



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE **FILED**

STATE OF CALIFORNIA

10-29-10
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Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Edison Company (U338-E), Cellco Partnership LLC 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)

MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY
TO DISMISS ALLEGED RULE 1.1 VIOLATION

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MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY
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I. INTRODUCTION

The claim by the Consumer Protection and Safety Division (“CPSD”) that Southern California Edison Company (“SCE”) violated Rule 1.1 by allegedly failing to disclose the existence of a post-incident accident reconstruction requested by counsel to assist in potential litigation is without factual or legal basis. The Commission should strike the Rule 1.1 claim prior to SCE’s filing its direct testimony in this proceeding.

On October 23, 2007, two days after the Malibu Canyon fire and at the instruction of counsel for SCE, SCE employee and expert consultant Arthur Peralta visited Malibu Canyon to observe the poles at issue in this investigation and to provide his expert impressions and analysis to SCE counsel in anticipation of possible litigation arising from the incident. SCE rightfully asserted a claim of privilege related to Mr. Peralta’s analysis and has declined to produce to CPSD documents including wind loading calculations prepared by him.¹

This motion seeks the dismissal of CPSD’s claim that SCE violated Rule 1.1 by allegedly “fail[ing] to disclose the *existence* of Mr. Peralta’s” work in response to data requests. Direct Testimony of CPSD Regarding the Malibu Canyon Fire of 2007, I.09-01-018 (May 3, 2010) (“CPSD Testimony”) at 6-5:8-9 (emphasis added). The alleged Rule 1.1 violation should be dismissed because CPSD has offered no evidence that SCE ever misled the Commission or its staff regarding Mr. Peralta or his analyses – much less evidence that SCE acted with the intent, recklessness or gross negligence required to find a violation of Rule 1.1. When CPSD served data requests for wind loading calculations (requests to which Mr. Peralta’s analyses were

¹ CPSD has moved to compel production of Mr. Peralta’s analyses. CPSD’s motion to compel has been fully briefed, is pending before an ALJ, and is *not* the subject of this motion. See CPSD’s Motion To Compel Production Of Wind Load Data Regarding The Three Poles That Failed In Malibu Canyon In Connection With The Malibu Fire (March 26, 2010) (“CPSD’s Motion to Compel”); SCE’s Response to CPSD’s Motion to Compel (April 5, 2010); CPSD’s Reply to SCE’s Response to CPSD’s Motion to Compel (April 15, 2010).

responsive), SCE objected in writing on at least three occasions based on privilege grounds. And when CPSD requested a deposition of Mr. Peralta, SCE produced him for deposition and allowed him to testify as to his recollection of the facts of his Malibu Canyon visit. There is *nothing* suggesting an attempt by SCE to mislead the Commission or its staff regarding the existence of Mr. Peralta's work or SCE's claim of privilege surrounding that work. CPSD's alleged Rule 1.1 violation is completely devoid of evidentiary support and should be dismissed.

II. BACKGROUND

On June 4, 2009, CPSD served on SCE data requests regarding the Malibu Canyon fire. CPSD's First Data Request to SCE (June 4, 2009) ("CPSD's Data Requests") (attached hereto as Exhibit 1). CPSD's Data Requests included 36 separate requests for various documents, calculations, analyses, complaints, photographs, and explanations, including four requests for wind loading calculations related to the poles at issue in this proceeding. Specifically, CPSD requested the following wind load calculations from SCE:

3. Provide each and all *wind load safety calculations* done between January 1, 1990 to October 30, 2007 for any of the three poles that broke in October 2007, and identify clearly when the calculation provided was made. Provide such calculations regardless of whether SCE or agents, or whether another entity, made the calculations.
...
5. For each installation or reconstruction that occurred on any of the three poles between January 1, 1990 and October 21, 2007, provide a retrospective *wind load calculation* to demonstrate that the allowable safety factors were not exceeded under GO 95. Provide the calculation regardless of identity of the entity or entities owning the assets attached to the poles at the time.
6. If SCE is unable to provide *such a calculation* for each installation or reconstruction that occurred between January 1, 1990 to October 30, 2007, provide the reasons why SCE cannot provide the calculation and the data that is not available and would be required for the calculation.
...

35. Provide all *wind load calculations or analyses* done by anyone from January 1, 1990 through October 23, 2007 that relate [to] any of the three subject poles and planned reconstruction or installation associated with the poles.

CPSD's Data Requests 3, 5, 6, 35 (emphasis added).

In response to CPSD's Data Requests, SCE attorney Brian A. Cardoza sent a letter to CPSD's Staff Counsel Robert Cagen to discuss SCE's objections and coordinate the production of documents. *See* Letter from B. Cardoza to R. Cagen (June 15, 2009) (attached hereto as Exhibit 2). Mr. Cardoza explained the letter's purpose was to "both list presently known objections...and request clarification where appropriate." *Id.* at 1. In response to CPSD's Requests 5 and 6 for wind loading calculations, the letter makes clear SCE's objection and assertion of privilege:

These questions seek "retrospective" wind loading calculations regarding the subject poles from January 1, 1990 to October 21, 2007. SCE objects to these requests on the grounds that they are unduly burdensome, prematurely seek expert evaluations which have not been completed, and *seek privileged information which is protected from disclosure under the attorney work product doctrine.*

Id. at 2 (objecting to CPSD's Data Requests 5-6) (emphasis added). Because Requests 3 and 35 did not request *retrospective* wind loading calculations, SCE did not interpret them as calling for Mr. Peralta's wind loading calculations and did not object to the requests on the basis of privilege.²

CPSD responded to SCE's objections in its own letter. Letter from R. Cagen to B. Cardoza (June 22, 2009) (attached hereto as Exhibit 3). With respect to SCE's objection to producing wind loading calculations, CPSD clearly acknowledged – and disputed – SCE's privilege claim. *Id.* at 3 ("Neither question 5 or 6 requests information that is privileged...There is nothing about this calculation that makes it the province exclusively of your expert litigation

² Request 35 does not even arguably call for Mr. Peralta's analyses, because it requests "wind load calculations...that relate [to] any of the three subject poles *and* planned reconstruction or installation associated with the poles." Request 35 (emphasis added). Mr. Peralta's analyses were not performed for purposes or reconstruction or installation.

witnesses.”). CPSD stated that it would not agree to modify the disputed requests and would file a motion to compel if necessary to obtain a full response. *Id.* CPSD’s letter said nothing about Requests 3 and 35 to which SCE had not objected.

On June 20, 2009, SCE produced documents and provided additional objections in response to CPSD’s Data Requests. SCE Responses to CPSD’s Data Requests (June 20, 2009) (attached hereto as Exhibit 4). In response to requests for production of wind loading calculations, SCE indicated that some responsive materials had been produced,³ reiterated its prior objections, and again stated an objection based on privilege:

Response to Question 03:

SCE previously provided CPSD materials responsive to this question. Please refer to the document pages bearing Bates numbers SCE 000778-000787. Approximate date of calculation, August/September 2003.

...

Response to Question 05:

SCE objects to this request on the grounds that it is unduly burdensome and seeks premature expert discovery and information protected from disclosure under the attorney work product doctrine. SCE will disclose its expert’s evaluations at the appropriate time through its testimony.

Response to Question 06:

SCE incorporates by reference its objections to Question 5, as set forth above.

...

Response to Question 35:

SCE incorporates by reference documents previously produced. Please refer to documents bearing Bates numbers SCE 000778-000797.

Id.

³ The materials produced in response to the requests for wind loading calculations are unrelated to Mr. Peralta’s work on October 23, 2007. *See* SCE 000778-000797.

SCE also provided a written response to CPSD's letter of June 22, 2009. Letter from B. Cardoza to R. Cagen (July 9, 2009) (attached hereto as Exhibit 5). Once again, SCE articulated its position that the requested wind loading calculations were privileged: "This question seeks premature expert work product in the form of retrospective wind loading calculations. SCE does not believe this request is appropriate at this time and stands upon its previous objections." *Id.* at 2 (objecting to Requests 5 and 6). The letter's closing invited CPSD to contact SCE with any "lingering concerns or thoughts." *Id.* at 3.

CPSD's attorney, Mr. Cagen, was fully aware that SCE objected to the production of its post-incident accident reconstruction (wind loading analysis) prepared in anticipation of litigation. Despite this knowledge, CPSD voluntarily elected *not* to compel the production of this material. Nine months passed and there were no further communications regarding the production of wind loading calculations.

In March 2010, SCE produced Mr. Peralta for deposition at the request of CPSD and expressly invited CPSD to ask Mr. Peralta about his observations of the poles at issue. Deposition of Arthur Peralta at 26:8-10 (March 5, 2010) ("Peralta Dep.") (attached hereto as Exhibit 6). Mr. Peralta testified at length. *See, e.g., id.* at 18:12-16, 32:6-9, 41:19-23 (testifying as to the presence of conductors and communications facilities on the poles and their proximity to a canyon), *id.* at 132:5-21 (the absence of shell rot and mechanical damage on the poles), *id.* at 33:3-20 (the presence of other SCE personnel who were working on the poles), *id.* at 34:3-9 (the time and weather), *id.* at 47:6-7 (the presence of firefighters). His testimony included the fact of his October 2007 visit to Malibu Canyon, his examination of the failed poles, and his completion of a pole loading worksheet.⁴ *Id.* at 17:15-22:10. Consistent with previous objections, however, SCE objected on the basis of privilege to Mr. Peralta's disclosing communications with SCE's

⁴ The term "pole loading" is used interchangeably with "wind loading." Peralta Dep. at 36:4-5.

Law Department, including his wind loading analysis. *See, e.g.*, Peralta Dep. at 26:10-12, 36:11-18; SCE’s Response to CPSD’s Motion to Compel at 3-4.

In May 2010, CPSD filed Direct Testimony alleging SCE violated Rule 1.1 in that it “completely neglected to mention Arthur Peralta’s wind load analysis that was conducted on October 23, 2007.” CPSD Testimony at 6-2:8-9; 6-2:16-17. CPSD alleges that SCE “apparently” did not reply “completely and honestly” to Request 3 and provided “misleading information” to CPSD in response to Request 35. CPSD Testimony at 6-2:3-4, 10-17. CPSD’s Testimony makes no reference to SCE’s responses to Requests 5 and 6.

CPSD’s Rule 1.1 allegation is sponsored by non-lawyer witnesses Pejman Moshfegh, a Public Utilities Regulatory Analyst in CPSD’s Utility Enforcement Branch, and Kan-Wai Tong, a Utilities Engineer in CPSD’s Utility Safety and Reliability Branch.⁵ CPSD Testimony at 6-1. Despite his sponsorship of the Rule 1.1 claim based solely on SCE’s alleged failure to disclose Mr. Peralta’s wind loading calculations in response to Requests 3 and 35, Mr. Moshfegh testified that he does not remember whether or not he considered the other responses by SCE to requests seeking wind loading calculations. Specifically, Mr. Moshfegh does not remember whether he considered SCE’s response and objections to Request 5 – a request seeking the same wind loading analyses as the requests underlying the Rule 1.1 claim and a request to which SCE objected repeatedly on the basis of privilege:

Q. ... in reaching your conclusions about SCE’s alleged violation of Rule 1.1., did you consider the answer to data request five, and what it told CPSD about SCE’s position on work product?

A. One moment.

Mr. Moldavsky: objection; vague. Go ahead.

A. I don’t remember.

...

Q. ...Mr. Moshfegh, have you seen data request five before?

⁵ Mr. Tong’s deposition testimony does not address his sponsorship of the Rule 1.1 claim.

- A. I believe I had read it.
Q. Okay. But you decided not to put it in your testimony; right?
A. I don't know if it was an active decision to exclude it, but I –
Q. Well it's not in there.
A. It's not in there.

Deposition of Pejman Moshfegh at 286:9-17, 287:6-14 (Aug. 10, 2010) (“Moshfegh Dep.”)
(attached hereto as Exhibit 7).

Similarly, when questioned about SCE's June 15, 2009 and July 9, 2009 letters to CPSD which included SCE's privilege objections to Requests 5 and 6, Mr. Moshfegh testified that he “believes” he had seen one of the letters and “may have” seen the other. Moshfegh Dep. at 292:12-18, 296:4-6. But he does not “exactly remember the specifics” of the letters and “can't say that [he] did consider them.” *Id.* at 300:1-4. He certainly did not include them in his testimony or otherwise bring them to the attention of the Commission. And despite bringing the Rule 1.1 claim against SCE, he testified that he does not know if the letters should be considered to have put CPSD on notice regarding SCE's claimed privilege or whether they are consistent with an intent to deceive the Commission or its staff:

- Q. [I]s there any reason to think that [SCE June 15, 2009 letter] did not put Mr. Cagen on notice that SCE took the position that if there were any retrospective pole-loading calculations done by experts, that they were claiming privilege?
Mr. Moldavsky: Objection; calls for a legal conclusion. Go ahead.

...

- A. I – I don't know.

Moshfegh Dep. at 294:11-22.

