

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA



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Investigation on the Commission's Own
Motion into the Operations and Practices of
Southern California Edison Company,
Cellco Partnership LLP d/b/a Verizon
Wireless, Sprint Communications
Company LP, NextG Networks of
California, Inc. and Pacific Bell Telephone
Company d/b/a AT&T California and
AT&T Mobility LLC, Regarding the
Utility Facilities and the Canyon Fire in
Malibu of October 2007

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

**DECLARATION OF HARVEY Y. MORRIS
IN SUPPORT OF SUPPLEMENTAL BRIEF OF THE CONSUMER
PROTECTION AND SAFETY DIVISION**

I, Harvey Y. Morris, declare under penalty of perjury that the following is true to my best knowledge and belief:

1. I am an Assistant General Counsel in charge of the Energy Transmission Section of the Commission's Legal Division and, among my duties, I supervise attorneys who represent the Consumer Protection and Safety Division (CPSD) in investigations and enforcement proceedings involving electric transmission and electric distribution matters, including safety-related matters.

2. On February 2, 2011, Administrative Law Judges Reed and Kenney issued a ruling (ALJs' February 2 Ruling) authorizing parties to file supplemental pleadings concerning the CPSD's pending motion to compel filed on March 26, 2010 (CPSD's March 26 Motion). As acknowledged by the ALJs' February 2 Ruling, on October 21, 2007, strong winds in Malibu Canyon broke three utility poles, resulting in a fire that burned nearly 4,000 acres (Malibu Fire). CPSD's March 26 Motion had sought an order

compelling Southern California Edison Company (SCE) to produce wind load data, including the wind-loading study of the three poles at issue, which was performed by SCE's employee, Arthur Peralta, after he had been at the site of the Malibu Fire within a couple days of the October 21, 2007 Malibu Fire (Peralta Malibu Fire Study), and to produce Mr. Peralta for further questioning by CPSD in a deposition due to the numerous instructions by SCE's attorney not to answer questions about his study. The ALJs' February 2 Ruling noted that many events have occurred since the filing of the CPSD's March 26 Motion, and has allowed parties an opportunity to address pertinent developments since April 15, 2010.

3. Attached to the Declaration of Edward Moldavsky in Support of Supplemental Brief (Moldavsky Decl.) as "Exhibit EDM-14", is the February 10, 2011 Stipulation in which SCE and CPSD have agreed that the unredacted "Field Worksheets" and "Detailed Assessment Results" of the Peralta Malibu Fire Study shall be confidentially produced by SCE to CPSD. However, SCE has excluded the "Storm Register" portion of the Peralta Malibu Fire Study and continues to assert that it is protected by the attorney-client privilege and the work product doctrine, whereas CPSD continues to dispute SCE's assertions. *See* Exhibit EDM-14, Paragraph 1. The Stipulation further recognizes that CPSD has explicitly reserved the right to update CPSD's March 26 Motion to compel production of the Storm Register documents and SCE has a right to file a response to the update. *See* Exhibit EDM-14, Paragraph 4.

4. The purpose of my declaration is to sponsor evidence of certain of the subsequent developments establishing why the Storm Registers prepared by Mr. Peralta for the three poles at issue are critical to the record in this proceeding in terms of fulfilling the purpose of the Commission's Accident Reporting Requirements, so that the and the Commission can become better informed of unsafe utility practices in order to remedy these practices and to enhance its electric safety requirements.

5. In a nutshell, SCE's preparation and submittal to CPSD of SCE's Accident Report for the Malibu Fire on October 25, 2007, authored by SCE employee Frederick McCollum (Malibu Fire Accident Report), was not based upon and does not reference

SCE's own expert's views of the cause of the Malibu Fire. In fact, although Mr. McCollum admitted that he has no expertise in pole loading studies and he admitted that Arthur Peralta does have expertise in this area, Mr. McCollum could not explain in his deposition why he ignored the information of Mr. Peralta as to the causes of the Malibu Fire. Attached hereto as "Exhibit HYM-1" is a copy of the Malibu Fire Accident Report.

6. For background, it is important to note that Robert Cagen, the CPSD attorney originally assigned to this case, retired at the end of 2009. Therefore, I assigned Ed Moldavsky to replace Mr. Cagen in the present proceeding. Because Mr. Moldavsky had to learn an extensive record, CPSD worked out an agreement with the parties, wherein CPSD agreed to a discovery cutoff (*i.e.*, no more depositions and last data requests to be sent by March 8, 2010) with CPSD testimony to be served by May 3, 2010.

7. CPSD's last deposition on March 5, 2010, right before the discovery cutoff, was of Arthur Peralta, who CPSD had only recently learned prior to March 5, 2010 was SCE's pole loading expert. Up until this deposition, CPSD had no idea that Mr. Peralta had been to the scene of the Malibu Fire, let alone conducted a pole loading study within a couple of days the fire. As soon as Mr. Moldavsky learned that information and began questioning Mr. Peralta about the study, SCE's attorney instructed Mr. Peralta not to answer numerous questions. Consequently, the CPSD's March 26 Motion, along with supporting documents, was filed on March 26, 2010. At Mr. Peralta's deposition, CPSD also first learned that SCE's employee Frederick McCollum knew that Arthur Peralta had been at the fire scene and had done a pole loading study. Attached hereto as "Exhibit HYM-2" are true and correct copies of relevant excerpts of the March 5, 2010 deposition transcript of Arthur Peralta. (Exhibit HYM-2, Reporter's Transcript (RT) 17:15-22:23, 36:2-25). Mr. Peralta further explained that "wind loading" and "pole loading" are used interchangeably. (Exhibit HYM-2, RT 36:2-5).

