



**FILED**

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## **Exhibit HYM-3**

1 BE IT REMEMBERED THAT, by Notice  
2 and on Monday, December 20, 2010, commencing  
3 at the hour of 10:00 a.m. thereof, at the  
4 offices of the CALIFORNIA PUBLIC UTILITIES  
5 COMMISSION, 320 West 4th Street, Suite 500,  
6 Los Angeles, California 90013, before  
7 ALEJANDRINA E. SHORI, CSR No. 8856,  
8 personally appeared,

9 **FREDERICK McCOLLUM,**

10 called as a witness herein, who, being first  
11 duly sworn, was thereupon examined and  
12 interrogated as hereinafter set forth.

13 \* \* \* \* \*

14 EXAMINATION

15 BY MR. MOLDAVSKY:

16 Q This is the deposition of Frederick  
17 McCollum being taken as part of the Public  
18 Utility Commission's Consumer Protection and  
19 Safety Division's investigation into  
20 the Malibu Canyon Fire that occurred in  
21 Southern California in October of 2007.  
22 Among other things, the Consumer Protection &  
23 Safety Division investigates matters that  
24 relates to protecting customers and ensuring  
25 safe and reliable utility service.

26 This is a fact-finding  
27 investigatory action that is currently tied  
28 to Docket Investigation 09-01-018.

1                   Mr. McCollum, my name is  
2 Ed Moldavsky and I'm an attorney with the  
3 California Public Utilities Commission's  
4 Consumer Protection and Safety Division.

5                   Are you aware of the fire that  
6 occurred in Malibu Canyon beginning in  
7 October 2007?

8                   A    Yes.

9                   MR. MOLDAVSKY:  Oh.

10                  MR. READ:  Thank you.

11                  MR. MOLDAVSKY:  We can stop on the  
12 admonitions and we'll just go around the room  
13 and everyone can identify themselves as well  
14 as the people on the phone.

15                  I just identified myself as  
16 Ed Moldavsky, attorney for CPSD.

17                  MR. MORRIS:  Harvey Y. Morris.  I'm an  
18 attorney for CPSD.

19                  MR. TONG:  Kan-Wai Tong, utilities  
20 engineer, CPUC.

21                  MR. MC MASTER:  Alan McMaster.  
22 I'm representing Lloyd's of London and FM in  
23 the civil matter.

24                  MR. HUNTER:  Craig Hunter representing  
25 NextG Network of California, respondent in  
26 this proceeding.

27                  MR. GERAGHTY:  Mark Geraghty, AT&T.

28                  MR. MORENO:  Richard Moreno, Southern

1 with that. And that is that you're trying to  
2 limit our questioning, instructing  
3 the witness to answer a question that you  
4 want the witness to answer rather than what  
5 our witness -- our question wants the witness  
6 to answer.

7 MR. READ: I'm only doing so in order  
8 to protect the privileged activities of this  
9 witness which go beyond the preparation of  
10 this notice to the commission. He had other  
11 responsibilities, activities and duties which  
12 are subject to privilege. That's all I'm  
13 saying.

14 MR. MOLDAVSKY: Q Well, just to lay  
15 a little foundation here, why did you write  
16 this letter to the California Public  
17 Utilities Commission?

18 A Because the Southern California  
19 Edison Company is directed to do so by  
20 the California Public Utilities Commission.

21 Q And there's a rule called the  
22 Accident Reporting Requirements that this  
23 letter was compliant with, correct?

24 A That was my understanding yes.

25 Q Okay. Do you know what the  
26 Accident Reporting Requirements are?

27 A Today or then? It changed.

28 Q Okay. Then.

1 A In general terms, yes.

2 Q Can you --

3 A Word for word or specifically,  
4 I don't think I can give you more than my  
5 general understanding what they were then.

6 Q When you wrote this letter, did you  
7 understand what the Accident Reporting  
8 Requirements were?

9 A Yes.

10 Q Because you wrote it in compliance  
11 with the Accident Reporting Requirements,  
12 correct?

13 A All right.

14 Q Is that a yes or no?

15 MR. READ: Well, it may call --

16 THE WITNESS: I don't know.

17 MR. READ: -- for a legal conclusion.

18 THE WITNESS: Yeah.

19 MR. MOLDAVSKY: Q All right. Well  
20 the Accident Reporting Requirements were  
21 the reason why you generated this letter,  
22 correct?

23 A That's correct. That's correct.

24 Q You would seek to write a letter  
25 that would be compliant with Commission  
26 rules, correct?

27 A Yes, sir.

28 Q I'd like to mark for identification

1 the next exhibit in order which I believe is  
2 Exhibit 4. This an opinion of the California  
3 Public Utilities Commission.

4 (Exhibit No. 4 was marked for  
5 identification.)

6 MR. MOLDAVSKY: Q Please review it and  
7 particularly if you can review Appendix B.

8 A It's a multi-page document. Do you  
9 want to take a recess while I read this or --

10 Q You want a break?

11 A Well, it's going take me a few  
12 minutes to read it. We can stay on the  
13 record. It's up to you.

14 Q Rather than read the entire  
15 document, why don't you just flip over to  
16 Appendix B which is Attachment 1.

17 MR. READ: Do you have another copy?

18 MR. MOLDAVSKY: Oh.

19 MR. READ: This one I didn't get a copy  
20 of.

21 MR. MOLDAVSKY: I believe this is  
22 a copy.

23 MR. READ: Where was the witness's  
24 attention directed?

25 MR. MOLDAVSKY: Attachment 1,  
26 Appendix B.

27 THE WITNESS: This document you handed  
28 me has crossouts. I don't know if that has

1 any significance or not.

2 MR. MOLDAVSKY: I'll represent that  
3 this is the form that it appears on the  
4 Commission's website for this decision.

5 MR. MORRIS: Because, if I can  
6 stipulate -- explain.

7 THE WITNESS: Sure.

8 MR. MORRIS: It says in the Ordering  
9 Paragraph, it's just showing what the changes  
10 were made from the previous Accident  
11 Reporting Requirements that the Commission  
12 was adopting. And that's why I chose the  
13 changes being made to the previous Accident  
14 Reporting Requirements.

15 MR. READ: So you are representing to  
16 us here that the text in Appendix B with the  
17 correction or the strikeouts and  
18 the additions is the text of the Accident  
19 Reporting Requirements that were in effect in  
20 October of 2007?

21 MR. MOLDAVSKY: That's our  
22 understanding. That's based on what was on  
23 the Commission's website.

24 MR. READ: Okay. Well --

25 MR. MORRIS: If you look at the  
26 Ordering Paragraph preceding this, you'll see  
27 that's exactly what it says.

28 MR. READ: Okay. I mean, that's -- you

1 can make that assumption, Rick.

2 THE WITNESS: All right.

3 MR. READ: But you still obviously have  
4 to read the document -- well, read the  
5 appendix, please.

6 THE WITNESS: All right. I think I got  
7 it.

8 MR. MOLDAVSKY: Q Okay. You know what  
9 a reportable incident is, right?

10 A Yes, sir.

11 Q And the Malibu Canyon fire was  
12 a reportable incident, right?

13 A I believe it was.

14 Q Okay. Turning your attention to  
15 the second paragraph of the Accident  
16 Reporting Requirements.

17 A All right.

18 Q Go ahead and review that text  
19 specifically, and let me know when you are  
20 done.

21 A All right. I'm ready.

22 Q Okay. You'll notice on the first  
23 sentence, why don't you go ahead and read  
24 the first sentence on the record for us.

25 A [Reading:]

26 Within twenty business days of a  
27 reportable incident, the utility shall  
28 provide to designated CPUC staff

1 a written account of the incident which  
2 includes a detailed description of  
3 the nature of the incident, its cause  
4 and estimated damage.

5 Q Okay. Goes on to say that it  
6 "shall identify the time and date of  
7 the incident, the time and date of the notice  
8 to the Commission of that incident,  
9 the location of the incident, casualties" and  
10 such.

11 And also indicates:

12 The report shall include  
13 a description of the utility's response  
14 to the incident and the measures the  
15 utility took to repair facilities  
16 and/or remedy any related problems on  
17 the system which may have contributed  
18 to the incident.