- Q. I'm asking whether or not you have ever thought about whether...Edison's answers to the data request and these letters, whether they are consistent in any way with an intent to deceive the Commission?
Mr. Moldavsky: Objection; vague as to these data requests. Go ahead.
A. Considering that I – I – I don't exactly remember the specifics of these two documents that you handed us, I – I don't know...

Id. at 299:18-300:1-3. Mr. Moshfegh further testified that he did not know whether CPSD sought to meet and confer regarding SCE’s privilege objection prior to the deposition of Mr. Peralta. *Id.* at 289:2-12, 289:20-290:4, 297:10-23. Prior to alleging a Rule 1.1 violation, CPSD did not even interview its past counsel, Mr. Cagen, to inquire as to why he elected not to compel the production of post incident loading calculations, despite being placed on notice of SCE’s objections. Moshfegh Dep. at 296:23-297:23.

In sum, CPSD’s decision to move forward with a Rule 1.1 allegation was a rush to judgment, sponsored by non-lawyers offering legal opinions without all the facts. Because the grounds for the Rule 1.1 violation fail to disclose the full context and history behind SCE’s responses to pertinent data requests, CPSD’s testimony in this regard is itself misleading and incomplete. On this record, CPSD has not met its burden of proof, and this claim must be dismissed without requiring SCE to respond further.

III. ARGUMENT

The Commission should dismiss the alleged Rule 1.1 violation against SCE. The claim is based upon SCE’s supposed deliberate failure to apprise the Commission of Mr. Peralta’s wind loading calculations but is wholly insupportable in light of SCE’s consistent assertion of privilege and objections to produce such calculations.

Rule 1.1 of the Commission’s Rules of Practice and Procedure states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Rule 1.1. The Commission has held that Rule 1.1 violations “require purposeful intent, recklessness, or gross negligence in regard to communications with the Commission.” *Order*

Instituting Investigation Into SCE's Electric Line Construction, Operation, and Maintenance Practices, D. 04-04-065, Investigation 01-08-029, 2004 Cal. PUC LEXIS 207 at *53 (April 22, 2004).⁶ Although lack of candor or withholding information may form the basis of a Rule 1.1 violation, this type of violation is possible only if the conduct was reckless or grossly negligent. *Id.* In *SCE's Electric Line OII*, for example, CPSD alleged a Rule 1 violation based on SCE's statement to the Commission that a transformer had not been removed because there was an outstanding new business order for service, when there was no such order. *Id.* The Commission found "confusion" in SCE's communication practices but no intentional, reckless, or grossly negligent conduct. *Id.* CPSD also alleged a Rule 1 violation based on SCE's statement to CPSD that it was unaware of a subcontractor's work on transformers where an employee of SCE testified otherwise. *Id.* at 55. The Commission found "miscommunication occurred but, again, not the type of conduct to constitute a Rule 1 violation." *Id.* at 55-56.

SCE has *never* misled the Commission or its staff regarding Mr. Peralta's wind loading analyses. As set forth in detail above, in June 2009, CPSD served Data Requests with several requests for wind loading calculations. CPSD's Data Requests 3, 5, 6, 35. SCE objected on the basis of privilege within 11 days of receiving CPSD's Data Requests and then reiterated in writing its claim of privilege at least twice more. *See* Letter from B. Cardoza to R. Cagen (July 15, 2009) ("SCE objects to these requests on the grounds that they are unduly burdensome, prematurely seek expert evaluations which have not been completed, and seek privileged information which is protected from disclosure under the attorney work product doctrine."); SCE's Responses to CPSD's Data Requests ("SCE objects to this request on the grounds that it is unduly burdensome and seeks premature expert discovery and information protected from

⁶ *SCE's Electric Line OII* involved alleged violations of Rule 1. Rule 1 was renumbered as Rule 1.1 by the Commission's 2006 revision of its Rules of Practice and Procedure. *See* Rulemaking to Update, Clarify and Recodify Rules of Practice and Procedure, D. 06-07-006, Rulemaking 06-02-011, 2006 Cal. PUC LEXIS 288 (July 20, 2006).

disclosure under the attorney work product doctrine.”); Letter from B. Cardoza to R. Cagen (July 9, 2009) (“This question seeks premature expert work product in the form of retrospective wind loading calculations. SCE does not believe this request is appropriate at this time and stands upon its previous objections.”).

CPSD’s own communications reflect its awareness of SCE’s asserted privilege claim and its intention to seek a motion to compel if necessary. Letter from R. Cagen to B. Cardoza (June 22, 2009) (disputing existence of privilege for wind loading calculation and arguing that “[t]here is nothing about this calculation that makes it the province exclusively of your expert litigation witnesses”). Yet CPSD did not pursue the objection or seek to compel until after the deposition of Mr. Peralta nine months later. *See* CPSD Motion to Compel. According to CPSD, it was at Mr. Peralta’s deposition that it made the “startling discovery” regarding the existence of Mr. Peralta’s wind loading analysis (*id.* at 2) and as a result brought a Rule 1.1 claim against SCE. This comment is itself “startling” as CPSD had long been aware of SCE’s objection to the production of post-incident expert analysis and elected to do nothing about it.

CPSD’s sponsoring witness for the alleged Rule 1.1 violation admits that he did not consider in full SCE’s responses and objections to requests for wind loading in bringing the Rule 1.1 claim. Moshfegh Dep. at 286:9-17, 287:4-14, 299:18-300:1-4. This critical omission cannot be overstated, as it demonstrates that Mr. Moshfegh’s Rule 1.1 claim is based upon an incomplete understanding of the record. Nor did Mr. Moshfegh ever contact Mr. Cagen, the CPSD attorney who handled the investigation during the time that SCE responded to CPSD’s Data Requests, about his communications with SCE regarding its responses and objections to the wind loading requests. Moshfegh Dep. at 296:23-297:23.

SCE did not interpret Requests 3 and 35 as calling for Mr. Peralta's analyses and thus did not object to those two requests on the basis of privilege. Requests 5 and 6, on the other hand, which clearly call for *retrospective* analyses were requests to which SCE provided consistent objections on the basis of privilege. SCE's position was well understood by Mr. Cagen and formed the basis of good faith meet and confers on the subject. To claim now that CPSD was not aware of SCE's position is factually inaccurate and misleading.

There is absolutely nothing to support a claim that SCE acted intentionally, recklessly, or with gross negligence to mislead the Commission or its staff. *See SCE's Electric Line OII*, 2004 Cal. PUC LEXIS 207 at *53-56. SCE's asserted privilege objections were more than sufficient to put CPSD on notice regarding the existence of wind loading analyses. Moreover, SCE willingly produced Mr. Peralta for deposition and allowed him to testify regarding his observations after the fire and regarding the existence of his wind loading calculations. *See, e.g., Peralta Dep.* at 17:15-22:10, 26:8-10, 32:6-9, 33:3-20, 34:3-9, 41:19-23, 47:6-7; 132:5-21; SCE's Response to CPSD's Motion to Compel. Such disclosures are flatly inconsistent with an intention to mislead the Commission or its staff regarding Mr. Peralta's analyses. Because SCE clearly objected to the production of post-incident wind loading analyses conducted at the instruction of counsel in anticipation of litigation, and CPSD elected to sleep on its rights to compel this information, there can be no basis for a Rule 1.1 charge as to Request 3 or 35. Accordingly, the Commission should dismiss the alleged Rule 1.1 violation in its entirety.

IV. CONCLUSION

It is undisputed in this proceeding that CPSD advanced its Rule 1.1 charge without reviewing the scope and substance of its data requests in full, or SCE's responses thereto. It is also undisputed that SCE placed CPSD on notice long ago of its objection to the production of

any documents prepared by its experts and consultants at the request of its attorneys in preparation for litigation.

For the foregoing reasons, SCE respectfully requests that the Commission dismiss the alleged Rule 1.1 violation. SCE should not be required to respond to a baseless allegation in its testimony.

Dated: October 29, 2010

Respectfully submitted,

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EXHIBIT 1

I.09-01-018

FIRST CPSD DATA REQUEST TO SCE

Below is the CPSD's First Data Request to SCE

CPSD requests full responses to this data request no later June 19, 2009. If SCE objects to any of these data requests, please submit your specific objection and its basis by June 15, 2009. If SCE asserts any privilege, please state by June 15 the basis of the privilege claimed. If any document is not produced under a claim of privilege, for each such document provide a summary of the purpose and subject of the document withheld, the date of the document, and the author or author and all recipients of the document.

In responding to each request please state the text of the request prior to providing the response, and provide the name of the person or person answering, the title of such person(s), the person and title of person they work for, and the name of the witness or witnesses who will be prepared to testify concerning the matters contained in each response or document produced. With respect to each document produced, identify the number of the data request and subpart that the document is in response to.

The terms "document," "documents," or "documentary material" include, but are not limited to, the following items, whether printed, recorded, or written or reproduced by hand: reports, studies, statistics, projections, forecasts, decisions, and orders, intra-office and interoffice communications, correspondence, memoranda, financial data, summaries or records of conversations or interviews, statements, returns, diaries, calendar, work papers, graphs, notebooks, notes, charts, computations, plans, drawing, sketches, computer printouts, summaries of records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, bulletins, records or representation or publications of any kind (including microfilm, videotape, and records however produced or reproduced), electronic or mechanical or electrical records of any kind (including, without limitation, tapes, tapes cassettes, discs, emails, and records) other data compilations (including without limitation, input/output files, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, discs and recording used in automated data processing, together with the programming instructions and other material necessary to translate, understand, or use the same), and other documents or tangible things or whatever description which constitute or contain information within the scope of a Request to produce.

1. Provide all documents that refer or relate to wind load safety factor calculations, done between January 1, 1990 and October 30, 2007, to establish or confirm pre-construction compliance with GO 95, for any wooden utility poles entirely or jointly owned by SCE. This data request applies both to calculations made for planned new poles and for planned new assets to be attached to existing poles.
2. Provide all manuals, memos, instructions, standards, directives, and all other documents created or used by SCE or its agents between January 1, 1990 and October 30, 2007, that refer or relate to the circumstances under which SCE identified that a GO 95 wind load safety calculation must or should be made, and to the circumstances under which SCE identified that these calculations need not be made.
3. Provide each and all wind load safety calculations done between January 1, 1990 to October 30, 2007 for any of the three poles that broke in October 2007, and identify clearly when the calculation provided was made. Provide such calculations regardless of whether SCE or agents, or whether another entity, made the calculations.
4. Provide a summary of the search that SCE did to locate the calculations requested in numbers 1, 2 and 3 above.
5. For each installation or reconstruction that occurred on any of the three poles between January 1, 1990 and October 21, 2007, provide a retrospective wind load calculation to demonstrate that the allowable safety factors were not exceeded under GO 95. Provide the calculation regardless of identity of the entity or entities owning the assets attached to the poles at the time.
6. If SCE is unable to provide such a calculation for each installation or reconstruction that occurred between January 1, 1990 to October 30, 2007, provide the reasons why SCE cannot provide the calculation and the data that is not available and would be required for the calculation.
7. Identify and explain the conditions under which SCE contends that a wind loading safety factor calculation was required to be conducted for “planned” reconstruction or installation (see GO 95, 44.1) between 1990 and October 2007.
8. Identify and explain the conditions under which SCE contends that a wind loading safety factor was not required to be conducted for “planned” reconstruction or installation (see GO 95, 44.1) between 1990 and October 2007.
9. For each of the calendar years of 2003, 2004, 2005, 2006, and 2007, provide the following data:

- A. A list of all wind load calculations conducted during these calendar years to establish compliance of planned installation and construction (Rule 44.1) with the safety factors specified in GO 95. Provide the list by date of calculation, identity of person or persons who did the calculation, date of installation and construction associated with the construction, and a general description of the construction or installation.
 - B. Provide all such wind load safety calculations listed in “A”.
 - C. Provide a list of all installation and construction started during each of the calendar years that did not generate a wind load safety calculation.
 - D. For each entry on the list in “C” above, explain the reasons why no wind load calculation was made.
- 10 Provide a chronological list of all notifications or complaints about any of the three poles or their loads received by SCE between 1993 and 2007 from any source, and provide a summary of the complaint or notification.
 11. Provide all documents that refer or relate to the notifications or complaints identified in the response to number 10 above.
 12. Refer to SCE’s April 20 report (report), p. 10 and 11, Rule 12.2 discussion. Provide all written reports of the intrusive testing done in 1990, 2003, or any other time, and all documents that refer or relate to all intrusive testing done on any of the three poles at any time.
 13. Refer to report, p. 11, Rule 31.1 discussion. SCE refers to its installation of “a private communication circuit in 1996. A contemporaneous pole loading study has not been located”. Provide the study to CPSD. If it cannot be located describe the search for it that SCE conducted, and provide all documents that refer to the study, and identify by name and position all persons who can provide evidence.
 14. Refer to report, p. 11, Rule 31.1 discussion. SCE states that “it is SCE’s belief that poles 1169252E and 1169253E were not overloaded by the addition of its own telecommunication cable because at the time of construction, SCE transmission poles were routinely designed to accommodate additional load such as, the future installation of its own communications circuits, if necessary.” Does SCE contend that this routine design to accommodate additional load alleviates SCE from conducting additional wind load safety calculation that otherwise would be required by GO 95 for the planned installation of its own communications circuits or other items? If the answer is anything other than an unqualified “no”, explain the basis for SCE’s contention that SCE’s design alleviates the utility’s responsibilities under GO 95.
 - 15 Refer to PT&T’s James Kenney’s February 8, 1974 letter to SCE VP Robert Coe (letter produced as attachment to SCE’s April 20, 2009 report). The letter refers to

an SCE proposal of November 2, 1973 “to overbuild our facilities in Malibu Canyon”. Provide a copy of this proposal.

