settlement Agreement to upgrade the safety factor of utility poles in Malibu Canyon reduces the risk that the same thing will happen again.

The Settling Respondents argue that this provision is no longer feasible because of the condition adopted by today's decision that if the $5.1 million provided by the Settling Respondents is not sufficient to (a) upgrade the safety factor for all utility poles on the designated portion of Malibu Canyon Road, and

(b) conduct a statistically valid survey of joint-use utility poles in SCE's service territory, the Settling Respondents shall deposit sufficient additional funds into the EIIF to complete Items (a) and (b). The Settling Respondents contend that because the Settlement Agreement capped their liability for Items (a) and (b) at $5.1 million, they should not be at risk for more than $5.1 million.

We are dismayed by the Settling Respondents' effort to remove a key public-safety benefit from the Settlement Agreement. In the Settlement Motion, the Settling Respondents (and CPSD) touted the significant public-safety benefits from the provisions in the Settlement Agreement that require the Settling Respondents to undertake Items (a) and (b):

> The...Settlement Agreement...will establish an innovative program designed to enhance the infrastructure of Malibu Canyon and improve the safety of residents in Southern California. In addition to requiring Settling Respondents to make a substantial payment directly to California's General Fund, the Settling Parties have crafted two robust safety enhancement projects that will (a) increase the safety factor of utility poles in the vicinity of the fire ignition site in Malibu Canyon, and (b) inspect thousands of poles in Southern California to determine compliance with GO 95's minimum safety factor. The public will greatly benefit from this Settlement Agreement as it addresses the specific public safety concerns, such as utility pole overloading, raised in the Commission's Order Instituting Investigation. (Settlement Motion, filed on February 3, 2012, at page 1.)

The Settling Parties never indicated that the Settlement Agreement might not provide sufficient funds to fully implement Items (a) and (b). To the contrary, when the assigned ALJ asked what would happen under the Settlement Agreement if $5.1 million were not sufficient to complete Items (a) and (b), the Settling Parties responded that $5.1 million would be sufficient:

> The $5.1 million budget for the Enhancement and Inspection projects constitutes an appropriate budget, based on conservative estimates of anticipated costs for bringing the poles in the designated area up to at least a s.f. of 4.0, and obtaining a statistically valid sample of poles jointly owned by SCE and AT&T, Sprint, and/or Verizon Wireless. There are 82 poles in the designated area that will be the subject of the Enhancement project. The statistically valid sample in the Inspection project will likely involve the inspection of more than 2,000 poles. Any part of the $5.1 million that is not used on the EIIF projects will escheat to the General Fund. The Settling Parties believe the $5.1 million EIIF is sufficient to fund the activities required by the Settlement Agreement. (Settling Parties' Response to Questions Posed by the ALJ, filed on February 24, 2012, at page 7.)

In sum, the Settling Parties were unequivocal in their representations to the Commission that the Settlement Agreement would upgrade the safety factor for 82 poles in Malibu Canyon, that the $5.1 million provided by the Settlement Agreement would be sufficient to fund the upgrade, and that the public would greatly benefit from the upgrade. We relied on these representations in our decision to approve the Settlement Agreement. Today's decision holds the Settling Respondents (and CPSD) accountable for their representations.

10. Assignment of the Proceeding

Timothy Alan Simon 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 utility poles located next to Malibu Canyon Road in Los Angles County fell to the ground and ignited a fire. 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. CPSD alleges that (i) one of the fallen poles was overloaded in violation of GO 95 and § 451; (ii) one of the replacement poles does not comply with GO 95 safety factor requirements; (iii) the Respondents interpreted SCJPC rules in a way that circumvents compliance with GO 95; and (iv) the Respondents violated Rule 1.1 by providing accident reports, data responses, and testimony that contained incorrect information. The Respondents deny all of CPSD's allegations.

3. The requirement in the Settlement Agreement for the Settling Respondents to pay $12 million is within the range of likely litigated outcomes for the alleged violations of Rule 1.1, § 451, and GO 95.