19 You see that text?

20 A Yes. I'll accept that as --

21 Q Okay.

22 A -- what's in that paragraph.

23 Q So your letter of October 25, 2007,  
24 which is currently marked as Exhibit No. 3,  
25 this was in response to the Accident  
26 Reporting Requirement second paragraph,  
27 correct?

28 A Yes, sir.

1 Q It's the 20-business day report?

2 A Yes, sir.

3 Q And in it, it includes a detailed  
4 description of the nature of the accident,  
5 its cause and estimated damage, correct?

6 A I believe it does.

7 Q So what was the cause?

8 A The wind that knocked over  
9 the poles.

10 Q How did you determine the cause?

11 A Personal observation.

12 Q Beyond personal observation, were  
13 there any other steps you took to determine  
14 the cause?

15 MR. READ: You're speaking again here  
16 of determining the cause for purposes of  
17 preparing the October 25 letter, correct?

18 MR. MOLDAVSKY: I'm speaking in terms  
19 of the Accident Reporting Requirements'  
20 second numbered paragraph, 'the report that's  
21 required pursuant to that text.

22 THE WITNESS: Yes. I spoke with  
23 the authorities who told me that was  
24 the cause.

25 MR. MOLDAVSKY: Q Okay. Was there any  
26 other information that you considered in  
27 determining the cause?

28 A By October 25, 2007, I think that

1 pretty much sums it up. Unless something  
2 comes to mind, then I'll supplement my  
3 response at a later date.

4 Q I'd like to refer you back to  
5 Exhibit No. 2 which was your declaration  
6 dated April 5, 2010.

7 A All right.

8 Q The fourth numbered paragraph, go  
9 ahead and read that on the record.

10 A [Reading:]

11 On Tuesday, October 23 2007,  
12 I reviewed Mr. Peralta's notes,  
13 thoughts and observations with him  
14 by telephone.

15 Q Okay. You can verify that today?

16 A I did do that activity, yes, sir.

17 Q And why did you do that activity?

18 MR. READ: Objection. That's going to  
19 invade the attorney-client privilege, and so  
20 I'll instruct him not to answer.

21 MR. MOLDAVSKY: Q Okay. In your  
22 conversation with Arthur Peralta on  
23 October 23, 2007, did that go to the cause of  
24 the Malibu Canyon fire incident?

25 MR. READ: Objection. The same  
26 instruction.

27 MR. MORRIS: Counsel, this is where we  
28 have a problem because this is a requirement

1 that he's already identified. He's talking  
2 about the cause as a reporting requirement.

3 MR. READ: Yes. I understand that.

4 MR. MORRIS: So he's already waived any  
5 right to --

6 MR. READ: Well --

7 MR. MORRIS: -- describe -- to be  
8 instructed to not answer a question when he's  
9 reported what the cause is.

10 MR. READ: I can see the argument that  
11 you're going to make, I guess, at some point  
12 in some motion or whatever, but we don't  
13 agree with that.

14 And in fact, in the deposition in  
15 October of this year, I think the key  
16 question was asked and answered by this  
17 witness which was whether or not he or any  
18 information that he had from Mr. Peralta  
19 played any role, had any input or whatever  
20 with respect to his October 25, 2007, letter,  
21 and he answered no.

22 MR. MORRIS: He answered he did not  
23 rely upon that.

24 MR. READ: All right.

25 MR. MORRIS: But we want to know if it  
26 goes to the cause. And we're asking  
27 questions about his reporting requirements.  
28 He's saying what the cause is. And he talked

1 to us probably before then and we want to  
2 know if it goes to what the cause is.

3 MR. READ: He has indicated that  
4 the Peralta information played no effect in  
5 his information provided to the Commission,  
6 so there is no waiver on that basis of  
7 the Peralta information.

8 MR. MORRIS: Okay.

9 MR. MOLDAVSKY: Your counsel said  
10 that --

11 MR. READ: And -- okay. So there's no  
12 question pending, I just want to make sure.

13 MR. MOLDAVSKY: Mark the transcript.

14 MR. READ: Sure.

15 MR. MOLDAVSKY: Q Your counsel's  
16 indicating that the Arthur Peralta -- that  
17 the information that you received from Arthur  
18 Peralta on October 23, 2007, didn't have --  
19 you didn't use it for the purposes of your  
20 letter to the Commission, is that right?

21 A I'm not sure what he's indicating.  
22 There was a lot of legalese there. But I  
23 can tell you as I testified before that the  
24 cause of the Malibu fire based on my personal  
25 observation as I was told by Cal Fire  
26 investigators was that the wind that knocked  
27 down these poles along Malibu Canyon fire --  
28 or Canyon Road.

1 Q Okay. We understand, and it's  
2 clear from your October 25, letter that  
3 you're making an attribution to the wind.

4 A An attribution? No. I was saying  
5 that was the cause.

6 Q Okay. Well --

7 A Let's make no mistakes here. No  
8 mistakes at all. It is my firm belief that  
9 the wind caused this event.

10 Q Okay.

11 MR. MORRIS: Is that --

12 MR. MOLDAVSKY: Q Okay. Is that a  
13 factual matter or an impression?

14 A That's my belief that the wind  
15 caused this event. And I base that on  
16 personal observation and in conversations  
17 with authorities that were investigating  
18 concurrently with me.

19 Q Well, did you consider Arthur  
20 Peralta's, the information you received from  
21 Arthur Peralta in arriving at that  
22 conclusion?

23 MR. READ: Objection. I -- well, may  
24 I have the question read, please.

25 (Record read.)

26 THE WITNESS: The conclusion being  
27 the cause of the fire was wind?

28 MR. MOLDAVSKY: Q Yes.

1 A No.

2 Q Why not?

3 A And since that is an answer --

4 MR. READ: Why don't --

5 THE WITNESS: -- why don't we take a  
6 break, since you asked that I not ask for a  
7 break after a question.

8 So if you want to hold the next  
9 question --

10 MR. READ: That's fair.

11 THE WITNESS: -- let's take a break.

12 MR. MOLDAVSKY: Go ahead and take a  
13 break.

14 THE WITNESS: Thanks.

15 (Recess taken)

16 MR. MOLDAVSKY: Let's go back on the  
17 record.

18 Q So there was a question that  
19 I tried to ask but then we had to take  
20 a break, and that's fine. But that question  
21 was why not?

22 MR. READ: Well, we're going to have to  
23 make the question a little clearer.

24 Why not what?

25 MR. MOLDAVSKY: Q Well, take a step  
26 back.

27 Why didn't you rely on the Arthur  
28 Peralta information when you made

1 the accident report to the Commission?

2 MR. READ: And I'm going to object and  
3 instruct him not to answer because of two  
4 reasons. Obviously, they're based on  
5 privilege. One, he's already said that he  
6 did not utilize it, so that gives you  
7 the answer you're entitled to. To answer why  
8 necessarily encroaches on the content and  
9 detail of the Peralta work which is  
10 privileged, so we cannot permit that question  
11 to be answered without concern for our  
12 privilege. So he's instructed not to answer.

13 MR. MOLDAVSKY: Mark the transcript.

14 Go ahead.

15 MR. MORRIS: No.

16 MR. MOLDAVSKY: Q Let's take a step  
17 back because there is a certain of  
18 information that the Commission does have  
19 about the Arthur Peralta analysis.

20 Again, he was at the site on  
21 October 22, 2007, correct?

22 A I'm not sure of the exact date, but  
23 shortly after the fire.

24 Q Well, you reviewed his -- according  
25 to Exhibit 2, you indicate that you reviewed  
26 his notes, thoughts and observations with him  
27 by telephone on October 23, 2007.

28 A All right.

1 Q Okay. I believe, subject to check,  
2 at his deposition he indicated that he had  
3 engaged in that conversation with you the day  
4 after he had been at the site.

5 A Okay. I'll take your word for it.  
6 I just don't know the exact date. I'd hate  
7 to be off by one day or the other and not  
8 have an accurate record here, but that's  
9 pretty close.

10 Q It's a safe deduction that he had  
11 been at the site prior to your review of his  
12 notes, thoughts and observations?