- A. Does SCE contend that any or all of the three poles that failed and their appurtenant attachments or support were “overbuilt”? If the answer is anything other than an unqualified “no”, list and explain each specific way that the pole or poles and other equipment attached them were “overbuilt”.
 - B. If SCE contends that any or all of the three poles that failed and their appurtenant attachments or support were “overbuilt”, provide calculations done before construction that demonstrate the safety factor or the poles as designed to be constructed. If no such calculations exist, re-create the safety factor calculations of the poles with the material planned for the poles at the time of construction.
16. Provide all documents and photos that show or refer or relate to any of the three poles leaning or varying from vertical at any time between 1990 and October 20, 2007. Provide these documents and photos regardless whether the authorship was utility personnel or agents, or non-employees such as customers or other public members, or any other source.
 17. SCE’s August 20 report lists a number of distribution circuit patrols (pp.4 and 5), detailed distribution inspections (p. 5), transmission patrols (pp. 5 and 6), intrusive inspections (p.6), and streetlight patrols (pp. 7 and 8) that SCE identified as involving the three poles from 1990 through 2007. Did SCE personnel or agents take note during any of those patrols or inspections that the three poles or any of them were leaning or varied from vertical in any measure? If yes, provide all documents authored between 1990 and October 2008 that reflect or refer to any SCE personnel or agents notation or reference to such leaning or variance.
 18. At any time between 1990 and 2007, did SCE engineers take into account in their designs for planned installation and construction on the three poles and attached and appurtenant structures, that winds speed in Malibu Canyon may exceed winds speed in adjacent areas? If yes, detail and explain how SCE took such winds into account for the poles and the other assets associated with the poles.
 19. Provide all memos and other documents in use by SCE or its agents from 1990 through October 2007 and that refer or relate to construction and maintenance of wooden poles in areas subject to stronger average winds than surrounding areas.
 20. Did SCE construction and maintenance managers and supervisors generally understand or experience that winds in Malibu Canyon may exceed the strength of winds measured in adjacent or surrounding areas? If the answer is anything other than an unqualified “no”, provide all SCE documents that refer or relate to winds in Malibu Canyon.

21. SCE states that it replaced the original guy pole in 1983 (SCE report, p.12). Provide all documents that relate or refer to the reasons why SCE replaced the pole at that time.
22. Provide all studies, analyses, and calculations done between 1990 and October 2007, to ascertain that safety factors associated with the three poles had not been reduced to less than two thirds of the construction safety factors (see SCE report pp. 12 and 13, section re Rule 44.2).
23. SCE states in its report that on December 20, 2007 it “informed the CPSD that it believed the wind speeds at the time of the incident exceeded 108 miles per hour” (SCE report, p.14). SCE then states that its belief was based upon “wind measurements taken at two nearby peaks, Whitaker Peak and Laguna Peak”. With respect to these statements, provide each and all facts and documents which support SCE’s apparent belief that wind measurements on October 20, 2007 at those two locations were characteristic of the wind speeds at Malibu Canyon at the same times.
24. Provide all expert analyses or statements that estimate wind speeds that occurred anywhere in Malibu Canyon on October 20, 2007.
25. Provide all correspondence and other documents sent by SCE to experts retained by SCE to submit testimony about wind speed that occurred in Malibu Canyon on October 20, 2007.
26. Did firefighting personnel or any fire department, either verbally or in writing, estimate to SCE or to any of its personnel, the speed of the wind in Malibu Canyon on October 20, 2007? If SCE’s response is anything other than an unqualified “no”, provide all written documents and communications that refer or relate to such estimates, and provide a summary of all such verbal communications (by date and time, names of personnel for SCE and fire dept., and statements made about wind speed).
27. Refer to SCE’s report, p.2, that states:

“SCE further notes that it recently received documents from another Respondent to this proceeding which appear to relate to or reflect potentially relevant calculations and analyses performed by SCE during the subject time-period. SCE’s search for relevant information did not identify these documents. SCE is now in the process of searching for and authenticating the subject materials”.

With respect to the above, provide:

- A. The identity of the Respondent and the documents SCE referred to.
 - B. A copy of the calculations and analyses that SCE performed during the subject time-period.
 - C. Identify each person or person who conducted, reviewed, or approved each such calculation or analysis.
28. Provide a copy of each and all written communications and all other documents generated between January 1, 1990 and October 20, 2007 between SCE and any other utility or utilities and that refer or relate to wind load analyses or calculations. In SCE's response include communications both from Edison and those sent to Edison.
29. Provide a copy of each and all written communications and all other documents generated between January 1, 1990 and October 20, 2007 between SCE and any other utility or utilities that refer or relate to planned reconstruction or installation associated with the three poles or their loads. In SCE's response include communications both from Edison and those sent to Edison.
30. Provide a copy of each and all written communications and all other documents generated from January 1, 1990 and October 20, 2007 between SCE and the Joint Pole Organization (sent either way) or its predecessors, that refers or relates to the following:
- A. Wind Load Calculations associated with any of the three poles or their loads.
 - B. Planned reconstruction or installation associated with the three poles or their loads.
 - C. Agreements, standards, instructions, suggestions, and memos about wind load calculations, wind load analyses, wind load procedures, and how and when to conduct them.
31. Refer to April 20 Sprint report, p. 20. Sprint refers there to a "field meet" between SCE and BMS before October 22, 2003 to review "wind loading concerns". With respect to this reference, state:
- A. Whether the field meet took place, and if so when, where, and the names of each person attending the meeting, names of their employers, and their functions.
 - B. Provide all documents and correspondence that refer or relate to the field meet or to conclusions reached from the field meet.
32. Refer to Sprint report, p. 21. Sprint there refers to its conclusion that "SCE *did* verify the wind loading results for this pole". With respect to this contention, state:

- A. Whether SCE did verify wind loading results for the pole.
 - B. If yes, all documents generated before October 20, 2007 that verify any wind loading results for this pole.
 - C. Describe the method that SCE used to verify wind loading results for the pole.
33. Refer to Sprint report, p. 15. Sprint there refers to a wind loading determination by Michael Smith on February 7, 2003 that the pole attachments proposed by Sprint would comply with GO 95. With respect to this reference:
- A. State whether SCE had this written determination (Ex. 33) in its possession at or near February 7, 2003.
 - B. Provide all documents that refer or relate to Sprint's determination.
 - C. Provide all correspondence between SCE and any other person or entity that refers or relates to the 2003 determination of compliance with GO 95 or to the meetings or discussions that led to this conclusion.
34. Provide all SCE manuals, memos and instructions to managers, supervisors and field personnel on how to assess by visual inspection or other means whether wood poles are overloaded.
35. Provide all wind load calculations or analyses done by anyone from January 1, 1990 through October 23, 2007 that relate any of the three subject poles and planned reconstruction or installation associated with the poles.
36. Provide an organizational chart as of July 1, 2003, showing:
- A. organization of the divisions and groups responsible for making wind load assessments and calculations associated with planned installation and Reconstruction, and for approving them.
 - B. provide the names and job titles of all SCE personnel responsible on July 1, 2003 for making such wind load assessments and calculations, and for approving them.
 - C. Provide the duties and responsibilities of persons identified in "B" above with respect to wind load assessments and calculations, and approvals.

EXHIBIT 2



Brian A. Cardoza
Senior Attorney
brian.cardoza@sce.com

June 15, 2009

VIA ELECTRONIC MAIL & U.S. MAIL

Mr. Robert C. Cagen
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298
rcc@cpuc.ca.gov

Re: Malibu Fire OIL, I.09-01-018
CPSD Date Request No. 1 to SCE, Dated
June 4, 2009

Dear Bob:

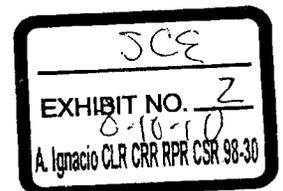
I appreciated the opportunity to speak with you last Friday regarding CPSD's Data Request No. 1 ("CPSD DR 1"), which had been served electronically after close of business, June 4, 2009. On June 5, 2009, I took a vacation day and was not in cellular telephone range to review the document. In the future, please copy my colleague, Robert LeMoine of SCE's Law Department, on discovery requests to ensure prompt delivery.

As we discussed, it will not be possible for SCE to provide complete responses to all of the questions in CPSD DR 1 by June 19, 2009. As I explained, several of the questions would require SCE to review all work orders dated within a 17-year period filed in regional and district offices throughout our 50,000 square mile service territory. Even if the information sought in those data requests were relevant to these proceedings (a point we dispute) and not otherwise objectionable, a production of this magnitude would be exceedingly labor-intensive and would take months to complete, assuming the appropriate personnel could be taken off other duties and assigned full-time to work on those data requests.

The purpose of this letter is to both list presently known objections to CPSD DR 1 and request clarification where appropriate. The objections expressed herein are not meant to list all objections SCE may have to CPSD DR 1 as our search for responsive materials is ongoing. With its production, SCE anticipates augmenting the objections set forth below and may set forth general objections to the entire production. Notwithstanding this, SCE identifies the following objections:

Question No. 1

This question seeks wind loading calculations covering a 17-year period for all wood poles in SCE's service territory. SCE objects to this request on the grounds that it is unduly burdensome and seeks



irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This question requires pulling all work orders in regional and district offices in our 50,000 square mile territory in search of wind loading calculations. It is estimated that compliance would require thousands of man hours and take months to complete.

Question Nos. 5 & 6

These questions seek "retrospective" wind loading calculations regarding the subject poles from January 1, 1990 to October 21, 2007. SCE objects to these requests on the grounds that they are unduly burdensome, prematurely seek expert evaluations which have not been completed, and seek privileged information which is protected from disclosure under the attorney work product doctrine. The CPSD has the burden of proof in this matter and is free to perform such studies as it believes are necessary to meet its evidentiary burden; however, SCE cannot be compelled to perform analytical work for the CPSD. To the extent SCE has retained consultants to perform such studies, the results of those studies will be provided at the appropriate time through SCE's evidentiary showing.

Question No. 9 (A) – (D)

This question is similar to No.1 and seeks wind load calculation documentation which may exist throughout SCE's service territory covering the years 2003 – 2007. SCE objects to this request on the same grounds as stated in response to No. 1. In its present form, this question would likewise require the retrieval, review and analysis of all work orders in the service territory. Besides being an unduly burdensome exercise, it would be exceedingly resource-intensive. It is estimated that such an assignment would involve thousands of man hours and take months to complete.

Question No. 19

This question seeks materials related to the construction and maintenance of wooden poles in areas of "stronger than average winds than surrounding areas." SCE objects to this question on the ground that it is vague and ambiguous.

Question No. 23

This question asks SCE to interpret wind speed data retrieved from the National Weather Service recorded on the date of the incident. SCE objects to this question on the grounds that it prematurely seeks expert evaluations which have not been completed and it seeks privileged information which is protected from disclosure under the attorney work product doctrine.

Question No. 24

This question seeks expert analyses regarding wind speeds in Malibu Canyon on October 20, 2007. SCE objects to this question on the grounds that it prematurely seeks expert evaluations which have not been completed and it seeks privileged information which is protected from disclosure under the attorney work product doctrine.

Question No. 25

This question seeks all communications between SCE and its experts. SCE objects to this question on the same grounds as stated in response to No. 24.

Question No. 28

This question seeks all communications between SCE and other utilities for the 17-year period between January 1, 1990 and October 20, 2007 regarding wind load calculations within our entire service territory. SCE objects to this question on the same grounds as stated in response to No. 1. above. SCE does not maintain a central file in which such general "communications with utilities" are stored. In order to respond to this question, it would be necessary for SCE to review each work order dated within the 17 year period on file in the regional and district offices throughout our 50,000 square mile service territory.

Bob, if CPSD will consider clarifying, refining and narrowing the above questions, I would be willing to work with you to ensure that SCE provides responsive and relevant information which meets CPSD's needs. In the meantime, I believe substantive responses to question nos. 3,4,7,8,10,11,12,13,14,15,16,17,21,22, 26,27,31,32,33 and 35 can be provided by June 19, 2009. Given their broad scope, SCE requests a 30-day extension of time, to July 20, 2009, to respond to the other questions. Such an extension is not unreasonable given the fact that there currently is no scheduling order in place. A thorough review for responsive materials necessarily takes time.

Thank you for your anticipated cooperation in agreeing to SCE's request for an extension and otherwise addressing the points noted above. Please let me know if you have any questions.