4. The Settlement Agreement provides a comprehensive remedy for CPSD's safety-related allegations against the Settling Respondents.

5. NextG and SCE have not demonstrated there are material contested issues of fact regarding the Settlement Agreement.

Conclusions of Law

1. The Settling Parties complied with Rule 12.1 of the Commission's Rules of Practice and Procedure.

2. With the conditions set forth in the following order, the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

3. With the conditions set forth in the following order, the Settlement Agreement should be approved pursuant to Article 12 of the Commission's Rules of Practice and Procedure. The Settling Parties' motion for approval of the Settlement Agreement should be granted.

4. The Settlement Agreement should be approved with the conditions listed in the following order to (i) ensure that key provisions in the Settlement

Agreement are fully implemented, (ii) ensure that key provisions are completed within a reasonable period of time, (iii) clarify the intent of several provisions, and (iv) establish record keeping and reporting requirements so that the Commission can monitor and audit compliance with the Settlement Agreement.

5. The upgrades, inspections, repairs, and replacements of utility facilities that are undertaken pursuant to the Settlement Agreement are subject to GO 95.

6. The Settlement Agreement does not affect any rights that NextG and SCE may have with respect to their own witnesses and written testimony or the Settling Parties' witnesses and written testimony.

7. SCE has an obligation under § 451 and GO 95 to repair or replace poles that do not comply with GO 95 safety requirements, regardless of funding authorized in SCE's most recent GRC.

8. Except as noted in Conclusion of Law 3, all pending motions and requests should be denied.

9. The survey of joint-use poles that will be conducted pursuant to the Settlement Agreement excludes (i) joint-use poles that do not have facilities attached by AT&T, Sprint, or Verizon Wireless, and (ii) single-use poles. It is conceivable that another pole-loading survey that includes (i) and/or (ii) will be commissioned later in this proceeding or in another proceeding. If this occurs, the Settling Parties should coordinate, to the extent practical, with the other pole-loading survey.

10. The results of the inspections and survey conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement should be made available, upon request, to the Commission and its staff for regulatory purposes besides those purposes identified in the previous Conclusion of Law.

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

O R D E R

IT IS ORDERED that:

1. The attached Settlement Agreement between the Consumer Protection and Safety Division and the Respondents AT&T Mobility LLC, Sprint Telephony PCS, L.P., and Cellco Partnership LLP d/b/a Verizon Wireless is approved, subject to the following conditions:

   i. The Settling Respondents shall establish a stand alone bank account to receive and disburse money for the Enhanced Infrastructure and Inspection Fund (EIIF). The Settling Respondents shall each deposit $1.7 million into the EIIF bank account (for a total of $5.1 million) within 45 days from the effective date of this order.

   ii. If $5.1 million is not sufficient to (a) upgrade the safety factor for all utility poles on 3.38 miles of Malibu Canyon Road in accordance with Paragraph 6 of the Settlement Agreement, and (b) conduct a statistically valid survey of joint-use utility poles in accordance with Paragraph 8 of the Settlement Agreement, the Settling Respondents shall deposit sufficient additional funds into the EIIF to complete Items (a) and (b), with the shortfall shared equally among the Settling Respondents.

   iii. The EIIF shall only pay for the actual costs of material, labor, and services that are directly related to Items ii.a and ii.b above. EIIF funds shall not pay for any internal overhead and administrative costs incurred by the Settling Respondents.

   iv. The Settling Respondents shall keep records of all EIIF deposits, disbursements, and supporting documents (e.g., contracts and invoices) for at least 10 years, consistent with Rule 18(A)(1)(b) of General Order (GO) 95.

v. The Settling Respondents shall each pay $2.3 million to the General Fund within 30 days from the effective date of this order, for a total payment of $6.9 million.

vi. The following activities required by Paragraphs 6 – 7 of the Settlement Agreement shall be completed within 30 months from the effective date of this order:

   a. Upgrading the safety factor for all utility poles along 3.38 miles of Malibu Canyon Road.

   b. After completing the upgrades, providing a report to CPSD that includes all pole-loading calculations and an accounting of the work performed and the funds expended.