13 MR. READ: What is the question?

14 THE WITNESS: I don't know if that  
15 question may --

16 Can you repeat question, if you  
17 would.

18 MR. MOLDAVSKY: Sure.

19 THE WITNESS: Can you read back  
20 the question?

21 (Record read)

22 MR. MORRIS: Could counsel speak out  
23 loud?

24 MR. READ: No.

25 MR. MORRIS: There's a question  
26 pending.

27 MR. READ: Yeah, I realize that. And  
28 I try not to have consultation but we

1 certainly are permitted to do so especially  
2 where matters of privilege are concerned, so  
3 that is the subject. We'll be happy to step  
4 out of the room.

5 THE WITNESS: So -- I'm a bit confused  
6 on the question.

7 I'm confused on the question.

8 Are you --

9 MR. READ: Well, let's get the question  
10 clear then and see what the issue is.

11 THE WITNESS: Yeah.

12 MR. MOLDAVSKY: Q What confuses you  
13 about the question?

14 A Well, I'm not sure if you're asking  
15 me did I speak with Mr. Peralta on Tuesday,  
16 October 23, 2007, after he visited the site  
17 or before he visited the site and did other  
18 work for us. I just don't know what you're  
19 asking. I -- I'm confused.

20 Q Okay. Well, let's take a step  
21 back.

22 A Okay.

23 Q This declaration and the facts  
24 contained therein still your sworn testimony,  
25 right?

26 A Yes.

27 Q Now one of the facts contained  
28 therein is that on October 23, 2007, you

1 reviewed Mr. Peralta's notes, thoughts and  
2 observations by telephone with him.

3 A Correct.

4 Q Okay. Now, he had been to the site  
5 and made notes, thoughts -- generated  
6 thoughts and made observations prior to that  
7 discussion, correct?

8 MR. READ: If you know.

9 THE WITNESS: In that second, I'm just  
10 not sure of today. I'd have to think about  
11 that.

12 MR. READ: Okay.

13 MR. MOLDAVSKY: Q Well, on October 22,  
14 2007, you did contact Arthur Peralta and told  
15 him that he was to observe the poles involved  
16 in the Malibu fire before they were removed  
17 from their location, right?

18 A Yes.

19 Q Now on the next day, October 23,  
20 2007, you reviewed his notes, thoughts and  
21 observations with him by telephone, correct?

22 A Yes.

23 Q And that had been after he had  
24 visited the site, correct?

25 A I'm not sure about that last part.

26 Q Well, you told Mr. Peralta to take  
27 notes of his thoughts, observations,  
28 impressions and analysis so that you can

1 include them in the investigation file,  
2 correct?

3 A That's correct.

4 Q And on Tuesday, October 23, 2007,  
5 you reviewed Mr. Peralta's notes, thoughts  
6 and observations with him by telephone?

7 A That is correct.

8 Q Well, his notes, thoughts and  
9 observations that you reviewed were relevant  
10 to the Malibu Canyon fire, correct?

11 A Yes.

12 Q So those notes, thoughts and  
13 observations were of the incident scene that  
14 he had visited, correct?

15 MR. READ: Well, that's the question  
16 you've asked but unfortunately this witness  
17 is not Mr. Peralta, so he doesn't know  
18 whether Mr. Peralta made multiple trips or  
19 whatever or when he went. So I think the  
20 witness has given you his best recollection.  
21 He's not sure.

22 If you got -- you took -- somebody  
23 took Mr. Peralta's deposition. I don't have  
24 it here. But was he asked the question?  
25 That would make more sense.

26 MR. MOLDAVSKY: Well, I mean, I think  
27 that -- again, this is testimony that was --

28 MR. READ: Yeah.

1           MR. MOLDAVSKY:  -- at least adopted by  
2 Mr. McCollum.

3           MR. READ:  That's right.  But you  
4 can't -- the witness is trying to be very  
5 careful here and very accurate about -- the  
6 core question you've asked is when did  
7 Mr. Peralta go to the site.  Or he may have  
8 gone multiple times.  And I think this  
9 witness has honestly said he doesn't know  
10 when that trip or trips occurred.

11          MR. MOLDAVSKY:  Okay.

12          MR. READ:  That's the only issue.  
13 We're not trying to be --

14          THE WITNESS:  No.  I'm not trying --

15          MR. READ:  Obfuscatory.

16          THE WITNESS:  Yes.  I'm not trying to  
17 be that in any fashion.

18                        You have me at a tremendous  
19 disadvantage because I did not prepare for  
20 this deposition and perhaps you read  
21 Peralta's depo and have the dates, because  
22 I don't recall what he said.

23          MR. MOLDAVSKY:  Q  Okay.  Well, let's  
24 put that aside for the time being.

25                        A  Okay.

26                        Q  But focusing on the paragraph  
27 numbered 3 in your declaration which is  
28 Exhibit No. 2.

1 A Yes.

2 Q You said:

3 I told Mr. Peralta to take notes of  
4 his thoughts, observations, impressions  
5 and analysis so that I could include  
6 them in the investigation file.

7 You see that?

8 A Yes.

9 Q So why did you tell him to do that  
10 so that you could include it in  
11 the investigation file?

12 MR. READ: Objection. And I will  
13 instruct him not to answer. The  
14 conversations beyond that necessary to  
15 establish the privilege remain privileged.

16 MR. MOLDAVSKY: Please mark  
17 the transcript.

18 Q Sir, Ordering Paragraph No. 1 [sic]  
19 states that you have personal knowledge of  
20 the matters stated below and, if called as  
21 a witness, could and would testify  
22 competently as set forth below.

23 Do you see that?

24 A Yes.

25 Q And you adopted that today as well  
26 as on April 5, 2010.

27 A Yes.

28 Q Okay. So your counsel has

1 instructed you not to answer. I'm not sure  
2 on what basis. But you nevertheless did tell  
3 Mr. Peralta to take notes of his thoughts,  
4 observations, impressions and analysis,  
5 correct?

6 A I did.

7 Q And there was a reason why you  
8 asked him to do that, correct?

9 A There was a reason, correct.

10 Q And do you know as you sit here  
11 today what that reason was?

12 A I know my -- I -- what -- to some  
13 extent, I would say yes. I don't know if  
14 I know all the reasons.

15 Q Okay. What was the --

16 A Understand my role at the time was  
17 to go out and gather information and to do  
18 the legwork for the attorneys so they  
19 could -- in anticipation of litigation so --

20 MR. READ: Sure.

21 THE WITNESS: -- that was one of the  
22 tasks that I was directed to do.

23 MR. READ: So Ed, the next question  
24 which is why did he ask, is privileged. He  
25 just said that what he was doing was at the  
26 instruction of counsel, to gather information  
27 and all to aid in the defense of the company.  
28 I mean, that's classic privilege. And so

1 asking why is not permissible.

2 He's instructed not to answer. And  
3 the grounds, which I thought I made clear, is  
4 that it violates the attorney-client  
5 communication and work product privileges.

6 MR. MOLDAVSKY: Q Now, it's not  
7 privileged -- strike that.

8 Arthur Peralta did a pole loading  
9 analysis, right?

10 MR. READ: Objection. Objection.

11 MR. MOLDAVSKY: That was very clearly  
12 established at Arthur Peralta's own  
13 deposition.

14 MR. READ: Well, I don't have that  
15 transcript in front of me.

16 MR. MOLDAVSKY: Which Mr. McCollum was  
17 a percipient witness to.

18 MR. READ: Well, I realize it, but  
19 didn't happen yesterday. And I don't think  
20 that it's appropriate, especially in areas  
21 concerning privilege, to ask this witness  
22 about prior testimony that is recorded and  
23 available in a deposition transcript.

24 MR. MOLDAVSKY: Q Well, as you sit  
25 here today, do you know whether or not Arthur  
26 Peralta did a pole loading analysis?

27 MR. READ: Objection. I'm going to ask  
28 the witness not to answer that question. The

1 Peralta deposition speaks for itself. And  
2 that is what you're entitled to on this  
3 subject.

4 MR. MOLDAVSKY: Well, mark the  
5 transcript.

6 Q But your -- talking about your own  
7 role in the investigation, did you do a pole  
8 loading analysis?

9 A No.

10 MR. READ: Well --

11 MR. MOLDAVSKY: Q Do you know how to  
12 do a pole loading analysis?

13 A No.

14 Q Do you know what a pole loading  
15 analysis is for?

16 A In general terms.

17 Q Which is?

18 A In general terms, as I testified  
19 previously, my last deposition, it's my  
20 understanding that they do -- "they" being  
21 our planners and estimators and people who  
22 design the infrastructure -- do pole loading  
23 analysis to ensure that you can have safe and  
24 good use of the material for their intended  
25 purpose of providing electrical service.