Very truly yours,

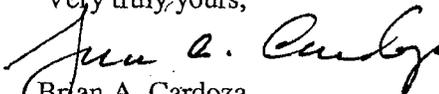

Brian A. Cardoza

EXHIBIT 3

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 22, 2009

VIA ELECTRONIC MAIL AND HARD COPYBrian A. Cardoza
Senior Attorney
2244 Walnut Grove Avenue
Rosemead, CA 91770

EXCEPTION MAIL

JUN 25 2009

Re: Malibu Fire OII, I.09-01-018,
CPSD Data Request No. 1 to SCE
Dated June 4, 2009CASE ADMINISTRATION
SCE LAW DEPARTMENT

Dear Brian:

This letter is CPSD's response to your June 15, 2009 letter addressed to me. Your letter makes certain proposals about CPSD's first data request directed to SCE, and also discusses those data requests that SCE agrees to answer as is. We appreciate your letter and proposals, which I will discuss here individually.

First, we cannot accept SCE's apparent proposal to provide additional or augmented objections at a later time, in particular that SCE "may set forth general objections to the entire production". CPSD's June 4 communication requests objections no later than June 15. We don't have the time in the schedule all parties agreed to for multiple sets of discovery objections. CPSD considers the objections that you have stated already as the only ones we will address at this point or later. Therefore to the extent that SCE's June 19 communication raises new objections we are not addressing them here.

CPSD cannot agree to your June 15 request for an extension to July 20 for SCE to respond to certain data requests you identify in your letter. We need to work within the already tight schedule the parties agreed on. We need all responses no later than July 3. If I correctly understand your June 19 communication then SCE and CPSD are in accord about a response date of July 3.

Below CPSD will reproduce SCE's objections and comments to particular data request questions. Our responses will address these matters and where appropriate will offer compromises that CPSD believes should fit both the legitimate interests of CPSD and of SCE.

Question No.1 (SCE discussion)

This question seeks wind loading calculations covering a 17-year period for all wood poles in SCE's service territory. SCE objects to this request on the grounds that it is unduly burdensome and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This question requires pulling all work orders in regional and district offices in our 50,000 square mile territory in search of wind loading calculations.

Mr. Brian A. Cardoza
June 22, 2009
Page 2

It is estimated that compliance would require thousands of man hours and take months to complete.

Question No. 1 (CPSD response)

CPSD requested all wind loading calculations for wood poles in SCE's service territory done from 1990 through 2007. This material is clearly calculated both to lead to admissible evidence and to lead to the discovery of admissible evidence. The time period is the same one we are concerned with in this proceeding. Respondents' practices of wind loading calculation for construction and installation during that period is critical to this case. Particularly because we have very few wind load calculations available for the 3 poles from 1990-2007, despite considerable construction and installation, we need to understand whether this lack of documentation is limited to these poles or is a system characteristic.

Your letter claims a review of 17 years of data is burdensome. Although the information you have provided is insufficient to determine the validity of that claim, we are willing as part of an overall agreement to accept a production of two years of data, for 2003 and for 2007 prior to the incident. If later we find that CPSD needs data for other years, we will request it then.

Question Nos. 5 & 6 (SCE discussion)

These questions seek "retrospective" wind loading calculations regarding the subject poles from January 1, 1990 to October 21, 2007. SCE objects to these requests on the grounds that they are unduly burdensome, prematurely seek expert evaluations which have not been completed, and seek privileged information which is protected from disclosure under the attorney work product doctrine. The CPSD has the burden of proof in this matter and is free to perform such studies as it believes are necessary to meet its evidentiary burden; however, SCE cannot be compelled to perform analytical work for the CPSD. To the extent SCE has retained consultants to perform such studies, the results of those studies will be provided at the appropriate time through SCE's evidentiary showing.

Questions 5 and 6 (CPSD's response)

Question 5 seeks information that is both relevant and unprivileged. A central issue in this proceeding is whether the proper wind load calculations were done at the appropriate times and whether they showed that the poles complied with legal engineering requirements. To date SCE has provided virtually no information to demonstrate that the calculations were made or considered at any time from 1990 to 2007 before construction or reinstallation on the three poles occurred. Using data that should be available or accessible to SCE now, SCE should also be able to reconstruct wind loading calculations to retrospectively demonstrate compliance with the wind loading standards of GO 95. If SCE lacks the information to do so, number 6 requires SCE to state the information that would be needed to make that calculation but is unavailable.

Mr. Brian A. Cardoza
June 22, 2009
Page 3

Neither question 5 or 6 requests information that is privileged. The requested wind load safety calculation is a central threshold issue in the proceeding. It is also a calculation that SCE's engineering department was routinely expected to do for the three poles and for the system in general. Litigation does not change that expectation. There is nothing about this calculation that makes it the province exclusively of your expert litigation witnesses. CPSD does not intend to wait for January 2010 to learn what SCE's position is on compliance of those poles with wind loading standards. The Malibu fire took place more than a year and a half ago. The CPSD has a right to the requested information now.

CPSD therefore does not agree to any change in our requests number 5 or 6, and will file a motion to compel if necessary for a full response.

Question No.9 (A) - (D) (SCE discussion)

This question is similar to No.1 and seeks wind load calculation documentation which may exist throughout SCE's service territory covering the years 2003 - 2007. SCE objects to this request on the same grounds as stated in response to No.1. In its present form, this question would likewise require the retrieval, review and analysis of all work orders in the service territory. Besides being an unduly burdensome exercise, it would be exceedingly resource-intensive. It is estimated that such an assignment would involve thousands of man hours and take months to complete.

Question No. 9 A-D (CPSD response)

I agree Number 9 is similar to Number 1, but it does ask for some additional information that is critical in our view and is clearly relevant. CPSD is willing for now to limit SCE's response to number 9 to the years 2003 and 2007 pre-incident.

Question No. 19 (SCE discussion)

This question seeks materials related to the construction and maintenance of wooden poles in areas of "stronger than average winds than surrounding areas." SCE objects to this question on the ground that it is vague and ambiguous.

Question No. 19 (CPSD response)

Data request 19 asks for all memos and other documents that "refer or relate to construction and maintenance of wooden poles in areas subject to stronger average winds than surrounding areas". There is nothing "vague and ambiguous" about this data request. SCE either has memos from this period that relate or refer to local wind conditions, or it doesn't. Local wind conditions are a key issue in the Malibu case. If SCE prefers to answer a question which replaces "in areas subject to stronger average winds than surrounding areas" with "in areas subject to strong winds" CPSD will accept this modification to our question.

Question No. 23 (SCE discussion)

This question asks SCE to interpret wind speed data retrieved from the National Weather Service recorded on the date of the incident. SCE objects to this question on the grounds that it prematurely seeks expert evaluations which have not been completed and it seeks privileged information which is protected from disclosure under the attorney work product doctrine.

Question No. 23 (CPSD response)

This data request refers to two statements that SCE made in its April 2009 report to the Commission. SCE's statements were that on December 20, 2007 it "informed the CPSD that it believed that the wind speeds at the time of the incident exceeded 108 mph" and that this belief was based upon "wind measurements taken at two nearby peaks, Whitaker Peak and Laguna Peak". CPSD's data request asks for the basis of these statements.

SCE made these statements and placed them in its report to the Commission. The data request seeks to discover the factual basis of the statements and the contentions made in the statements. That is proper and appropriate discovery. Nor did Malibu litigation exist to my knowledge in December 2007 in which experts were involved. Even if SCE made its statements based on expert testimony in anticipation of litigation, it cannot make factual contentions and at the same time deny discovery of the basis for the contentions and the statement. Also, SCE is certainly required to provide all facts and expert opinions leading to its statements and conclusions, to the extent they were formed or made from facts or conclusions that were not rendered by experts hired by Edison for this proceeding or some other Malibu litigation. Those contributions to SCE's statements could have come from lay observation of data, or expert weather bureau data.

CPSD believes this data request is proper in its current form.

Question No. 24 (SCE discussion)

This question seeks expert analyses regarding wind speeds in Malibu Canyon on October 20, 2007. SCE objects to this question on the grounds that it prematurely seeks expert evaluations which have not been completed and it seeks privileged information which is protected from disclosure under the attorney work product doctrine.

Question No. 24 (CPSD response)

SCE's objection may have validity, although we cannot ascertain this without additional research and review. CPSD agrees to forego this data response for now and to pursue it when SCE's experts release their testimony.

Mr. Brian A. Cardoza
June 22, 2009
Page 5

Question No. 25 (SCE discussion)

This question seeks all communications between SCE and its experts. SCE objects to this question on the same grounds as stated in response to No. 24.

Question No. 25 (SCE discussion)

CPSD agrees to forego this data request for now, for the same reasons as CPSD agreed to do so for Question No. 24.

Question No. 28 (SCE discussion)

This question seeks all communications between SCE and other utilities for the 17-year period between January 1, 1990 and October 20, 2007 regarding wind load calculations within our entire service territory. SCE objects to this question on the same grounds as stated in response to No. 1 above. SCE does not maintain a central file in which such general "communications with utilities" are stored. In order to respond to this question, it would be necessary for SCE to review each work order dated within the 17 year period on file in the regional and district offices throughout our 50,000 square mile service territory.

Question No. 28 (CPSD response)

Compromising this data request poses a problem. Much of this proceeding rests on the frequency and nature of wind loading communications between and among joint pole owners during the period from 1990 through 2007. This is true both for the three poles at issue and for the system in general.

However, if SCE commits to identifying and producing a knowledgeable Edison employee to testify at a deposition about the nature of written and verbal inter-utility communications about wind loading, CPSD is willing to consider limiting this data request to a search for large projects between 1990 and 2007, and a small and agreed upon sample of other projects. I don't have an idea in mind of "large projects" and am open to your suggestions on this matter.

Brian, please give me a call or e-mail me if you have any questions. Thank you for the opportunity to work this out informally rather than by motion.

Sincerely,



Robert Cagen
Staff Counsel
rcc@cpuc.ca.gov
(415) 703-2197

Cc: James Lehrer, SCE
Robert F. Lemoine, SCE

EXHIBIT 4

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian Cardoza
Title: Attorney
Dated: 06/04/2009

Question 01:

Provide all documents that refer or relate to wind load safety factor calculations, done between January 1, 1990 and October 30, 2007, to establish or confirm pre-construction compliance with GO 95, for any wooden utility poles entirely or jointly owned by SCE. This data request applies both to calculations made for planned new poles and for planned new assets to be attached to existing poles.

Response to Question 01:

SCE objects to this question on the grounds that it is overbroad, vague, unduly burdensome and seeks irrelevant documents not reasonably calculated to lead to the discovery of admissible evidence. This question covers a 17-year period. To the extent the requested information exists and has not been discarded over time, the ability to identify, gather and summarize these documents would require SCE to perform a manual search of many thousands of records filed in the 34 District offices within SCE's 50,000 square mile service territory. Such an effort, to the extent possible, would take months to complete and would require SCE to divert limited resources from other duties in an attempt to fully respond to this question.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 02:

Provide all manuals, memos, instructions, standards, directives, and all other documents created or used by SCE or its agents between January 1, 1990 and October 30, 2007, that refer or relate to the circumstances under which SCE identified that a GO 95 wind load safety calculation must or should be made, and to the circumstances under which SCE identified that these calculations need not be made.

Response to Question 02:

SCE objects to this question on the grounds that it is vague, overbroad and unduly burdensome. This question seeks materials covering a 17-year period. Responsive manuals and training materials are routinely updated as changes are made over time. SCE does not formally retain outdated versions of such materials. Notwithstanding these objections and without waiving them, SCE is attempting to comply with this request and anticipates serving responsive materials within 15 days.

Southern California Edison
2007 Malibu Canyon Fire OII L09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Jeff Billingsley

Title: Manager of Transmission Asset Management

Dated: 06/04/2009

Question 03:

Provide each and all wind load safety calculations done between January 1, 1990 to October 30, 2007 for any of the three poles that broke in October 2007, and identify clearly when the calculation provided was made. Provide such calculations regardless of whether SCE or agents, or whether another entity, made the calculations.

Response to Question 03:

SCE previously provided CPSD with materials responsive to this question. Please refer to the document pages bearing Bates numbers SCE 000778 - 000787. Approximate date of calculation, August/September 2003.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 04:

Provide a summary of the search that SCE did to locate the calculations requested in numbers 1, 2 and 3 above.

Response to Question 04:

Re: Question 1 – See objection, above.

Re: Question 2 - SCE contacted representative subject matter experts and responsible department representatives and asked them to locate and provide copies of relevant and responsive documents. Specifically, SCE directed its request for responsive materials to its Transmission Planning Dept., Performance Management and Analysis Group, Edison Carrier Solutions, Central Design, Publications and Standards and TDBU Training.