vii. The following activities required by Paragraph 8 of the Settlement Agreement shall be completed within 18 months from the effective date of this order:

   a. Conducting a statistically valid survey of the joint-use poles in Southern California Edison's service territory to determine if these poles comply with GO 95 safety factor requirements.

   b. After completing the survey, providing a report to CPSD that includes the inspection results, all pole-loading calculations, and an accounting of the work performed and the funds expended.

viii. Any funds that remain in the EIIF after the completion of the activities in Paragraphs 6 – 8 of the Settlement Agreement shall escheat to the State of California General Fund no later than 30 months from the effective date of this order.

ix. The Settling Respondents shall file and serve a notice each time they complete an activity specified in Items v. through vii. above. The notice shall be due 10 days after completion of the activity.

x. The term "safety factor" as used in the Settlement Agreement shall be defined by Rule 44 of GO 95. The term "equivalent safety factor for other materials" as used in the Settlement Agreement shall be defined by Table 4 and Footnote (c) of Rule 44. The term "Settling Party (or Settling Parties)" in Paragraph 9 of the Settlement Agreement shall be replaced with "Settling Respondent (or Settling Respondents)."

xi. Any Settling Respondent who places a line-item charge on its customer bills to recover settlement-related costs must not state or imply that the charge is approved by the Commission.

xii. The inspections conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement shall be conducted by an independent contractor or contractors retained by the Settling Respondents. Such contractor(s) shall not be (i) NextG Networks of California, Inc or Southern California Edison Company (NextG or SCE), (ii) currently employed exclusively by NextG or SCE, or (iii) an affiliate of the entities identified in (i) and (ii). CPSD shall maintain oversight of the selection of the contractor(s).

xiii. The results of the inspections and survey conducted pursuant to Paragraphs 6 and 8 of the Settlement Agreement shall be made available, upon request, to the Commission and its staff for regulatory purposes.

xiv. The Settling Respondents, when upgrading the safety factor for poles in Malibu Canyon and performing remedial work on any substandard poles discovered by the pole-loading survey, shall comply with the requirements of the Settlement Agreement and GO 95. SCE may upgrade and/or remediate poles to a higher safety factor than required by today's decision using its own funds. The Settling Respondents shall cooperate with SCE in this regard.

2. The joint motion of the Consumer Protection and Safety Division, AT&T Mobility LLC, Sprint Telephony PCS, L.P., and Cellco Partnership LLP d/b/a Verizon Wireless for approval of the attached Settlement Agreement is granted, subject to the conditions in the previous Ordering Paragraph.

3. All other pending motions and requests are denied.

4. The survey of joint-use poles conducted pursuant to the approved Settlement Agreement shall be coordinated, to the extent practical, with other pole-loading surveys that may be conducted in Southern California Edison's service territory.

5. This proceeding remains open to resolve pending allegations against Southern California Edison Company and NextG Networks of California, Inc.

6. The Settling Parties consisting of AT&T Mobility LLC, Sprint Telephony PCS, L.P., Cellco Partnership LLP d/b/a Verizon Wireless, and the Commission's Consumer Protection and Safety 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 Ordering Paragraph 1.

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 Settlement Agreement attached to today's decision. 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.

SETTLEMENT AGREEMENT BETWEEN THE CONSUMER PROTECTION AND SAFETY DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND AT&T MOBILITY LLC, SPRINT TELEPHONY PCS, L.P. AND CELLCO PARTNERSHIP LLP D/B/A VERIZON WIRELESS REGARDING I.09-01-018; THE ORDER INSTITUTING INVESTIGATION INTO THE MALIBU CANYON FIRE

PARTIES

The parties to this Settlement Agreement are the Consumer Protection and Safety Division of the California Public Utilities Commission ("CPSD"), AT&T Mobility LLC, ("AT&T"), Sprint Telephony PCS, L.P. ("Sprint") and Cellco Partnership LLP d/b/a Verizon Wireless ("Verizon Wireless") (hereinafter collectively referred to as the "Settling Parties"). Southern California Edison Company ("SCE") and NextG Networks of California, Inc, ("NextG") who have also been named respondents in this proceeding, are not parties to this Settlement Agreement.