26 Q So a pole loading analysis is  
27 relevant to the cause of an incident,  
28 correct?

1 MR. READ: Objection.

2 THE WITNESS: I don't know.

3 What? What incident? I'm not sure  
4 what --

5 MR. MOLDAVSKY: Q Okay. The Malibu  
6 Canyon incident.

7 A Is it rel- -- I don't know.

8 As I testified before, and I was  
9 there, I'm telling you this was wind. This  
10 was wind. The public authority said it was  
11 wind. Chief Freeman said it was wind.  
12 Investigator Rick Morris said it was wind.  
13 Investigator Clifford Houser said it was  
14 wind. The firemen I interviewed said it was  
15 wind.

16 Q Okay.

17 A I don't know where else to go with  
18 that for you.

19 Q As an investigator for Southern  
20 California Edison, you went out to the scene  
21 yourself?

22 A Yes, sir.

23 Q And you did gather -- you  
24 interviewed witnesses, you talked to some  
25 fire personnel, took a look at the scene and  
26 gathered information and evidence, correct?

27 A Yes, sir.

28 Q Okay. Now, you have a firm belief

1 that the cause of this fire was wind?

2 A Yes, sir.

3 Q And you mentioned that several  
4 times including at your prior deposition, and  
5 you don't correct that testimony, correct?

6 A That's accurate.

7 Q So that is your firm belief and you  
8 are not going to have any corrections for  
9 that testify?

10 A I can't speak to the future, but as  
11 we sit here today it is my firm belief that  
12 this incident was caused by an extreme wind  
13 event.

14 Q Okay. You factor into that  
15 analysis the conversations that you had with  
16 fire personnel, with other witnesses to  
17 the scene, that sort of thing, correct?

18 MR. READ: Are you speaking of his  
19 conclusions reflected in Exhibit 3?

20 MR. MOLDAVSKY: Q Well, even broader  
21 than that. I think he's testified that his  
22 conclusion of the cause of the Malibu Canyon  
23 fire incident was wind. He stated that as  
24 his firm belief.

25 THE WITNESS: It is my firm belief.

26 MR. MOLDAVSKY: So I'm getting to the  
27 bases of that belief which is fair game,  
28 counsel. Okay.

1           MR. READ: Well, I mean, it is in  
2 the sense that you know, he authored  
3 a document, Exhibit 3 that is a part of  
4 the record. But I would note, maybe this  
5 needs to be noted more as time goes on that  
6 Mr. McCollum is not a witness in this  
7 proceeding. Edison's witnesses in this OII  
8 have now submitted all their testimony and  
9 Mr. McCollum is not a testifying witness.

10           MR. MOLDAVSKY: Actually --

11           MR. READ: So his views are maybe  
12 interesting but really not relevant to this  
13 record and this proceeding at this time.

14                       We brought him here because he  
15 obviously has some limited percipient  
16 knowledge that is not privileged but only  
17 very little.

18           MR. MOLDAVSKY: Q Okay. I appreciate  
19 that, counsel. But I would just like to ask  
20 the witness then because counsel's indicated  
21 that maybe you're not an appropriate witness,  
22 but you were assigned to this case on  
23 October 21, 2007, correct?

24           A Yes.

25           Q And you've been on this case until  
26 today, correct?

27           A I -- not exclusively.

28                       And the record won't reflect

1 the manner in which you asked that question,  
2 counsel. But I have worked in conjunction on  
3 the Malibu -- on the litigation side, not on  
4 the regulatory side. That's where my  
5 energy's been concentrated.

6 Q Okay. Nevertheless, as far as  
7 gathering facts, gathering information and  
8 helping Southern California Edison to assess  
9 the cause of the Malibu Canyon Fire incident,  
10 you were a central figure in that process,  
11 correct?

12 MR. READ: Objection.

13 THE WITNESS: Are you talking about --  
14 are you asking me was I a central figure in  
15 our litigation strategy on the civil side or  
16 was I a central figure in preparing this  
17 report?

18 I mean, I went out and gathered  
19 facts. And based on my personal information  
20 and I was informed by the, I think we all  
21 were, by the chief fire guy that the wind  
22 caused this thing. And the individual fire  
23 investigators told me the wind caused it. So  
24 we have a short duration -- this report's due  
25 really quickly. I think 20 days afterwards.  
26 And we wanted to get it out the door  
27 immediately.

28 MR. MOLDAVSKY: Q And you did actually

1 participate on the regulatory side because  
2 you generated this report.

3 A To some extent I participated.  
4 Yeah, I participated but --

5 Q How long have you participated on  
6 the regulatory side?

7 A Well, I'm here today.

8 Q Throughout the duration?

9 A I've assisted from time to time.

10 Q Okay.

11 A Okay.

12 Q So --

13 MR. READ: And I -- you know, I'll  
14 permit questions. I mean, that much of  
15 a question. Obviously I'm not going to  
16 permit him to testify in detail about  
17 anything that he has been doing with respect  
18 to either the regulatory work associated with  
19 this matter or the civil litigation.

20 MR. MORRIS: Well, counsel, if it's  
21 regulatory work and he's done a report,  
22 Accident Reporting Requirements, are you  
23 instructing him not to answer questions about  
24 the basis for how he did the Accident  
25 Reporting Requirement?

26 MR. READ: No. I think I was pretty  
27 clear that the basis for preparing this  
28 Exhibit 3 is acceptable or permissible

1 discovery.

2 MR. MOLDAVSKY: Okay.

3 MR. READ: Although I do find it to be  
4 hugely out of time. I mean this report was  
5 written in October of 2007 and now we are  
6 here in the end of 2010 asking him questions  
7 about this document.

8 MR. MOLDAVSKY: Well, we can get into  
9 discovery reasons and other bases for that.  
10 But let's just focus in on information that  
11 the witness knows.

12 Q You did generate the --

13 MR. READ: Non-privileged information  
14 that this witness knows, yes. Proceed.

15 MR. MOLDAVSKY: In any case,  
16 the underlying facts. Are you suggesting  
17 that underlying facts are --

18 MR. READ: No. As I've said to you,  
19 I think I've been trying very hard to  
20 maintain and understand the distinction  
21 between facts which can be discovered and,  
22 you know, work product. Mr. Peralta's work  
23 is work product.

24 MR. MOLDAVSKY: Okay. But Mr. Peralta's  
25 work, as it were, in at least adopting this  
26 document (indicating) which lays out --  
27 excuse me. Wrong exhibit. At least adopting  
28 Exhibit 3, right.

1 Q You said you wrote Exhibit 3.

2 A Did you say Mr. Peralta was  
3 involved?

4 Q Must have been --

5 A You did.

6 Mr. Peralta was not involved in any  
7 way, shape or fashion with this document. It  
8 was exclusively me.

9 MR. READ: And this --

10 THE WITNESS: My report. The poles  
11 fell down. That's what was the cause. The  
12 cause was the poles fell down.

13 MR. MOLDAVSKY: Q But did you think  
14 about what Arthur Peralta had told you when  
15 you generated this report two days after you  
16 talked to him?

17 A No. The basis, as I've testified  
18 previously in my last deposition, earlier  
19 today, the basis for saying in this document  
20 it appeared that the matter was caused by  
21 wind was based on personal observation and --  
22 well, private conversations I had with  
23 California state employees and their public  
24 statements on newscasts.

25 Q Okay. Could there be other causes  
26 for the Malibu Canyon fire incident other  
27 than wind?

28 A Could there be?

1 Q Yeah.

2 A Yes.

3 Q Okay. And have you thought of any  
4 of those in the course of your course?

5 MR. READ: Objection, because that is  
6 going to -- now, as I understand your  
7 question, you're now covering unlimited  
8 period of time where this witness's function  
9 on behalf of the law department and his  
10 thoughts, impressions, viewpoints are  
11 privileged. He's not a witness. We are not  
12 putting Mr. McCollum forward to respond to  
13 the testimony of CPSD. We have put forward  
14 five or six witnesses who have responded to  
15 CPSD's testimony on this issue. And that's  
16 what this proceeding's supposed to be about.