Re: Question 3 – SCE contacted subject matter experts and responsible department representatives in its Transmission Department, Edison Carrier Solutions, SCE's Joint Pole Organization, Technical Planning, Par Electric (SCE contractor) and District Planning for assistance in locating and copying relevant and responsive materials.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 05:

For each installation or reconstruction that occurred on any of the three poles between January 1, 1990 and October 21, 2007, provide a retrospective wind load calculation to demonstrate that the allowable safety factors were not exceeded under GO 95. Provide the calculation regardless of identity of the entity or entities owning the assets attached to the poles at the time.

Response to Question 05:

SCE objects to this request on the grounds that it is unduly burdensome and seeks premature expert discovery and information protected from disclosure under the attorney work product doctrine. SCE will disclose its expert's evaluations at the appropriate time through its testimony.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 06:

If SCE is unable to provide such a calculation for each installation or reconstruction that occurred between January 1, 1990 to October 30, 2007, provide the reasons why SCE cannot provide the calculation and the data that is not available and would be required for the calculation.

Response to Question 06:

SCE incorporates by reference its objections to Question 5, as set forth above.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 07:

Identify and explain the conditions under which SCE contends that a wind loading safety factor calculation was required to be conducted for “planned” reconstruction or installation (see GO 95, 44.1) between 1990 and October 2007.

Response to Question 07:

SCE is still in the process of reviewing these questions and anticipates supplementing this response within 15 days.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 08:

Identify and explain the conditions under which SCE contends that a wind loading safety factor was not required to be conducted for “planned” reconstruction or installation (see GO 95, 44.1) between 1990 and October 2007.

Response to Question 08:

SCE is still in the process of reviewing these questions and anticipates supplementing this response within 15 days.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian Cardoza
Title: Attorney
Dated: 06/04/2009

Question 09a-d:

For each of the calendar years of 2003, 2004, 2005, 2006, and 2007, provide the following data:

- A. A list of all wind load calculations conducted during these calendar years to establish compliance of planned installation and construction (Rule 44.1) with the safety factors specified in GO 95. Provide the list by date of calculation, identity of person or persons who did the calculation, date of installation and construction associated with the construction, and a general description of the construction or installation.
- B. Provide all such wind load safety calculations listed in "A".
- C. Provide a list of all installation and construction started during each of the calendar years that did not generate a wind load safety calculation.
- D. For each entry on the list in "C" above, explain the reasons why no wind load calculation was made.

Response to Question 09a-d:

SCE objects to this question on the grounds that it is overbroad, vague, unduly burdensome and seeks irrelevant documents, not reasonably calculated to lead to the discovery of admissible evidence. This question covers a period of several years. To the extent the requested information exists and has not been discarded over time, the ability to identify, gather and summarize these documents would require SCE to perform an internal search of many thousands of records filed in the 34 District offices throughout SCE's 50,000 square. mile service territory, and external search of documents held by the various contractors that performed this work for SCE during this time period. Such an effort, to the extent possible, would take months to complete and would require SCE to divert limited resources from other duties in an attempt to fully respond to this question.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 10:

Provide a chronological list of all notifications or complaints about any of the three poles or their loads received by SCE between 1993 and 2007 from any source, and provide a summary of the complaint or notification.

Response to Question 10:

SCE is unaware of any notifications or complaints in this regard.

Southern California Edison
2007 Malibu Canyon Fire OII 1.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 11:

Provide all documents that refer or relate to the notifications or complaints identified in the response to number 10 above.

Response to Question 11:

See response to Question 10, above.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance Inspection
Dated: 06/04/2009

Question 12:

Refer to SCE's April 20 report (report), p. 10 and 11, Rule 12.2 discussion. Provide all written reports of the intrusive testing done in 1990, 2003, or any other time, and all documents that refer or relate to all intrusive testing done on any of the three poles at any time.

Response to Question 12:

SCE has previously responded to this request. See SCE documents bearing Bates numbers 000027 -000036, 000078, 000085, and 000193.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Benito Gongora

Title: Manager, Outside Plant Construction

Dated: 06/04/2009

Question 13:

Refer to report, p. 11, Rule 31.1 discussion. SCE refers to its installation of “a private communication circuit in 1996. A contemporaneous pole loading study has not been located”. Provide the study to CPSD. If it cannot be located describe the search for it that SCE conducted, and provide all documents that refer to the study, and identify by name and position all persons who can provide evidence.

Response to Question 13:

SCE has determined that no study was performed.

SCE contacted Edison Carrier Solutions and was able to retrieve and review the subject work order. In addition, SCE spoke with subject matter experts who worked in Edison Carrier Solutions’ Business Unit during the subject timeframe.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 14:

Refer to report, p. 11, Rule 31.1 discussion. SCE states that “it is SCE’s belief that poles 1169252E and 1169253E were not overloaded by the addition of its own telecommunication cable because at the time of construction, SCE transmission poles were routinely designed to accommodate additional load such as, the future installation of its own communications circuits, if necessary.” Does SCE contend that this routine design to accommodate additional load alleviates SCE from conducting additional wind load safety calculation that otherwise would be required by GO 95 for the planned installation of its own communications circuits or other items? If the answer is anything other than an unqualified “no”, explain the basis for SCE’s contention that SCE’s design alleviates the utility’s responsibilities under GO 95.

Response to Question 14:

SCE is still in the process of reviewing these questions and anticipates supplementing this response within 15 days.

Southern California Edison
2007 Malibu Canyon Fire OII L09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Sam Stonerock
Title: Corporate Representative
Dated: 06/04/2009

Question 15a-b:

Refer to PT&T's James Kenney's February 8, 1974 letter to SCE VP Robert Coe (letter produced as attachment to SCE's April 20, 2009 report). The letter refers to an SCE proposal of November 2, 1973 "to overbuild our facilities in Malibu Canyon". Provide a copy of this proposal.

A. Does SCE contend that any or all of the three poles that failed and their appurtenant attachments or support were "overbuilt"? If the answer is anything other than an unqualified "no", list and explain each specific way that the pole or poles and other equipment attached them were "overbuilt".

B. If SCE contends that any or all of the three poles that failed and their appurtenant attachments or support were "overbuilt", provide calculations done before construction that demonstrate the safety factor or the poles as designed to be constructed. If no such calculations exist, re-create the safety factor calculations of the poles with the material planned for the poles at the time of construction.

Response to Question 15a-b:

The nature of the question suggests that CPSD may not understand the common industry term "overbuild" and therefore may have jumped to an inappropriate and prejudicial conclusion.

The term "overbuild" as used in the referenced 1974 letter and as commonly used today, simply means: to build above. This term does not imply or infer that SCE lines or any associated line elements were installed in such a manner as to create a non-conformance with GO 95 or that an unsafe condition resulted.

In fact, prior to the emergence of fiber-optic technology, SCE entered into special agreements with companies like PT&T, for the purpose of mitigating electromagnetic interference with communication signals. Such interference was typically caused by the proximity of overhead electric supply lines. These agreements would typically address circumstances where a non-SCE open-wire or cabled communication circuit existed on joint use utility poles and remedies. Under such agreements, SCE would either alter the voltage class of an existing supply line (i.e. Class H to Class E) or add a new Class E supply line to the supporting poles (overbuild). In those circumstances, necessary measures would be employed to prevent or remedy electromagnetic

interference with signals transmitted on the communication wires or cables below (underbuild).

To the extent CPSD has misinterpreted common industry terminology in the above referenced PT&T letter, SCE objects to this question.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Frederick C. McCollum

Title: Senior Investigator

Dated: 06/04/2009

Question 16:

Provide all documents and photos that show or refer or relate to any of the three poles leaning or varying from vertical at any time between 1990 and October 20, 2007. Provide these documents and photos regardless whether the authorship was utility personnel or agents, or non-employees such as customers or other public members, or any other source.

Response to Question 16:

SCE is unaware of the existence of any responsive documents. Photographs of the poles prior to the fire, obtained from public domain sources after the fire, are attached as Appendix A.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 17:

SCE's August 20 report lists a number of distribution circuit patrols (pp.4 and 5), detailed distribution inspections (p. 5), transmission patrols (pp. 5 and 6), intrusive inspections (p.6), and streetlight patrols (pp. 7 and 8) that SCE identified as involving the three poles from 1990 through 2007. Did SCE personnel or agents take note during any of those patrols or inspections that the three poles or any of them were leaning or varied from vertical in any measure? If yes, provide all documents authored between 1990 and October 2008 that reflect or refer to any SCE personnel or agents notation or reference to such leaning or variance.

Response to Question 17:

SCE objects to this question on the grounds that it is vague as to the term "take note." This question as phrased is also unduly burdensome and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections and without waiving them, SCE has produced documents related to the subject inspections. SCE is unaware of any notations in these records of leaning poles. Please refer to documents bearing Bates numbers SCE000001-000057.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Mel Stark

Title: Manager Maintenance & Inspection

Dated: 06/04/2009

Question 18:

At any time between 1990 and 2007, did SCE engineers take into account in their designs for planned installation and construction on the three poles and attached and appurtenant structures, that winds speed in Malibu Canyon may exceed winds speed in adjacent areas? If yes, detail and explain how SCE took such winds into account for the poles and the other assets associated with the poles.

Response to Question 18:

SCE objects to this question on the grounds that it is vague and ambiguous. SCE further objects to the extent this question is based upon the faulty premise that wind speeds in Malibu Canyon may exceed those of adjacent areas.

SCE Engineers took into account the historic wind speeds in Malibu Canyon as appropriate. SCE's design criteria are based on an 8-pound wind criteria which is appropriate for the geographical area. SCE does not believe that Malibu Canyon is typically a high wind area or commonly experiences wind speeds greater than adjacent areas sufficient to warrant construction beyond the 8-pound criteria. SCE reserves the right to comment on the wind event on the day of the subject event to determine whether and to what extent the wind speed exceeded the normal and expected conditions.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Arthur Peralta
Title: Scientist
Dated: 06/04/2009

Question 19:

Provide all memos and other documents in use by SCE or its agents from 1990 through October 2007 and that refer or relate to construction and maintenance of wooden poles in areas subject to stronger average winds than surrounding areas.

Response to Question 19:

SCE objects to this question on the grounds that it is vague, ambiguous, overbroad and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections and without waiving them, SCE will provide documents it believes to be responsive to this question within 15 days as consistent with its response to Question 2, above.

Southern California Edison
2007 Malibu Canyon Fire OII 1.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 20:

Did SCE construction and maintenance managers and supervisors generally understand or experience that winds in Malibu Canyon may exceed the strength of winds measured in adjacent or surrounding areas? If the answer is anything other than an unqualified “no”, provide all SCE documents that refer or relate to winds in Malibu Canyon.

Response to Question 20:

SCE objects to this request as vague and ambiguous. SCE further objects to the extent this question is based upon the faulty premise that wind speeds in Malibu Canyon may exceed those of adjacent areas. Notwithstanding these objections and without waiving them, SCE does not agree that wind speeds in Malibu Canyon require additional construction beyond the designated light loading requirements as defined in GO 95.

Attached as Appendix B are responsive documents.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Mel Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 21:

SCE states that it replaced the original guy pole in 1983 (SCE report, p.12). Provide all documents that relate or refer to the reasons why SCE replaced the pole at that time.

Response to Question 21:

SCE previously provided responsive documents. See SCE documents bearing Bates numbers 000484-000493.

Southern California Edison
2007 Malibu Canyon Fire OII L09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Mel Stark

Title: Manager Maintenance & Inspection

Dated: 06/04/2009

Question 22:

Provide all studies, analyses, and calculations done between 1990 and October 2007, to ascertain that safety factors associated with the three poles had not been reduced to less than two thirds of the construction safety factors (see SCE report pp. 12 and 13, section re Rule 44.2).

Response to Question 22:

SCE objects to this question on the grounds that it is vague, ambiguous and overbroad. Notwithstanding these objections and without waiving them, SCE incorporates by reference, previously provided SCE documents bearing Bates numbers 000027 -000036, 000078, 000085, and 0000193.

Southern California Edison
2007 Malibu Canyon Fire OII 1.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 23:

SCE states in its report that on December 20, 2007 it “informed the CPSD that it believed the wind speeds at the time of the incident exceeded 108 miles per hour” (SCE report, p.14). SCE then states that its belief was based upon “wind measurements taken at two nearby peaks, Whitaker Peak and Laguna Peak”. With respect to these statements, provide each and all facts and documents which support SCE’s apparent belief that wind measurements on October 20, 2007 at those two locations were characteristic of the wind speeds at Malibu Canyon at the same times.

Response to Question 23:

SCE objects to this question on the grounds that it mischaracterizes the cited passage from SCE’s April 20, 2009 Report. SCE specifically noted in its Report that “discovery and investigation in this area is continuing and that conclusive findings concerning wind speeds prevailing at the site at the time of the fire are entirely premature at this time.” SCE provided evidence to the CPSD prior to this OII that wind speed recordings, obtained from the National Weather Service, demonstrated wind speeds in the area exceeding 108 miles per hour. This evidence was apparently disregarded by the CPSD.

Moreover, on December 20, 2007, SCE responded to CPSD Investigator Kan-Wai Tong’s question regarding wind speed. The question posed was:

What was the wind speed at the time of the incident? Please include the source of the data and distance from the location of the incident.