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

AT&T, Sprint and Verizon Wireless are public utilities, as defined by the California Public Utilities Code, each with wireless telecommunication facilities located in southern California.

RECITALS

A. This matter arises from a fire that ignited on October 21, 2007. CPSD has reported that on October 21, 2007, three utility poles (poles 1169252E, 1169253E and 2279212E) 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 36 vehicles and damaged 19 other structures. The power lines on the poles that fell were owned and operated by SCE. The poles were jointly owned by SCE, AT&T, Sprint, Verizon Wireless and NextG.[1]

B. On October 21, 2008, CPSD issued its Incident Investigation Report, which included allegations of pole overloading violations.

C. On January 29, 2009, the Commission instituted Investigation 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 to the Investigation.

D. The parties served the following testimony: 1) CPSD served its direct testimony on May 3, 2010; 2) Respondents served direct testimony of November 18, 2010; 3) CPSD served rebuttal testimony on April 29, 2011; 4) Respondents served surrebuttal testimony on June 29, 2011 and 5) on August 29, 2011 CPSD served reply testimony and on the same date AT&T and Verizon Wireless jointly, as well as Sprint individually, served surrebuttal testimony.

[1] Sprint states that it sold all of its ownership interests in poles 1169252E and 2279212E to NextG on January 12, 2007.

E. On May 3, 2010, April 29, 2011, and August 29, 2011 CPSD served testimony in I.09-01-018. In its testimony, CPSD presented evidence that at least one of the three wood utility poles at issue in I.09-01-018, was overloaded at the time of NextG's attachment of fiber optic cable, prior to the October 21, 2007 fire in Malibu Canyon, in violation of Public Utility Code Section 451 and GO 95 (Rules 12.2, 31.1, 43.2, 44.3, and 48). CPSD's expert witness further testified that Pole 1169252E was overloaded regardless of the termite damage that was detected inside the pole.

F. The general chronological order of attachment for the subject poles is as follows:

a. Southern California Edison ("SCE") Cables/Conductors (Prior to 1990)
b. Verizon Wireless Cable/Conductor (1994-1995)
c. AT&T Cable/Conductor (1995-1996)
d. Edison Carrier Solution Cable/Conductor (November 1996)
e. Sprint Cable/Conductor (1998)
f. Sprint Antennas and related equipment; pole 253 only (2003)
g. NextG Cable/Conductor (2003-2005)

G. On June 29, 2011 and August 29, 2011, using the same pole loading analysis and methodology as that used by CPSD, AT&T and Verizon Wireless jointly presented evidence that neither Verizon Wireless nor AT&T overloaded pole 1169252E or pole 1169253E at the times they attached their respective facilities to those poles.

H. On August 29, 2011, using the same pole loading analysis and methodology as that used by CPSD, AT&T and Verizon Wireless, Sprint presented evidence that it did not overload pole 1169253E at the time it attached

its facilities to that pole in 2003, and Sprint presented evidence that it did not own facilities on pole 1169252E at the time of the fire.

I. On April 29, 2011, CPSD also presented evidence in its Rebuttal Testimony that replacement pole 4557608E was constructed by SCE in 2007 below GO 95's minimum safety factor of 4.0. Neither AT&T, Verizon Wireless, nor Sprint presented evidence in response to this issue. Sprint has never had any facilities attached to pole 4557608E.

J. CPSD has presented evidence in its testimony that significant communication failures exist within the SCJPC process, including inconsistent interpretations of SCJPC rules that directly affect companies' safety obligations under GO 95.

AGREEMENT

This Agreement is entered into for purposes of compromise. In order to minimize the time, expense, and uncertainty of further litigation, CPSD, AT&T, Sprint, and Verizon Wireless agree to the following terms and conditions as a complete and final resolution of all claims against and all issues regarding AT&T, Sprint, and Verizon Wireless under the facts as set forth in I.09-01-018 ("this proceeding"). AT&T, Sprint, and Verizon Wireless have no claims or issues regarding CPSD. This Settlement Agreement shall not constitute a precedent for any other proceeding.