17 MR. MORRIS: No, counsel. That's where  
18 we have a strong disagreement.

19 We believe this is supposed to be  
20 a proceeding to find the truth. The fact  
21 that Edison won't put their own witnesses as  
22 witnesses for Edison in this proceeding to  
23 testify to what happened is why we're doing  
24 depositions of people like Art Peralta and  
25 like Mr. McCollum because these are the  
26 percipient witnesses that know what's going  
27 on. And you are hiring outside consultants  
28 that don't know what the percipient witnesses

1 do know.

2           So we're cross-examining percipient  
3 witnesses even if you chose not to use them  
4 because this proceeding is about trying to  
5 get to the truth of the matter and not to see  
6 how Edison has tried to put its own witnesses  
7 on, that are outside the agency, outside  
8 the company, and that's why we're deposing  
9 Mr. McCollum right now.

10           MR. MOLDAVSKY: And I would just add on  
11 to that, Mr. McCollum is a witness in this  
12 proceeding, filed a declaration (indicating).  
13 And so we're -- he filed the declaration in  
14 which says if called as a witness, could and  
15 would testify competently. And he is being  
16 called as a witness, Charlie.

17           MR. READ: Well, we brought him here.  
18 He's subject to discovery. We have not  
19 objected to that, although we have concerns  
20 on timing and scope and so forth. And so,  
21 I mean, I think there is a distinction  
22 between his position as a declarant in  
23 a motion practice and being a testifying  
24 witness in this proceeding. That's  
25 the distinction.

26           But you know, he's here to answer  
27 questions and not listen, I suppose, to the  
28 lawyers talk.

1 Do we have a question pending?

2 THE WITNESS: I don't know.

3 MR. MOLDAVSKY: Q Okay. Did you in  
4 determining that wind was the cause of  
5 the fire in your belief.

6 A On October 25, 2007. That's an  
7 important --

8 Q Okay. Fair enough.

9 A -- element.

10 Q On October 25, 2007 --

11 A Yes, sir.

12 Q -- in reaching that conclusion, did  
13 you consider any other potential causes?

14 A Yes.

15 Q Such as?

16 A Arson.

17 Q Okay. Anything else?

18 A Well, there's a sequence to --  
19 I have a limited experience on cause and  
20 origin investigation and I rely on others,  
21 including the professionals, the state  
22 employees. And so we reviewed the various  
23 causes: campfires, arson, fireworks,  
24 lightning. There's a whole laundry list of  
25 possible causes for fires. And since this  
26 one was observed by the actual fire  
27 department actually occur, they actually  
28 watched this happen, as they told me, it

1       seemed like we got the cause pretty nailed  
2       down.

3               Q    Did you consider pole overloading?

4               A    On October 25, 2007, no.

5               Q    Arthur Peralta was sent to the  
6       scene to do a pole loading analysis, correct?

7               MR. READ:  Objection.  Again, I think  
8       we've gone back over the same ground.

9                        You got Peralta's testimony.  I'm  
10       not going to permit this witness to testify  
11       as to any conversations that he had.

12       The substance of any conversations he had  
13       with Art Peralta surrounding this incident.

14               MR. MOLDAVSKY:  Mark the transcript.

15               Q    Why didn't you consider pole  
16       overloading?

17               A    The question is and our task is, as  
18       noted in Exhibit 4, paragraph 2, is to get  
19       the cause.  And the cause -- these poles did  
20       not fall down independently, so -- and  
21       I personally observed the wind just  
22       screaming.

23                        Aside from the story that was  
24       related to me by the responding fire captain  
25       and whatnot, I've never heard anyone say --  
26       I've never to this day heard anyone say other  
27       than it was wind, including Mr. Kan Tong's  
28       report.

1 Q So you read Mr. Tong's report?

2 A I have. Some time ago.

3 Q Did you read the testimony that he  
4 submitted?

5 A It's -- I probably did some time  
6 ago. And I think it does make -- my  
7 recollection of the report is it does make  
8 note the wind was extreme.

9 Q Did you read Mr. Tong's data  
10 request responses to the joint respondents?

11 A I don't recall the contents of  
12 the report.

13 Q But do you recall reviewing that?

14 A I believe I read it at some point  
15 couple of years ago, but I don't --  
16 I couldn't tell you the subparts of it and  
17 whatnot.

18 Q Okay. Just to clarify because I  
19 don't think you answered the question, why  
20 didn't you consider pole overloading in  
21 generating the October 25 report?

22 MR. READ: I believe he did he answer  
23 the question.

24 Could we just take a look?

25 There's no reason to go back over  
26 this more than once. It's been asked and  
27 answered.

28 Just a couple questions back.

1 If -- I realize it's not too easy to find.

2 (Record read)

3 MR. MOLDAVSKY: Q You know what pole  
4 overloading is?

5 A Just in a general sense but I have  
6 no in-depth analysis or understanding of it.

7 Q Do you understand that if too much  
8 weight is put on a pole, that can contribute  
9 to it falling down?

10 A No.

11 Q You don't understand that question  
12 or you don't believe that is true?

13 A See, that's what I'm saying. I'm  
14 not an expert. I'm not trying to be cute,  
15 okay?

16 It's my understanding if you put  
17 too much weight on the pole, the weight is  
18 going to go straight down into the earth. So  
19 I don't know if you're talking about, you  
20 know, the vertical pressures of the wind as  
21 it goes -- it's a complete science and it --  
22 you know, I don't know if you're talking  
23 about vertical stresses or side stresses or  
24 this, that. I'm just not an expert on that  
25 subject.

26 Q Okay. How could you say what  
27 the cause was if you didn't consider pole  
28 overloading?

1           A    I don't understand what  
2 the disconnect here is.

3                    I got out there.  I personally  
4 observed the wind.  I personally observed  
5 these splintered poles.  I personally  
6 observed rocks flying over and hitting cars  
7 and just this intense windstorm out there.  
8 I personally observed that.  I personally  
9 interviewed the responding fire captain who  
10 saw the fire there and he related to me  
11 this -- quite the tale of how big he is and  
12 the equipment he used and he almost got blown  
13 over.  I watched the -- Freeman get on TV and  
14 tell everyone it was the wind.  And I saw  
15 the cover of Time magazine of all the wind  
16 blowing.

17                    I mean, I don't know how to answer  
18 your question.  It was wind.  Wind.  Wind.  
19 Wind.  I don't know what else to say.

20           Q    Let's take a step back.

21           A    Sure.

22           Q    You weren't there at the accident  
23 scene at the time that the pole snapped?

24           A    That's correct, sir.

25           Q    Okay.  You came subsequent?

26           A    That's correct.

27           Q    And you were tasked to determine  
28 what the cause of the accident was, correct?

1 A No.

2 Q You were not -- the cause of  
3 the accident was irrelevant to your role?

4 A No. No. No.

5 What my task was to, as I stated  
6 here, was to gather -- and as I stated in my  
7 last deposition -- was to gather facts and  
8 information in preparation of litigation,  
9 okay, so that other people can -- I mean, you  
10 can tell this proceeding has been going on  
11 for three years. There's quite a bit of  
12 intellectual study that needs to take place  
13 here. So that's what I did.

14 For the purposes of reporting under  
15 paragraph 2, in that time frame, it seemed  
16 that wind was absolutely the cause.

17 Q Did you --

18 A Now, if someone were to come out  
19 five days later and say, hey, I ran into your  
20 pole then with my car and I'm just reporting  
21 it now, then we would obviously have to  
22 supplement that.

23 Q Let's clarify that.

24 Let's say you subsequently learned  
25 that, as the example you gave, a car or some  
26 external cause had contributed to the Malibu  
27 Canyon fire, you would have reported that to  
28 the CPUC, wouldn't you?

1 MR. READ: Well, objection. It's, as  
2 you're fond of saying, an incomplete  
3 hypothetical. Calls for speculation.

4 MR. MOLDAVSKY: Q So if you had known  
5 that there was some other cause that may have  
6 contributed to the poles falling down, you  
7 would not have reported that to the PUC?

8 MR. READ: Same objection.

9 THE WITNESS: It's my understanding,  
10 even as we sit here today, that wind caused  
11 these poles to break. That's my  
12 understanding. I don't -- I'm being  
13 completely truthful and forthright with you.