SCE responded as follows:

It is believed the wind speed exceeded 108 mph at the time of the incident. This initial assessment is based on the public information statement released by the National Weather Service. These measurements were taken at two nearby peaks, Whittaker Peak and Laguna Peak. Whittaker Peak is located approximately 39 miles north of the incident location. Laguna Peak is located approximately 21 miles east of the incident location.

SCE subsequently provided a copy of the referenced National Weather Service Public Information Statement to Investigator Tong as an attachment to a letter dated February 4, 2008.

At the time the question was posed, this was the only document in SCE's possession which contained data of the wind conditions on October 21, 2007. SCE believed the wind speeds in the general area of the incident exceeded 108 mph based upon this evidence provided. It would be up to meterological experts to later determine the ultimate significance of this evidence.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 24:

Provide all expert analyses or statements that estimate wind speeds that occurred anywhere in Malibu Canyon on October 20, 2007.

Response to Question 24:

SCE objects to this question on the grounds that seeks premature expert discovery and otherwise seeks information protected from disclosure under the attorney work product doctrine.

Southern California Edison
2007 Malibu Canyon Fire OII 1.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 25:

Provide all correspondence and other documents sent by SCE to experts retained by SCE to submit testimony about wind speed that occurred in Malibu Canyon on October 20, 2007.

Response to Question 25:

SCE objects to this question on the grounds that seeks premature expert discovery and otherwise seeks information protected from disclosure under the attorney work product doctrine.

Southern California Edison
2007 Malibu Canyon Fire OII 1.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 26:

Did firefighting personnel or any fire department, either verbally or in writing, estimate to SCE or to any of its personnel, the speed of the wind in Malibu Canyon on October 20, 2007? If SCE's response is anything other than an unqualified "no", provide all written documents and communications that refer or relate to such estimates, and provide a summary of all such verbal communications (by date and time, names of personnel for SCE and fire dept., and statements made about wind speed).

Response to Question 26:

Not directly, but by inference. On October 30, 2007, SCE personnel spoke with Fire Department Captain Boze at Station 125 of the Los Angeles County Fire Department in Calabasas, California. Captain Boze described the wind at "howling" on the morning of October 21, 2007. He further stated that when he arrived at the fire's location, he needed to fully lean into the wind with one leg extended behind him to brace himself and prevent from being blown over, even though he was wearing all his fire gear and weighed 210 pounds without gear. In addition, further references to wind speed are contained in County of Los Angeles Fire Department Accidental Brush Report 07-260 (SCE 000058-000061).

Southern California Edison
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DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 27a:

Refer to SCE's report, p.2, that states:

"SCE further notes that it recently received documents from another Respondent to this proceeding which appear to relate to or reflect potentially relevant calculations and analyses performed by SCE during the subject time-period. SCE's search for relevant information did not identify these documents. SCE is now in the process of searching for and authenticating the subject materials".

With respect to the above, provide:

- A. The identity of the Respondent and the documents SCE referred to.

Response to Question 27a:

- A. Attachment KD-3 and KD-4 of "Response of NextG Network of California, Inc. to the OII.
B. SCE documents Bates stamped SCE 000772 through SCE 000777.
C. Jim Austin and Jack Van Beyeren.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 27b-c:

Refer to SCE's report, p.2, that states:

“SCE further notes that it recently received documents from another Respondent to this proceeding which appear to relate to or reflect potentially relevant calculations and analyses performed by SCE during the subject time-period. SCE's search for relevant information did not identify these documents. SCE is now in the process of searching for and authenticating the subject materials”.

With respect to the above, provide:

- B. A copy of the calculations and analyses that SCE performed during the subject time-period.
- C. Identify each person or person who conducted, reviewed, or approved each such calculation or analysis.

Response to Question 27b-c:

- A. Attachment KD-3 and KD-4 of “Response of NextG Network of California, Inc. to the OII.
- B. SCE documents Bates stamped SCE 000772 through SCE 000777.
- C. Jim Austin and Jack Van Beyeren.

Southern California Edison
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DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 28:

Provide a copy of each and all written communications and all other documents generated between January 1, 1990 and October 20, 2007 between SCE and any other utility or utilities and that refer or relate to wind load analyses or calculations. In SCE's response include communications both from Edison and those sent to Edison.

Response to Question 28:

SCE objects to this question on the grounds that it is overbroad, vague, unduly burdensome and seeks irrelevant documents not reasonably calculated to lead to the discovery of admissible evidence. This question covers a 17-year period. To the extent the requested information exists and has not been discarded over time, the ability to identify, gather and summarize these documents would require SCE to perform a manual search of many thousands of records filed in the 34 District offices throughout SCE's 50,000 square mile service territory. Such an effort, to the extent possible, would take months to complete and would require SCE to divert limited resources from other duties in an attempt to fully respond to this question.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Melvin Stark
Title: Manager Maintenance & Inspection
Dated: 06/04/2009

Question 29:

Provide a copy of each and all written communications and all other documents generated between January 1, 1990 and October 20, 2007 between SCE and any other utility or utilities that refer or relate to planned reconstruction or installation associated with the three poles or their loads. In SCE's response include communications both from Edison and those sent to Edison.

Response to Question 29:

SCE attached responsive documents as Appendix C.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Larry Chow
Title: Manager of Joint Pole Organization
Dated: 06/04/2009

Question 30a-c:

Provide a copy of each and all written communications and all other documents generated from January 1, 1990 and October 20, 2007 between SCE and the Joint Pole Organization (sent either way) or its predecessors, that refers or relates to the following:

- A. Wind Load Calculations associated with any of the three poles or their loads.
- B. Planned reconstruction or installation associated with the three poles or their loads.
- C. Agreements, standards, instructions, suggestions, and memos about wind load calculations, wind load analyses, wind load procedures, and how and when to conduct them.

Response to Question 30a-c:

SCE objects in general to this question on the grounds that it is vague and ambiguous as to the term "Joint Pole Organization." In responding to this question, SCE interprets "Joint Pole Organization" to mean "Southern California Joint Pole Committee."

30A

The Joint Pole Authorization (JPA) process among pole owners does not require wind load calculations to be sent between member utilities and the Southern California Joint Pole Committee (SCJPC) Office. The SCJPC Office primary function is to act as a clearinghouse for joint pole transactions among members. The typical document generated to the SCJPC Office by members is the "Final Authorization for Joint Pole Transaction." SCE incorporates by reference those documents produced in the response to Question 29 above.

30B

The JPA process does not require documents for planned reconstruction or installation to be provided to the SCJPC Office. The requirement as specified in the SCJPC Routine Handbook calls for these documents to be sent by the issuing member to all members of record for the given pole(s). The typical document generated among members is the "Authorization for Joint Pole Transaction." SCE incorporates by reference those documents produced response to Question 29 above. The SCJPC Routine Handbook provided is proprietary and is provided to CPSD pursuant to the confidentiality provisions of Public Utilities Code section 583 and General Order 66-C. The SCJPC Routine Handbook is attached within Appendix D.

30C

Attached as Appendix D, are SCJPC Meeting minutes from June 2007 to August 2007, which request that members who purchase an interest in SCE solely or jointly owned poles, provide wind load data to aid in the JPA review process. Also included is a typical J.P. (Joint Pole) Memorandum Form 7 which circulated between members after August 2007. This form was used when a member submitted a JPA for purchase of an interest in an SCE solely or jointly owned where the JPA came without wind load information. This form specifies what additional information is needed to complete the JPA approval process.

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DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 31a-b:

Refer to April 20 Sprint report, p. 20. Sprint refers there to a “field meet” between SCE and BMS before October 22, 2003 to review “wind loading concerns”. With respect to this reference, state:

- A. Whether the field meet took place, and if so when, where, and the names of each person attending the meeting, names of their employers, and their functions.
- B. Provide all documents and correspondence that refer or relate to the field meet or to conclusions reached from the field meet.

Response to Question 31a-b:

SCE is informed and believes a field meet took place between SCE contract employee Jim Austin and Casey Doherty of NextG Network for the sole purpose of exploring the feasibility of Next G Network’s installation of a cell site on Pole No. 1920871E located on Las Virgines Road, 128 feet north of Waycross Road in Malibu, California. Documents referring and relating to this field meet have previously been provided and are identified with Bates numbers SCE 000772 through SCE 000777.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Jeff Billingsley
Title: Manager of Transmission Assets Management
Dated: 06/04/2009

Question 32a-c:

Refer to Sprint report, p. 21. Sprint there refers to its conclusion that “SCE *did* verify the wind loading results for this pole”. With respect to this contention, state:

- A. Whether SCE did verify wind loading results for the pole.
- B. If yes, all documents generated before October 20, 2007 that verify any wind loading results for this pole.
- C. Describe the method that SCE used to verify wind loading results for the pole.

Response to Question 32a-c:

SCE objects to this question on the grounds that it does not appear to be an accurate reading of the cited passage from Sprint’s Report. Notwithstanding this objection and without waiving it, SCE responds as follows:

- A. Wind loading results were reviewed.
- B. SCE incorporates by reference documents previously produced. Please refer to documents bearing Bates numbers SCE 000778-000797.
- C. SCE used a spreadsheet developed to determine maximum span separation in various loading scenarios.

Southern California Edison
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DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 33a-c:

Refer to Sprint report, p. 15. Sprint there refers to a wind loading determination by Michael Smith on February 7, 2003 that the pole attachments proposed by Sprint would comply with GO 95. With respect to this reference:

- A. State whether SCE had this written determination (Ex. 33) in its possession at or near February 7, 2003.
- B. Provide all documents that refer or relate to Sprint's determination.
- C. Provide all correspondence between SCE and any other person or entity that refers or relates to the 2003 determination of compliance with GO 95 or to the meetings or discussions that led to this conclusion.

Response to Question 33a-c:

- A. After a thorough and diligent search, SCE has been unable to locate a copy of the referenced document. Accordingly, it is presently unknown whether SCE had this document in its possession at or near February 7, 2003.
- B. Please see response 33(A).
- C. SCE is unaware of any responsive documents.

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DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Brian A. Cardoza
Title: Attorney
Dated: 06/04/2009

Question 34:

Provide all SCE manuals, memos and instructions to managers, supervisors and field personnel on how to assess by visual inspection or other means whether wood poles are overloaded.

Response to Question 34:

SCE incorporates by reference documents it anticipates will be produced in response to Question 2.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD

Prepared by: Jeff Billingsley

Title: Manager of Transmission Asset Management

Dated: 06/04/2009

Question 35:

Provide all wind load calculations or analyses done by anyone from January 1, 1990 through October 23, 2007 that relate any of the three subject poles and planned reconstruction or installation associated with the poles.

Response to Question 35:

SCE incorporates by reference documents previously produced. Please refer to documents bearing Bates numbers SCE 000778-000797.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 36a:

Provide an organizational chart as of July 1, 2003, showing:

A. organization of the divisions and groups responsible for making wind load assessments and calculations associated with planned installation and Reconstruction, and for approving them.

Response to Question 36a:

SCE objects to this question on the grounds that it is vague, ambiguous and overbroad, in that it is not limited to the poles at issue. SCE further objects to the extent the question seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections and without waiving them, SCE provides responsive documents limited to SCE's Northwest Transmission Design, Santa Clarita Division as Appendix E. SCE has been unable to locate an organizational chart for SCE's Thousand Oaks Service Center Distribution Group for the subject period.

Southern California Edison
2007 Malibu Canyon Fire OII I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-01

To: CPSD
Prepared by: Frederick C. McCollum
Title: Senior Investigator
Dated: 06/04/2009

Question 36b-c:

Provide an organizational chart as of July 1, 2003, showing:

- B. Provide the names and job titles of all SCE personnel responsible on July 1, 2003 for making such wind load assessments and calculations, and for approving them.
- C. Provide the duties and responsibilities of persons identified in “B” above with respect to wind load assessments and calculations, and approvals.

Response to Question 36b-c:

SCE objects to this question on the grounds that it is vague, ambiguous and overbroad, in that it is not limited to the poles at issue. SCE further objects to the extent the question seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections and without waiving them, SCE provides responsive documents limited to SCE’s Northwest Transmission Design, Santa Clarita Division as Appendix E. SCE has been unable to locate an organizational chart for SCE’s Thousand Oaks Service Center Distribution Group for the subject period.

EXHIBIT 5



SOUTHERN CALIFORNIA
EDISON

An EDISON INTERNATIONAL Company

Brian A. Cardoza
Senior Attorney
brian.cardoza@sce.com

July 9, 2009

VIA ELECTRONIC MAIL & U.S. MAIL

Robert C. Cagen, Esq.
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298
rcc@cpuc.ca.gov

Re: Malibu Fire OII, I.09-01-018
CPSD Date Request No. 1 to SCE, Dated
June 4, 2009

Dear Bob:

Yesterday, SCE served Amended Responses to the CPSD's Data Request No. 1. Thank you again for kindly agreeing to the extension to respond. In our Amended Response, we provided documents and objections with regards to questions 2 and 19, and further amended our previous responses to questions 7, 8 and 14. I hope these responses are satisfactory given the nature of the questions and apparent scope of these proceedings.