1. AT&T, Sprint and Verizon Wireless will pay a total of **$12,000,000** (to be divided between them in equal one-third shares) of which $6,900,000 will be a payment to the State of California General Fund and $5,100,000 will go to an Enhanced Infrastructure and Inspection Fund ("EIIF") as described in more detail below.

2. SCE and NextG have not been privy to these settlement discussions, are not Settling Parties, have not provided any compensation or consideration towards the settlement payments and are still Respondents in this proceeding. The Settling Parties agree that the settlement discussions between the parties that resulted in this Agreement are and shall remain at all times confidential. AT&T, Sprint, and Verizon Wireless agree not to provide any materials or information from these confidential settlement discussions to the remaining Respondents for this proceeding regardless of the terms of the Joint Defense Agreement. This agreement is expressly limited to this proceeding and does not prohibit AT&T, Sprint and Verizon Wireless from exercising their rights under the Joint Defense Agreement in any civil litigation related to the October 21, 2007 fire in Malibu Canyon.

3. AT&T, Sprint, and Verizon Wireless agree not to object to CPSD calling any witness that provided testimony sponsored by AT&T, Sprint, and/or Verizon Wireless.

4. AT&T agrees to withdraw its Motion to Exclude Presentation of Additional Witnesses.

5. AT&T, Sprint, and Verizon Wireless agree to waive cross-examination of any of CPSD's witnesses in this proceeding: Raymond Fugere, Kan Wai-Tong, Pejman Moshfegh, as well as the SIG witnesses.

6. The funds in the EIIF will only be used for two purposes. First, the EIIF will be used to enhance all existing poles along 3.38 miles of Malibu Canyon Road from Mesa Peak Tractor Way to Potter Drive ("Designated Area") to a minimum safety factor ("s.f.") of 4.0 based on the use of wood poles, or the equivalent s.f. for other materials. Mr. Raymond Fugere of CPSD has testified that pole 4557608E, which SCE installed to replace one of the subject poles that

failed on October 21, 2007, was not constructed with the required safety factor of at least 4.0. As part of the EIIF, AT&T, Sprint, and Verizon Wireless agree to ensure that Pole 4557608E has a safety factor of at least 4.0 in accordance with paragraph 7 below.

7. If a pole in the Designated Area has a s.f. below 2.67 and cannot be increased to a 2.67 s.f. without replacing the entire pole, AT&T, Sprint, and Verizon Wireless will work with the co-owners of the pole to replace the pole and will not draw any EIIF funds for the pole replacement. This enhancement project shall be a one-time enhancement to the poles within the Designated Area and shall not create an ongoing obligation on AT&T, Verizon Wireless, and Sprint to maintain the poles within the Designated Area at a 4.0 s.f. Upon completion of this enhancement work, AT&T, Sprint and Verizon Wireless will provide a report which shall include all pole loading calculations and accounting to CPSD.

8. Second, the EIIF will pay for all costs associated with inspection of a statistically valid sample of existing poles located in Southern California Edison's service territory with a 95% confidence level and an interval of 2 to determine whether those poles meet the minimum s.f. requirements set forth in GO 95. The poles included in the inspection must be randomly selected, but each pole must contain an electric facility and at least one attachment by AT&T, Sprint or Verizon Wireless. The pole selection methodology and inspection results shall be in a format mutually agreed upon by Settling Parties and will include a pole loading calculation for each pole. The inspection shall be conducted by an independent contractor retained by AT&T, Sprint and Verizon Wireless. Upon completion of this inspection, AT&T, Sprint, and Verizon Wireless will provide the inspection results and an accounting to CPSD.