14 MR. MOLDAVSKY: Q Is wind related to  
15 pole overloading?

16 MR. READ: Objection.

17 MR. MOLDAVSKY: Q If you know.

18 A I guess the simple answer is if  
19 the pressure, the wind or other things that,  
20 you know, it takes up and carries with it, if  
21 it stresses against the pole to a point where  
22 the poles break, then in a layman's term,  
23 I guess your answer would be yes.

24 Q So pole overloading could  
25 contribute to a pole's failure even if wind  
26 was also a cause?

27 MR. READ: Objection.

28 THE WITNESS: I'm not an expert.

1 I can't testify to that. I don't know.

2 MR. MOLDAVSKY: Q You don't know? You  
3 know what pole overloading is.

4 A No. I believe I testified earlier  
5 that I don't have -- I have just a base  
6 understanding of -- I've never been trained  
7 as a planner. I couldn't give you the  
8 component parts. I don't know how to do  
9 a safety factor analysis and all the things  
10 that go into that, so I --

11 Q Well, we've established you  
12 yourself can't do a pole loading analysis.

13 A That's accurate.

14 Q Okay. But there's others in the  
15 company who can, correct?

16 A Yes.

17 Q Like Arthur Peralta.

18 A Yes.

19 Q And you knew at the time that you  
20 told Arthur Peralta to go to the scene that  
21 he could do a pole loading analysis, correct?

22 A Yes.

23 Q Okay. And as far as the claims  
24 unit is concerned, because I understand there  
25 were other personnel that were at the scene  
26 engaging in repairs and the like, you were  
27 the person who was assigned as  
28 the investigator of the Malibu Canyon fire

1 incident and you were the claims personnel  
2 that was there in the first few days of the  
3 fire; in other words, no one else from claims  
4 was there?

5 A That's not it.

6 Well, yes. You're right, for  
7 the most part.

8 Q Okay. What's the part that I'm  
9 wrong?

10 A Well, I think I testified before  
11 that I did have another claims representative  
12 come out there but he was doing more of  
13 a damage assessment task, which was part of  
14 our requirements here as well.

15 Q Right. So there's the damage  
16 assessment?

17 A Correct.

18 Q And you had delegated that to  
19 another individual, correct?

20 A We divided the task, yes.

21 Q Did you engage in the damage  
22 assessment?

23 A No.

24 Q You relied on this other  
25 individual. What was his name?

26 A Greg Greene.

27 Q You relied on Greg Greene's  
28 assessment of damage --

1 A Yes.

2 Q -- in generating your report to the  
3 Commission?

4 A Yes.

5 Q Compliant with the Accident  
6 Reporting Requirements, correct?

7 A Yes.

8 Q Okay. Now, other than repair crew,  
9 the only other person that I know of that  
10 Southern California Edison sent to the scene  
11 shortly after the fire was Arthur Peralta,  
12 correct?

13 MR. READ: Objection.

14 THE WITNESS: I don't know what you  
15 know.

16 MR. MOLDAVSKY: Q You don't know  
17 what -- how about what you know.

18 MR. READ: Well --

19 MR. MOLDAVSKY: Well --

20 THE WITNESS: I know --

21 MR. READ: Could you restate  
22 the question?

23 MR. MOLDAVSKY: Q Sure. You were at  
24 the incident -- let's create a time frame.  
25 October 21 to October 29, 2007. Do you have  
26 a sense of that time frame?

27 A Okay, yes.

28 Q And you could safely tell me that

1 you went to the incident scene to conduct  
2 your investigation or part of your  
3 investigation during the time frame from  
4 October 21, 2007, to October 29, 2007?

5 A Yes.

6 Q And during that time frame  
7 Mr. Greene was also at the incident scene  
8 engaging in damage accident?

9 A No. Not at the incident. He  
10 wasn't at the incident location. He was --

11 Q Okay.

12 A Because the incident location was  
13 on a remote canyon there.

14 Q Okay.

15 A And the fire proceeded towards  
16 the west I think the direction is.

17 Q But Arthur Peralta was at the  
18 incident scene?

19 A Mr. Peralta went to the incident  
20 location, yes.

21 Q And he did it shortly after  
22 the incident?

23 A He did it shortly after the  
24 incident, yes, sir.

25 Q He did it at your direction?

26 A He did.

27 Q And you knew that he has the  
28 expertise to do a pole loading analysis at

1 the time that you sent him, correct?

2 A Yes.

3 Q Okay. In fact, he's the wind  
4 loading guru as others have testified in this  
5 proceeding.

6 A Not my words.

7 Q Okay. Fair enough.

8 So did you know what Mr. Peralta  
9 would do when he was at the scene at the time  
10 that you sent him?

11 A No.

12 Q Okay. Did you have a belief that  
13 he would engage in the necessary steps to  
14 conduct a pole loading analysis?

15 MR. READ: Objection, and I will  
16 instruct him not to answer. You cannot get  
17 at what Mr. Peralta did or didn't do with  
18 respect to his visit. That is privileged.

19 If you want to, as I think is  
20 pretty obvious, make a claim, although it's  
21 not in present testimony, not a word of it,  
22 that this letter of October 25 should have  
23 included a pole loading analysis, then you're  
24 free to make that claim. But it's never been  
25 made before 3-1/2 years down the road. And  
26 you can't -- you know, this witness will tell  
27 you what he believed and why we wrote what he  
28 did. But if you want to make the claim about

1 a pole loading analysis, then you got to make  
2 it as a separate allegation, new at this  
3 incredibly late stage, and we'll proceed on  
4 that basis.

5 MR. MOLDAVSKY: Okay.

6 MR. READ: Okay?

7 MR. MOLDAVSKY: As far as the steps  
8 that CPSD would take in presenting its case,  
9 you know, I think that it's safe to say,  
10 Charlie, that we'll engage in that assessment  
11 and we'll take those steps.

12 MR. READ: Right. And we thought you  
13 had already taken the steps and made your  
14 decisions, and filed your case.

15 MR. MOLDAVSKY: Okay, but this is very  
16 collateral --

17 MR. READ: We responded.

18 MR. MOLDAVSKY: This is collateral to  
19 the questions that we're asking him. He did  
20 provide a report to the Commission. He did  
21 do so in compliance with the Accident  
22 Reporting Requirements that require the cause  
23 of the incident to be included.

24 Now, it is absolutely fair game for  
25 him to testify as to what elements he  
26 considered in arriving at the conclusion that  
27 wind caused the fire.

28 MR. READ: And I think he's testified

1 attorney-client communication.

2 MR. MOLDAVSKY: I mean --

3 MR. READ: After the 8th of September.

4 MR. MOLDAVSKY: So you're telling me,  
5 counsel, that a question that was not  
6 objectionable on September 23, 2008, became  
7 objectionable in the interim, in the interim  
8 that has passed?

9 MR. READ: Well, I need to consult with  
10 my witness to determine whether he can answer  
11 the question without regard to anything  
12 that's privileged. He may be able to. You  
13 want me to take a break, we'll find out.

14 MR. MOLDAVSKY: Before we take a break  
15 here, I think this is a pretty salient issue.  
16 He's stated in a data request response to  
17 the California Public Utilities Commission as  
18 of September 23, 2008 --

19 MR. READ: Yeah.

20 MR. MOLDAVSKY: -- SCE was not aware of  
21 the poles being overloaded by other pole  
22 members prior to the incident. He stated  
23 that.

24 MR. READ: Yes.

25 MR. MOLDAVSKY: There's nothing we can  
26 do about that. But I'm asking him as of  
27 today --

28 MR. READ: Right. I'm only --

1 MR. MOLDAVSKY: -- was SCE aware of the  
2 poles being overloaded by other pole members  
3 prior to the incident?

4 MR. READ: I'm only pointing out that  
5 between on September 23 and today, which is  
6 December 20, 2010, there's been a lot of time  
7 that's passed. There's been a lot of work  
8 and activity of this witness related, and at  
9 the request and direction of counsel. That's  
10 all.

11 And until I know what that's  
12 involved -- what that involves, if anything,  
13 on this topic, I'm going to instruct him not  
14 to answer.