This letter also responds to your June 22 letter in which you endeavored to resolve SCE's objections stated in our June 15 letter to you. Please note that your June 22 letter came after SCE produced documents on June 20, 2009 and did not reference the actual production.

Regarding our June 15 letter; as I am sure you are aware, there was no obligation for SCE to provide objections in advance of the production. SCE stated its preliminary objections in the interest of timeliness and courtesy and reserved the right to supplement its preliminary objections with appropriate additional objections to be served with the responses to the data request. To date, CPSD has not cited applicable authority for the proposition that SCE has waived any objections in this context.

Question No. 1:

This request seeks all wind loading calculations covering a 17 year history throughout SCE's service territory.

CPSD claims that this information is relevant and critical to the case as it needs to understand why there is an apparent lack of documentation with regards to wind loading for the subject poles or whether this is a system characteristic. To the contrary, as is clear from the Order Instituting Investigation, at issue in this case is the integrity of pole construction for the three poles involved in this matter as guided by General Order 95. SCE maintains that system wide wind

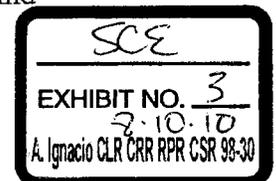
P.O. Box 800
#1669482

2244 Walnut Grove Ave.

Rosemead, California 91770

(626) 302-6628

Fax (626) 302-1904



loading documentation goes far beyond the stated scope of this OII. A production limited to even a couple of years would be unduly burdensome, costly and time-consuming. Issues involving system wide practices are more properly addressed through a generic statewide rulemaking, not in an adjudicatory proceeding addressing a narrow set of circumstances. For these reasons, SCE objects to the request to produce wind loading records for 2003 and 2007 for its entire system.

Question No. 5 and 6:

This question seeks premature expert work product in the form of retrospective wind loading calculations. SCE does not believe this request is appropriate at this time and stands upon its previous objections.

The CPSD states that it needs this analysis because no wind loading studies performed by SCE have been provided. However, SCE has provided wind loading studies in response to this data request. Accordingly, CPSD's assertion that no SCE wind loading studies have been provided appears moot. Again, the CPSD contends that SCE failed to comply with GO 95 and, as such, has the burden of making this showing. If this showing requires calculating how the subject poles were overloaded, it is incumbent upon CPSD to do so with their own experts.

Question No. 9:

This question also seeks system wide wind loading information covering a 17 year period. Although the CPSD proposes to limit the inquiry to two years, even this limitation would pose an unreasonable burden upon SCE to comply; further, the revised question still exceeds the scope of this OII. For the same reasons SCE stated in response to Question 1, SCE stands upon its prior objections.

Question No. 19:

This question seeks all memos and other documents that "refer or relate to construction and maintenance of wooden poles in areas subject to stronger than average winds than surrounding areas." SCE stands upon its prior objections. Notwithstanding these objections, SCE has produced a wind speed analysis involving Malibu Canyon and surrounding areas which predates the fire. SCE also produced manuals and internal design materials as Appendix F to its Amended Response, which are arguably responsive to this question.

Question No. 23:

This question seeks information regarding pre-OII statements made by SCE regarding wind speed in Malibu Canyon at the time of the fire. Your June 22, 2009 letter presumably was not prepared with the benefit of reviewing SCE's June 19, 2009 response to this question. If you are still not satisfied with SCE's response in this regard, please let me know.

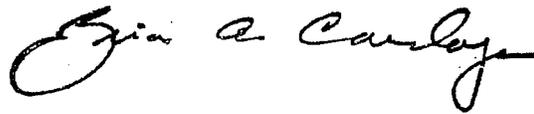
Question No. 28:

This question seeks all documents referring or relating to communications between utilities, covering a 17 year period within our entire service territory, on the subject of wind loading. For the

reasons previously noted, a search for such materials would be both unduly burdensome, untenable and would constitute a search for irrelevant material. While we appreciate your offer to limit the inquiry to "large projects between 1990 and 2007" and "sampling" of other projects, these limitations pose similar problems to those previously noted. I would like to discuss this issue directly with you. I think we can get you the information CPSD may need on this subject without undertaking an unduly burdensome search for irrelevant documents.

Thank you, Bob, for your comments. I hope our amended responses, as well as, the supplemental documents we recently provided in augmentation of our Report of April 20, 2009, are of assistance. As always, please feel free to give me a call to discuss lingering concerns or thoughts.

Very truly yours,

A handwritten signature in cursive script that reads "Brian A. Cardoza". The signature is written in dark ink and is centered on the page.

Brian A. Cardoza

CC: James M. Lehrer
Robert F. LeMoine

EXHIBIT 6

1 BEFORE THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF CALIFORNIA

3 - - -

4 Investigation on the)
5 Commission's Own Motion into the)
6 Operations and Practices of)
7 Southern California Edison)
8 Company, Cellco Partnership LLP)
9 d/b/a Verizon Wireless, Sprint)
10 Communications Company LP, NextG) Investigation 09-01-018
11 Networks of California, Inc. and) (Filed January 29, 2009)
12 Pacific Bell Telephone Company)
13 d/b/a AT&T California and AT&T)
14 Mobility LLC, Regarding the)
15 Utility Facilities and the)
16 Canyon Fire in Malibu of)
17 October 2007.)
18 -----))

19 DEPOSITION OF
20 ARTHUR DEAN PERALTA
21 LOS ANGELES, CALIFORNIA
22 MARCH 5, 2010

23 ATKINSON-BAKER, INC.
24 COURT REPORTERS
25 (800) 288-3376
 www.depo.com

 REPORTED BY: CARYN CARRUTHERS,
 CSR NO. 4389, RPR, CP, CLR

 FILE NO.: A401EA6

1 BEFORE THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF CALIFORNIA

3 - - -

4 Investigation on the)
5 Commission's Own Motion into the)
6 Operations and Practices of)
7 Southern California Edison)
8 Company, Cellco Partnership LLP)
9 d/b/a Verizon Wireless, Sprint)
10 Communications Company LP, NextG) Investigation 09-01-018
11 Networks of California, Inc. and) (Filed January 29, 2009)
12 Pacific Bell Telephone Company)
13 d/b/a AT&T California and AT&T)
14 Mobility LLC, Regarding the)
15 Utility Facilities and the)
16 Canyon Fire in Malibu of)
17 October 2007.)
18 -----))

19 Deposition of ARTHUR DEAN PERALTA, taken on
20 behalf of the Public Utilities Commission of
21 the State of California at 320 West 4th Street,
22 Suite 500, Los Angeles, California 90013,
23 commencing at 11:16 a.m., Friday, March 5,
24 2010, before Caryn Carruthers, CSR No. 4389,
25 RPR, CP, CLR.

1 by districts.

2 Q. Have you ever done work on a steel pole that
3 failed?

4 A. No.

5 Q. In what format do you receive notification of a
6 failed pole?

7 A. Either by e-mail, phone, or if I'm in a
8 particular district, they'll get ahold of me there while
9 I'm at the district if we have a structure that does go
10 down.

11 Q. Do you keep your e-mails?

12 A. Not all of them.

13 Q. The ones that you receive about failed poles?

14 A. Not all the time.

15 Q. Okay. Did you receive any notification of
16 three poles that failed in Malibu Canyon in late October
17 of 2007?

18 A. Got a call.

19 Q. What were you asked to do?

20 A. Look at three structures that went down.

21 Q. Do you recall the location of those structures?

22 A. In Malibu?

23 Q. Hm-hmm.

24 Do you recall what street they were on?

25 A. I couldn't tell you the name of the road.

1 Q. Who called you?

2 A. Mr. Rick McCollum.

3 Q. What time of day did Rick McCollum call you?

4 MR. CARDOZA: Don't guess. If you know, you can
5 testify.

6 THE WITNESS: I can't give you the time.

7 BY MR. MOLDAVSKY:

8 Q. But you recall it being in late October of
9 2007?

10 A. I know it was in October, but I couldn't tell
11 you what time and date.

12 Q. Okay. Other than telling you the -- in regard
13 to the three poles that you looked at in October of 2007,
14 what facilities were on them?

15 A. I could tell you there was conductors and
16 communication on the pole that I remember.

17 Q. On all three poles?

18 A. No. At least two of the poles. One -- Another
19 structure was a guy structure.

20 Q. When you say a "guy structure," what are you
21 referring to?

22 A. A structure that supports a load, due to the
23 structure being on an angle or dead-end.

24 Q. Were these three poles next to a canyon?

25 A. I believe so.

1 MR. CARDOZA: Just object as vague as phrased.

2 They were in a canyon, we can stipulate, but
3 you mean next to like a drop-off or slope?

4 MR. MOLDAVSKY: We can broaden it. Just seeking a
5 geographic location of the three poles.

6 THE WITNESS: Yes.

7 BY MR. MOLDAVSKY:

8 Q. Do you recall the pole numbers?

9 A. No.

10 Q. When you went to look at these three poles in
11 Malibu, did you take any notes?

12 A. Yes.

13 Q. Okay. Did you show those notes to anyone?

14 A. Yes.

15 Q. Who did you show them to?

16 A. I sent my notes to Rick McCollum.

17 Q. How did you send it to him?

18 A. Our pony, our inner mail.

19 Q. Did you keep a copy?

20 A. No.

21 Q. What did you observe, other than the fact that
22 there were conductors and other facilities on these
23 poles?

24 A. That there was three poles down.

25 Q. When you say "down," what do you mean?

1 A. They were laying on the ground.

2 Q. All three of them?

3 A. Yes.

4 Q. Was any portion of any of the three poles still
5 in the ground, as in embedded in the ground, at the time
6 that you observed them?

7 A. I don't -- I don't remember.

8 Q. Okay. How many pages of notes did you write?

9 A. I think three.

10 Q. Do you generally take notes when you observe a
11 failed pole?

12 A. Most cases, yes.

13 Q. Most of the time, how many pages of notes do
14 you take?

15 A. Depends on the number of failures that are at
16 any given site.

17 Q. Okay. The number of what? Excuse me?

18 A. Failures.

19 Q. Oh, failures.

20 What did you write in those notes?

21 A. Just information that -- what was on the poles,
22 wrote them on a worksheet.

23 Q. What kind of worksheet?

24 A. A poleloading worksheet.

25 Q. Is that the title of the worksheet:

1 Poleloading worksheet?

2 A. I -- I don't recall exact -- what the title is
3 for that worksheet.

4 Q. But you called it a poleloading worksheet.

5 A. Correct.

6 Q. Is it a standard form that you receive from
7 Edison, or is that something that you generated?

8 A. One that I generated.

9 Q. Were your notes handwritten?

10 A. Yes.

11 Q. Were there any diagrams in your notes?

12 A. Other than what's printed on the worksheet
13 itself.

14 Q. What's printed on the worksheet itself?

15 A. Just information that tells us what type of
16 structure it is, and empty entries where we can enter the
17 type of conductor, type of cables, any equipment, any
18 down guys, that type of information.

19 Q. Is the same form used for any given failed
20 pole?

21 A. Yes.

22 Q. And is that true both as to distribution as
23 well as transmission?

24 A. Yes.

25 Q. Did you take your assistant with you to the

1 three poles in Malibu?

2 A. No.

3 Q. Did your assistant go anywhere else that day,
4 to your knowledge?

5 A. During that time frame, I didn't have an
6 assistant.

7 Q. Ah, thank you.

8 Were you alone at the time you observed the
9 three poles in Malibu?

10 A. Yes.

11 Q. Did you talk to Mr. McCollum after you observed
12 the three poles in Malibu?

13 MR. CARDOZA: That's a yes-or-no question.

14 THE WITNESS: Yes.

15 BY MR. MOLDAVSKY:

16 Q. Did you talk to Mr. McCollum the same day that
17 you observed the poles in Malibu afterwards?

18 A. I don't recall whether or not I talked to him
19 that day or the next day.

20 Q. Okay. When you talked to him, what did you
21 talk about?

22 MR. CARDOZA: Okay. I'm going to object to that
23 question.

24 This witness has some percipient knowledge
25 post-accident. That is one thing in terms of questioning

1 have to sort that out.

2 MR. MOLDAVSKY: Okay.

3 MR. CARDOZA: Okay.

4 MR. MOLDAVSKY: That's fine.

5 Well, that's not fine. We'll probably contest
6 you on it.

7 MR. CARDOZA: Right. Okay. That's fine.

8 But if you have questions about his
9 observations, and, to the extent he can recall what he
10 observed, go ahead, ask him what he recalls. But I will
11 not allow him to talk about what he conveyed to the law
12 department.