9. If the inspection shows that a pole does not meet the minimum GO 95 s.f. requirement, the Settling Party (or Settling Parties) that is a joint owner of the pole will work with all pole owners to bring the pole into compliance with the minimum GO 95 s.f. requirement. CPSD will not seek penalties against AT&T, Sprint, or Verizon Wireless, or any other pole owner, solely based on the inspection, provided that the pole is brought into compliance with GO 95 minimum s.f. requirement in accordance with GO 95 within a reasonable period of time. This clause does not supersede CPSD'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 pole is identified as not meeting the minimum safety factor as a result of this study, CPSD is not waiving its right to seek penalties if that pole is later involved in an accident or outage (regardless of whether or not the pole is brought into compliance in a reasonable amount of time). This clause does not immunize the identified poles for perpetuity.

10. The EIIF will be used only for those items specifically set forth in paragraphs 6, 7, and 8, and will be capped at $5,100,000. If any funds remain in the EIIF after the items in paragraphs 6, 7, and 8 have been completed, the funds will escheat to the California General Fund.

11. AT&T, Sprint, and Verizon Wireless acknowledge that no provision of the Southern California Joint Pole Committee ("SCJPC") process, including SCJPC Routine Handbook Section 18.1-D, can be used to avoid complying with any applicable law or regulation, including GO 95.

12. AT&T, Sprint, and Verizon Wireless agree that, if they seek to attach to a pole governed by the SCJPC and receive a safety objection within, or after, the 45-day time limit specified in Section 18.1-D of the SCJPC Routine Handbook,

AT&T, Sprint, and/or Verizon Wireless will take appropriate action to address the safety concern.

13. Mr. William Schulte testified about his views regarding the purported "inadequacies" of CPSD's investigation. For example, Mr. Schulte testified that: "By the time Mr. Tong inspected any physical evidence, more than two weeks after the incident, the facilities and equipment from the scene had long since been removed and preserved at an SCE warehouse." However, the following evidence had been discarded, or was not otherwise available for inspection at the SCE warehouse: 1) an Edison Carrier Solutions Cable, 2) two NextG cables, 3) an AT&T cable, and 4) an Edison KPF Switch. AT&T, Sprint, and Verizon Wireless acknowledge that Mr. Schulte's testimony regarding the purported "inadequacies" of CPSD's investigation is incorrect and agree to withdraw from sponsoring and/or supporting all of William R. Schulte's testimony in this proceeding.

14. AT&T, Sprint and Verizon Wireless have not served testimony contesting Mr. Fugere's methodology for computing the s.f. under GO 95.

15. AT&T, Sprint, and Verizon Wireless agree to withdraw from sponsoring Mr. Rosenthal's and Dr. Peterka's testimony in this proceeding. This agreement is expressly limited to this proceeding, and does not prohibit AT&T, Sprint or Verizon Wireless from retaining and calling these expert witnesses in any civil litigation related to the October 21, 2007 fire in Malibu Canyon.

16. Nothing in this agreement or Motion for Approval of Settlement Agreement shall be deemed a determination of the merits of any claim in any proceeding.

17. AT&T, Sprint, and Verizon Wireless enter into this Settlement Agreement without prejudice to their 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.

18. The Settling Parties agree to seek expeditious approval of this Settlement Agreement and to use their best efforts to secure Commission approval of it, 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 the Settlement Agreement if its adoption is opposed by any other party in proceedings before the Commission.

19. If the Commission has not issued a decision approving this Settlement Agreement prior to the commencement of the evidentiary hearing for the remaining Respondents, AT&T, Sprint, Verizon Wireless, or CPSD may withdraw from this Settlement Agreement.

20. This Settlement Agreement embodies the entire understanding of the Settling Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements, or understandings among the Settling Parties.

21. The Settling Parties have bargained in good faith to achieve this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. Each of the Settling Parties has contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of the Settlement Agreement shall be construed against any party because that party or its counsel drafted the provision.

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

23. This Settlement Agreement may be executed in counterparts.

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

Dated: _____ AT&T Mobility LLC

By: _____

Dated: _____ SPRINT TELEPHONY PCS, L.P.

By: _____

Dated: _____ CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS

By: _____

Dated: _____ CONSUMER PROTECTION &
SAFETY DIVISION

By: _____

(END OF APPENDIX A)