15 MR. MOLDAVSKY: Mark it.

16 Q Now, you told --

17 MR. MORENO: Hold on, Ed.

18 MR. READ: Hold on one second.

19 MR. MOLDAVSKY: Q Okay, I'd like to  
20 continue with the questioning.

21 So --

22 A I thought we were going to have a  
23 break for lunch after that.

24 Q After -- no. We didn't get to  
25 where we were going here, so --

26 A All right.

27 Q Now you mentioned that you are not  
28 an expert as far as pole overloading is

1 concerned.

2 A That's accurate.

3 Q Arthur Peralta is?

4 A It's my understanding that's his  
5 field of knowledge.

6 Q Okay. So you were posed a data  
7 request by Mr. Kan-Wai Tong, "Were SCE aware  
8 of the poles being overloaded by other pole  
9 members prior to the accident;" correct?

10 A Yes.

11 Q Did you consult with anyone at  
12 Southern California Edison to assist you in  
13 arriving at the answer "No"?

14 MR. READ: Objection. The process of  
15 consultation and consideration that goes into  
16 this kind of answer is going to be within  
17 the privilege. That would be true of CPSD.  
18 We -- in fact, you've asserted privilege.

19 MR. MORRIS: There's no objection to  
20 this data request.

21 MR. MOLDAVSKY: Yeah. If there --

22 MR. READ: That's another question.

23 MR. MOLDAVSKY: There's no objection on  
24 this data request, counsel.

25 MR. READ: But you've asked another  
26 question, which is not --

27 MR. MOLDAVSKY: No. No. No. No.

28 MR. READ: -- on this document.

1 MR. MOLDAVSKY: Well, I'm asking him  
2 what he reviewed.

3 THE WITNESS: Well --

4 MR. READ: Wait a minute.

5 THE WITNESS: -- chance to take a  
6 break. The question came right after  
7 the answer. So do we get the opportunity to  
8 take a brief break?

9 MR. MOLDAVSKY: I mean, I think this is  
10 a very salient question which we'd like an  
11 answer to.

12 MR. READ: Well --

13 MR. MORENO: What's the question?

14 MR. READ: I've said I would consult  
15 with the witness. That was an earlier  
16 question.

17 MR. MOLDAVSKY: Okay. And it's --

18 MR. READ: Covers the same ground.

19 MR. MOLDAVSKY: It's very difficult for  
20 me to construct a record. When I ask the  
21 question there's long speeches that interrupt  
22 it, so please just let me get this question  
23 out.

24 THE WITNESS: I don't understand. You  
25 won't let me take lunch. And I ask to -- you  
26 asked me to set up the ground rules at the  
27 beginning of your admonition to wait until  
28 after an answer and not take a break when

1 taken concurrently on the incident date"?

2 A I can't answer your question  
3 without getting context. I don't know. This  
4 is just a paragraph from a document that's  
5 191 pages in length and a multi-hour  
6 deposition. I don't know what photographs  
7 we're talking about so I can give you  
8 context.

9 Q Okay. You know what, putting  
10 the issue of the photographs aside.

11 A But you just asked me a question  
12 about the photographs. Now you're telling me  
13 to put it aside, so I'm confused.

14 Q Well, the photographs are included  
15 in your statement. However, you do say that  
16 the evidence had been removed from the scene  
17 and taken to a holding facility. Do you  
18 agree with that statement?

19 A I don't understand your question.  
20 Could you restate it?

21 Q You testified that the evidence had  
22 been removed from the scene and taken to  
23 a holding facility. Is that a true  
24 statement?

25 A Yes, sir, it is.

26 Q Okay. And that did not occur  
27 concurrently on the incident date, correct?

28 A That's correct.

1 Q When did that occur?

2 A Couple of days after the -- if  
3 Sunday was October 21, then that happened a  
4 couple days later. So Sunday, so maybe  
5 Tuesday, Wednesday, something like that.  
6 Maybe -- may -- oh gosh. Three years ago.  
7 Something like that. Tuesday, Wednesday,  
8 Thursday, whenever we could get everything  
9 loaded up.

10 Q And one of the reasons for taking  
11 a while for the evidence to be removed was  
12 the fact that you had discussions with  
13 Cal Fire regarding the preservation of  
14 evidence, correct?

15 A That's correct.

16 Q And they had prevented you from  
17 removing evidence the scene for some days?

18 A No. That's not correct.

19 Q Okay. How is this incorrect?

20 A We have a protocol in place. And  
21 so it's not that they prevented us. It's  
22 that we sought their permission to do so  
23 because we didn't want there to be any  
24 allegations that, you know, that they may  
25 have had to want to come see the scene in  
26 situ, I believe is the term of art. So it  
27 took quite a bit of time to get their  
28 blessings.

1           Q   Quite a bit of time was more than  
2 a couple of days?

3           A   No.

4           Q   How long was it?

5           A   Day or so.  Maybe Tuesday morning.

6           Q   Okay.

7           A   Something like that.

8           Q   Okay.  To prior to getting  
9 Cal Fire's blessing, you didn't disturb  
10 the evidence that was at the scene, correct?

11          A   I did not, no.

12          Q   Do you know of anyone who did?

13          A   If somebody did, without a doubt.

14          Q   Do you know who that was?

15          A   No, I don't.

16          Q   What causes you to say that someone  
17 disturbed the evidence?

18          A   Because pole 252E was cut up and  
19 dragged to the side.  Someone had to do that.

20          Q   Putting that aside, there were  
21 a number of wires, conductors,  
22 telecommunications equipment attached to the  
23 poles prior to --

24          A   Yes.

25          Q   -- the poles falling over, correct?

26          A   Yes.  Well, I'm going to presume  
27 that they were there, sure.  I wasn't there  
28 before, so I'll take that --

1 Q Safe assumption?

2 A Safe assumption.

3 Q You did not authorize or did not  
4 yourself remove any of that evidence from  
5 the scene of the incident prior to receiving  
6 Cal Fire's approval, correct?

7 A That's my recollection, yes.

8 Q In other words, all  
9 the telecommunications facilities,  
10 conductors, triplex wire, whip antennas,  
11 lumieres were affixed to or nearby  
12 the subject poles during the time frame that  
13 we just discussed?

14 A Yes.

15 Q And it wasn't until after you  
16 received Cal Fire's approval which  
17 happened --

18 A Oh, actually. I should say to the  
19 best of my knowledge, I only know what Edison  
20 did out there.

21 Q Okay.

22 A There were multiple entities on  
23 those poles, I don't know what, and certainly  
24 saw I guess Verizon, AT&T trucks. Those were  
25 the only vehicles that were being let past  
26 the CHP thing -- or utility service vehicles.  
27 I have no knowledge what they did. None. Or  
28 didn't do.

1 excuse me, regarding the preservation of  
2 evidence that you sent to let's say  
3 the respondents of this proceeding.

4 Do you understand what I mean --

5 A Sure.

6 Q -- when I say respondents to the  
7 proceeding?

8 A Sure.

9 Q Okay.

10 A I did. I did send those letters.

11 Q Did you follow up on those letters?

12 A No.

13 Q Did you ask --

14 A I think I sent them all -- what do  
15 you call it, business reply mail, you know,  
16 to confirm that they received them.

17 Certified.

18 Q Okay. So you certified --

19 A Certified letter.

20 Q -- letter. But what about the  
21 substance of your letters?

22 A No, I didn't follow up on that.

23 Q So you didn't follow up on  
24 the question about whether or not the  
25 respondents themselves preserved evidence?

26 A That's accurate.

27 Q Do you think that's important?

28 MR. READ: Objection. Calls for

1 a legal conclusion, speculation.

2 MR. MOLDAVSKY: Q Answer if you can.

3 A Do I think it's important that I  
4 followed up with -- no.

5 Q Do you think preservation of  
6 evidence is important?

7 A I do.

8 Q Why?

9 A So that everyone can have a fair --  
10 opportunity to fairly look at the facts and  
11 reach certain conclusions.

12 Q I want to direct you to page 88 of  
13 Exhibit 1.

14 Go ahead and review this entire  
15 page and let me know when you're done.

16 A All right.

17 Q Turning your attention to lines 13  
18 to 14, you testified that:

19 All the evidence that -- when  
20 I speak of evidence, I'm speaking with  
21 the poles and their related equipment.  
22 All that was loose was gathered and  
23 taken that I could find. The wires,  
24 telecommunication cables, conductors,  
25 were not removed from the scene.