8. I personally attended the deposition of Frederick McCollum on December 20 through December 21, 2010. CPSD's counsel, Ed Moldavsky, deposed Mr. McCollum on numerous issues, including his responsibilities and efforts to preserve all of the

evidence, his presence and Arthur Peralta's presence at the scene of Malibu Fire before any evidence had been removed or destroyed, and various other issues.

9. Attached hereto as "Exhibit HYM-3" are true and correct copies of relevant excerpts of Mr. McCollum's deposition transcripts from December 20-21, 2010. At the deposition, Mr. McCollum answered questions about the cause of the Malibu Fire, to which SCE's counsel never objected whenever Mr. McCollum stated his firm belief that the wind was the cause of the Malibu Fire. (Exhibit HYM-3, RT 47:7-48:3, 51:1-18, 63:5-64:25.). However, SCE's counsel objected to numerous other questions with instructions not to answer, including questions about other possible causes of the fire or, in particular, regarding discussions Mr. McCollum had with Arthur Peralta about other causes. (Exhibit HYM-3, RT 48:17-26; 52:27-53:12; 59:9-15; 61:24-62:3; 83:12-84:4.)

10. At his December 20, 2010 deposition, Mr. McCollum testified that he is not a pole loading expert and he does not know how pole loading requirements work, but that Arthur Peralta is a pole loading expert. (Exhibit HYM-3, RT 62:6-13; 75:3-77:16, 78:17-79:22; 96:27-97:13). Nevertheless, notwithstanding that he has no pole loading expertise, SCE assigned Mr. McCollum to prepare SCE's Malibu Fire Accident Report to purportedly comply with the Commission's Accident Reporting Requirements, which required SCE to file a written report within 20 days of the accident, including a *detailed description* of the nature of the accident, its *cause* and estimated damage. (Exhibit HYM-3, RT 41:14-46:28). (Emphasis added.) Attached hereto as "Exhibit HYM-4" are relevant excerpts of the Commission's D.06-04-055 and its Appendix B, which show the Accident Reporting Requirements that existed at the time of the Malibu Fire. Mr. McCollum never provided a sufficient reason why he did not at least rely upon his discussion with Mr. Peralta nor why he submitted SCE's report to the Commission on October 25, 2007, within four days of the Malibu Fire, instead of taking the 20 days available to him. SCE's choice of Mr. McCollum to prepare the Malibu Fire Accident Report, his refusal to take into account Arthur Peralta expert advice on his pole loading analysis, and SCE's attorney's instruction at the depositions of Mr. Peralta, Mr. McCollum and Mr. Van Beyeren not to answer any questions concerning the Peralta

Malibu Fire Study are consistent with a pattern of depriving the Commission from learning the actual cause of the Malibu Fire.

11. At his December 21, 2010 deposition, Mr. McCollum also testified that Arthur Peralta was at the scene of the Malibu Fire between October 22 and October 24, 2007 and saw the poles in the same configuration as Mr. McCollum saw them before they were removed from the scene. (Exhibit HYM-3, RT 272:9-24). CPSD did not know until December, 2010, the significant extent to which certain of the Respondents' physical evidence had been destroyed or not preserved, which Mr. Moldavsky has addressed in much greater detail in his February 11, 2011 declaration accompanying CPSD's present supplemental brief. Therefore, Mr. Peralta was the last person with pole loading expertise to see the poles at issue and the facilities that were attached before much of the evidence was removed from the scene or discarded. Mr. Peralta was uniquely able to form opinions that nobody else could formulate.

12. At his December 20, 2010 deposition, Mr. McCollum further testified regarding the importance of preservation of evidence and his awareness that evidence could not be removed from the scene of the fire without compliance with Cal Fire protocol (Exhibit HYM-3, RT 155:21-158:28; 162:5-11).

13. Attached hereto as "Exhibit HYM-5" are true and correct copies of relevant excerpts of CPSD's data requests of June 4, 2009, which were e-mailed to SCE. Question 3 asked for all wind load safety calculations on the three poles at issue from January 1, 1990 through October 30, 2007, and Question 35 requested information for all wind load safety calculations or analyses on the three poles at issue from January 1, 1990 through October 23, 2007.

14. Attached hereto as "Exhibit HYM-6" are true and correct copies of relevant excerpts of SCE's June 2009 responses to the June 4, 2009 data request. SCE objected on the basis of privilege to certain data requests, but did not ever object on the basis of privilege or any other ground to Questions 3 or 35.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 11, 2011, at San Francisco, California.

/s/ HARVEY Y. MORRIS

HARVEY Y. MORRIS