26 Do you agree with that statement?

27 A I do.

28 Q I want you to refer to lines 20

1 through 25. And you can read line 19 as  
2 well.

3 A All right. Do you want me to read  
4 it out loud?

5 Q Yes.

6 A [Reading:]

7 Question:

8 What was done with those?

9 Answer:

10 I -- it's my understanding -- well,  
11 it was my initial understanding that  
12 they were simply going to be  
13 reinstalled on new poles that were  
14 placed to replace this. I subsequently  
15 learned that at least as far as the  
16 Edison Carrier Solutions cable that it  
17 was not reused and it was discarded.

18 Q What's the Edison Carrier Solutions  
19 cable?

20 A There is a division of Edison. I  
21 don't know if it's Edison International or  
22 Southern California Edison the  
23 telecommunications arm, and they had a fiber  
24 optic cable that ran down this Malibu Canyon  
25 Road, and that's the cable that I'm referring  
26 to.

27 Q Okay. When did you learn that it  
28 had been discarded?

1           A   Months, if not years later.

2           Q   Did you see it when you were at the  
3 scene?

4           A   Yes.

5           Q   Did you see it on October 22  
6 the next day when you visited the scene?

7           A   Yes.

8           Q   Did you see it on October 23  
9 the following day when you visited the scene?

10          A   I don't have any recollection of  
11 any of the communication cables that I saw on  
12 my initial visit to the last day I was there  
13 changing.

14          Q   Okay.

15          A   There were all these black cables  
16 on the ground between those two poles and it  
17 looked pretty much the same to me day after  
18 day.

19          Q   Who discarded the Edison Carrier  
20 Solutions cable?

21          A   I don't know. I don't know the  
22 names of those people, but it was the Edison  
23 Carriers Solution work group.

24          Q   All right. And I can point you to  
25 other parts of the transcript.

26                Does the name Joe Rodriguez sound  
27 familiar to you?

28          A   Joe Rodriguez is one of the

1 supervisors of that work group there.

2 Q Did Joe Rodriguez supervise the  
3 group that discarded the Edison Solutions  
4 cable?

5 A I don't -- I don't -- I don't know  
6 today if he was or not.

7 Q Did you speak to him about  
8 preserving evidence?

9 A Well, to answer your question, it's  
10 my recollection that we spoke about it and it  
11 was the initial thought that the cable was  
12 going to be reused, all those cables were  
13 going to be reused. As I understand fiber  
14 optic, it's not something you can readily  
15 splice like you could a metal wire because of  
16 the glass part of it or whatever it is. And  
17 this cable comes in like 10,000-foot rolls.  
18 So it was my understanding that they were  
19 just going to put it back up in the air. And  
20 that is what I thought was the case until it  
21 may have just been recently that I learned,  
22 oh, no, it was discarded. It was compromised  
23 in some fashion and it was not retained.

24 Q Did you learn the manner in which  
25 it was discarded?

26 A No.

27 Q How do you learn it was discarded?

28 A I subsequently contacted them when

1 this issue arose at some point in these,  
2 I forget, civil or regulatory proceedings.  
3 And on further inquiry, I learned that it was  
4 discarded.

5 Q What was your subsequent inquiry?

6 A I think I called somebody.

7 Q Who did you call?

8 A I don't recall.

9 Q Do you remember when you made that  
10 call?

11 A It seems to me it was not too  
12 distant past but I don't know if that's six  
13 months, nine months. I was under the  
14 impression for many months, maybe even years  
15 that it was still the same cable up there.

16 Q What did the Edison Carrier  
17 Solutions cable look like?

18 A Black cable of indeterminate  
19 diameter.

20 Q They had a diameter?

21 A It did have it but I never  
22 determined what it was.

23 Q Okay. Did you write down in your  
24 notes any information regarding the existence  
25 of the Edison Carrier Solutions cable?

26 A I don't know.

27 Q You were referring previously to  
28 telecommunications cables, correct?

1 A Yes.

2 Q One of those telecommunications  
3 cables was the Edison Carrier Solutions  
4 cable, correct?

5 A Yes.

6 Q Was it bigger than the ACSR cables?

7 A Oh, gosh, I don't know.

8 Q How about the triplex?

9 A I don't know.

10 Q Would it refresh your recollection  
11 to look at your notes?

12 A No. Pictures probably better than  
13 notes because I don't measure diameters.  
14 That's why I took photographs.

15 Q Does Joe Rodriguez use timecards to  
16 your knowledge?

17 A I don't know.

18 Q Do you know how Joe Rodriguez  
19 tracks his time?

20 A I do not.

21 Q Have you talked to Joe Rodriguez  
22 through the course of this case?

23 MR. READ: Well, objection to  
24 communications among or between at least this  
25 witness who's represented the law department  
26 and Edison employees who would be covered by  
27 privilege.

28 MR. MORRIS: What privilege would be

1 that be, counsel?

2 MR. READ: That's the privilege of  
3 attorney-client communication.

4 MR. MORRIS: Even though Mr. McCollum  
5 is not an attorney?

6 MR. READ: No. Certainly, Mr. McCollum  
7 is working directly for and at the  
8 supervision of attorneys. It's well  
9 established that that privilege extends  
10 beyond merely people who may have a law  
11 degree or admission to practice.

12 MR. MORRIS: Are you instructing him  
13 not to answer?

14 MR. MORENO: I think that question was  
15 did you talk to him.

16 MR. READ: If the question was did you  
17 talk to him, that's acceptable without  
18 disclosing the nature of the conversation.

19 THE WITNESS: I did talk to Joe  
20 Rodriguez.

21 MR. MOLDAVSKY: Q All right. And did  
22 you talk to him about how the Edison Carrier  
23 Solutions cable was discarded?

24 MR. READ: I will permit you, as I said  
25 before, to answer questions even though they  
26 are from communications if you obtained in  
27 the course of that conversation a fact such  
28 as the cable was discarded on thus and such

1 BE IT REMEMBERED THAT, by Notice and  
2 on Tuesday, December 21, 2010, commencing at  
3 the hour of 10:00 a.m. thereof, at the  
4 offices of the CALIFORNIA PUBLIC UTILITIES  
5 COMMISSION, 320 West 4th Street, Suite 500,  
6 Los Angeles, California 90013, before  
7 ALEJANDRINA E. SHORI, CSR No. 8856,  
8 personally appeared

9 **FREDERICK McCOLLUM,**  
10 recalled as a witness herein, who, having  
11 been previously sworn, was thereupon examined  
12 and interrogated as hereinafter set forth.

13 \* \* \* \* \*

14 EXAMINATION

15 BY MR. MOLDAVSKY:

16 Q Is this on the record?

17 THE REPORTER: It is.

18 MR. MOLDAVSKY: Thank you.

19 Q And I just wanted to remind you  
20 that all the admonitions, instructions that  
21 I had given to you at the prior deposition  
22 also apply today. Do you understand?

23 A Yes.

24 Q Thank you.

25 So, actually, I just want to begin  
26 today by drawing your attention to another  
27 exhibit.

28 I know you mentioned you don't have

1 MR. READ: I'll give it one more time  
2 in deference to you, Harvey.

3 THE WITNESS: Can you read the question  
4 back?

5 (Record read.)

6 THE WITNESS: Boy, that changes  
7 the last several questions when you say when  
8 you cut through all this.

9 Just so we're crystal clear on  
10 this, my best, today in December of 2010, is  
11 that some time after I spoke with him on  
12 Monday, October 22, and probably within  
13 48 hours, I know that Mr. Peralta went to the  
14 location and saw the poles exactly as I saw  
15 them and before they were moved from  
16 the scene. To the best of my knowledge,  
17 because I wasn't on the scene 24 hours. But  
18 they readily appeared to be in the same  
19 configuration day after day until they were  
20 removed.

21 MR. MOLDAVSKY: Q And Mr. Peralta, to  
22 your best knowledge, saw those poles in that  
23 configuration?

24 A Yes, sir.

25 MR. MOLDAVSKY: Actually, could we take  
26 a short break?

27 THE WITNESS: Great.

28 (Recess taken)