13 MR. MOLDAVSKY: Okay.

14 Q. Mr. Peralta, did you talk to anyone else in
15 Southern California Edison other than the law department?

16 MR. CARDOZA: I'm sorry. Just vague.

17 You mean as to --

18 MR. MOLDAVSKY: In regard to the poles that you
19 observed in Malibu.

20 THE WITNESS: No.

21 BY MR. MOLDAVSKY:

22 Q. Did you talk to anyone outside of Southern
23 California Edison about those poles?

24 MR. CARDOZA: Again, we're just talking -- When you
25 say talk to anybody, you mean outside of the law

1 MR. MOLDAVSKY: Okay. So you wouldn't like it to be
2 a universal principle in this case --

3 MR. CARDOZA: I've stated my position,
4 Mr. Moldavsky, so let's move forward.

5 MR. MOLDAVSKY: No problem. All right.

6 Q. Mr. Peralta, what did you observe on the poles
7 in Malibu?

8 A. Okay. I mean, there was three poles down with
9 wiring and communication on the poles.

10 Q. How long did you look at the poles?

11 A. I think I was at the site for about half hour
12 to an hour.

13 Q. How long did you look at each pole?

14 A. I don't remember what the time frame of it I
15 spent on each pole.

16 Q. Did you take any pictures?

17 A. No.

18 Q. Did you make any measurements?

19 A. I may have taken a measurement as far as the
20 circumference of the pole at ground line, if I was able
21 to take that measurement.

22 Q. What do you mean by that?

23 A. Well, we had three structures down, you had
24 crews working on the structures tearing it down, so from
25 a safety standpoint I didn't want to get in their way. I

1 was only able to get to the structure when they were not
2 actually working on it.

3 Q. You mentioned there were crews working on the
4 poles.

5 How many people were there that you observed?

6 A. Well, I couldn't give you the number of
7 personnel that were actually on that site.

8 Q. Was it more than one?

9 A. Yes.

10 Q. Was it more than three?

11 A. I believe so.

12 Q. Was it more than five?

13 A. Could have been.

14 Q. Okay. And the personnel that you observed at
15 the scene, were they Southern California Edison
16 personnel?

17 A. Yes. They were line crews.

18 Q. What do you mean when you say "line crews"?

19 A. Actually crews that actually work on the lines,
20 disbanding it, and erecting new structures on the site.

21 Q. Do you know the names of any of the people that
22 you observed at the poles in Malibu?

23 A. No.

24 Q. Did you talk to any of the people who you
25 observed at the poles, near the poles, in Malibu?

1 A. Other than, Hello, how are you doing. But
2 other than that, no. I try to keep out of their way.

3 Q. What time of day did you observe the poles in
4 Malibu?

5 A. It was midday.

6 Q. Was it raining?

7 A. No.

8 Q. What was the weather like?

9 A. It was little bit of breeze, but clear.

10 Q. At the time that you observed the poles, would
11 you say that the visibility was good?

12 A. I don't recall.

13 Q. Okay. How did you get to the site?

14 A. Drove to the site.

15 Q. Did you drive in an Edison car?

16 A. Yes.

17 Q. Do you generally use the same Edison car when
18 you drive to sites?

19 A. I have a vehicle assigned to me.

20 Q. Do you track the mileage?

21 A. No.

22 Q. Okay. Do you keep track of the failed poles
23 that you visit in the course of your work?

24 MR. CARDOZA: I'd just object as vague.

25 THE WITNESS: Not all of them.

1 A. Poleloading.

2 Q. What's the difference between a poleloading
3 analysis and a windloading analysis?

4 A. The term "windloading" is kind of used
5 interchangeably with "poleloading."

6 Q. After observing the poles that failed in
7 Malibu, did you go back to your office and do a
8 poleloading analysis on the computer?

9 A. Yes.

10 Q. What was the outcome of that analysis?

11 MR. CARDOZA: Wait a minute.

12 I'm going to object as attorney work product
13 and attorney-client privilege and instruct you not to
14 answer as a post-incident investigation directed by the
15 law department.

16 So whatever conclusions he may have reached, I
17 would object to as being -- falling within those
18 privileges.

19 BY MR. MOLDAVSKY:

20 Q. Did you run a poleloading analysis for each of
21 the poles that failed?

22 A. I believe so.

23 Q. And you mention that you still have that
24 analysis.

25 MR. CARDOZA: I just would object. I believe that

1 And I'm not sure, I don't believe there would have been
2 really been a material difference between what Mr. Cromer
3 produced in terms of identifying pole numbers, inventory
4 that's in Malibu Canyon, than what Mr. Peralta would have
5 reviewed, but I can verify that.

6 MR. MOLDAVSKY: Right. And also Mr. -- The map that
7 was produced as Exhibit 1 in Mr. Cromer's deposition
8 was -- had red marks on it, which, as I recall,
9 Mr. Cromer had placed on that map.

10 MR. CARDOZA: Right. But it's overlaid on an
11 inventory map, so it does show the inventory of Edison's
12 facilities in the canyon.

13 MR. MOLDAVSKY: To have a clear record, you know,
14 that exhibit is specifically tied to Mr. Cromer because
15 of the red markings. If it is in any way different, we
16 can discuss this more off the record.

17 MR. CARDOZA: Okay.

18 MR. MOLDAVSKY: But okay.

19 Q. When you arrived at the scene where the poles
20 had failed in Malibu, what did you observe?

21 A. That there was three poles down with wire
22 attached to them, and there was crews working on the
23 poles.

24 Q. How far away did you park from the poles?

25 A. In a safe location. That way I was away from

1 Q. What did you see on TV?

2 A. That we had a fire in Southern California.

3 Q. Okay. Now -- But at the time that you were at
4 the scene, did you observe any fires?

5 A. I don't remember.

6 Q. Did you see any firefighters?

7 A. Yes.

8 Q. And you saw them at the scene.

9 A. I saw them at the staging point prior to going
10 up the canyon.

11 Q. How far is the staging point from the scene
12 where the poles had failed?

13 A. I could not tell you. Four or five miles. I
14 don't recall.

15 Q. How many firefighters did you see?

16 A. I couldn't give you a number.

17 Q. Did you talk to any of the firefighters?

18 A. No.

19 Q. What did you observe? Fire trucks or
20 firefighting personnel?

21 A. Both.

22 Q. Did you have any personal knowledge at the time
23 you were at the scene that the poles may have been
24 related to a fire?

25 A. No.

1 by insect.

2 Q. Okay. Anything else?

3 A. Other than those mentioned. I'm sure there's
4 others, but right now I can't think of them.

5 Q. Okay. Now, when you arrived at the scene in
6 Malibu in 2007 and observed the three poles that had
7 failed, did you observe any pole degradation on any of
8 those poles?

9 A. I don't recall.

10 Q. Do you recall seeing the three poles?

11 A. Yes.

12 Q. Okay. Okay. Now, going through categories.

13 Did you see any shell rot on any of the poles?

14 A. No, because I did not excavate any of the
15 structures. I just looked at the structures that were
16 just laying down.

17 Q. Okay. Did you see any mechanical damage on any
18 of the poles?

19 MR. CARDOZA: I'll object as vague as phrased.

20 THE WITNESS: I didn't note it nor -- because the
21 crews were working on the poles, so I didn't notice.

22 BY MR. MOLDAVSKY:

23 Q. Did you note any insect damage on the poles?

24 A. Not that I'm aware of.

25 Q. What do you mean when you say, "Not that I'm

EXHIBIT 7

1 THE PUBLIC UTILITIES COMMISSION OF THE
2 STATE OF CALIFORNIA

3
4 INVESTIGATION ON THE COMMISSION'S
5 OWN MOTION INTO THE OPERATIONS
6 AND PRACTICES OF SOUTHERN
7 CALIFORNIA EDISON COMPANY (U338-E), I.09.018
8 CELLCO PARTNERSHIP LLC D/B/A Filed Jan. 29, 2009
9 VERIZON NETWORKS OF CALIFORNIA INC.
10 AND PACIFIC BELL TELEPHONE COMPANY
11 D/B/A AT&T MOBILITY LLC REGARDING
12 THE UTILITY FACILITIES AND THE
13 CANYON FIRE IN MALIBU OF OCTOBER 2007

14 _____/

15
16 VIDEOTAPED DEPOSITION OF PEJMAN MOSHFEGH
17 SAN FRANCISCO, CALIFORNIA
18 TUESDAY, AUGUST 10, 2010

19
20
21
22 BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
23 CSR LICENSE NO. 9830
24 JOB NO. 32117

1 A Yes.

2 Q And do you see that Edison's response
3 objected on several grounds, that it was unduly
4 burdensome and that it seeks premature expert
5 discovery and information protected from disclosure
6 under the attorney work product doctrine.

7 Do you see that?

8 A Yes.

9 Q Now, you didn't -- did you consider, in
10 reaching your conclusions about SCE's alleged
11 violation of Rule 1.1, did you consider the answer to
12 data request five, and what it told CPSD about SCE's
13 position on work product?

14 A One moment.

15 MR. MOLDAVSKY: Objection; vague.

16 Go ahead.

17 THE WITNESS: I don't remember.

18 MR. READ: Q. When you -- did you
19 participate in drafting the data request five? I
20 guess not. It was drafted in '09, come to think of
21 it.

22 MR. MOLDAVSKY: And CPSD has confirmed we can
23 take a look at when he was added to the team and
24 provide that information.

25 MR. READ: I mean, this is quite a while

1 before. I mean, this is mid '09, so --

2 MR. MOLDAVSKY: Subject to check, I think we
3 can adopt that.

4 MR. READ: Q. Well, I'll ask this question,
5 but you may -- before I put this in front of you
6 today, Mr. Moshfegh, have you seen data request five
7 before?

8 A I believe I had read it.

9 Q Okay. But you decided not to put it in your
10 testimony; right?

11 A I don't know if it was an active decision to
12 exclude it, but I --

13 Q Well, it's not in there.

14 A It's not in there.

15 Q Let me ask you if you have an understanding
16 of a word here in the second line. This request asks
17 SCE to provide a retrospective wind-load calculation.

18 Now, do you understand that to be a request
19 that Edison performed a -- what we're generally
20 calling a pole-loading calculation on the -- on the
21 poles after the fire, after the failure?

22 A For the additions that came before it, before
23 the fire?

24 Q That -- that's right.

25 Isn't that what's being asked of SCE here in

1 MR. READ: Okay.

2 Q Let me ask this: Again, I realize your
3 tenure is such that you may not know the answer, but
4 isn't it correct that in -- in response -- in reaction
5 to SCE's response to this data request five, CPSD
6 never sought a meet and confer to pursue Edison's
7 objection and in -- invocation of the
8 attorney-client -- attorney work product?

9 A I'm not sure.

10 Q Okay. And so you wouldn't know why CPSD
11 never pursued that question?

12 A I -- I don't know.

13 MR. MOLDAVSKY: And I would just interpose an
14 objection. To the extent you're referring to
15 interactions he may have had with my predecessor,
16 Mr. Bob Cagen, and a meet and confer that may or may
17 not have occurred, we'll -- we'll just adopt that as
18 subject to check.

19 MR. READ: Okay.

20 Q And do you know whether, at any time, in
21 response to question -- data request five, whether
22 CPSD ever asked SCE to prepare a privileged log that
23 would set out, in the fashion lawyers do without
24 disclosing contents, the existence of documents
25 that -- for which privilege is claimed?

1 A Maybe. I'm not sure.

2 Q Okay. Did you ever ask about whether that
3 was done?

4 A No, sir.

5 Q Okay. In -- in preparation for your finding
6 of a violation of Rule 1.1, did you ever ask whether
7 that had been -- whether CPSD had asked Edison after
8 data request five was answered, whether there was any
9 follow-up?

10 A Follow-up regarding? I mean, I -- I mean,
11 I'm -- I know about the motion to compel about --
12 regarding the Peralta --

13 Q This is --

14 A -- but --

15 Q Okay. Pardon me. Go ahead.

16 A No, I'm sorry.

17 Q This answer was received over six months
18 before the Peralta deposition; wasn't it?

19 A I'd have to check the date of when --

20 Q Well, let's do that. That, we can do,
21 because your -- your testimony in Chapter 6 has the
22 date of the Peralta deposition March 5, 2000 --
23 goodbye (telephone operator) -- March 5, 2010.

24 A Okay.

25 Q Okay. Well, that's nine months after SCE

1 (Document marked Exhibit SCE 2
2 for identification.)

3 MR. READ: And July 9th, which I'm giving you
4 two of now, which will be SCE 3.

5 MR. MOLDAVSKY: Thank you. This is SCE 3.
6 (Document marked Exhibit SCE 3

7 for identification.)

8 MR. READ: Oh, I need one for the reporter.

9 MR. PICKETT: Which one is two?

10 MR. READ: The earlier one is the -- you
11 ready? Okay.

12 Q Let's look, first, at SCE 2. This is a
13 letter from Mr. Cardoza at Edison to Mr. Cagen, who I
14 think Mr. Moldavsky just referred to as his
15 predecessor in this proceeding.

16 Have you ever seen this letter before,
17 Mr. Moshfegh?

18 A I believe I've seen this.

19 Q Did you take it into consideration when you
20 wrote your testimony alleging that Edison had violated
21 Rule 1.1? And I ask you, this letter deals with a
22 number of data requests, but you'll see -- and I draw
23 your attention on page two to the paragraph dealing
24 with data request five and six. I think you'll recall
25 that we were just looking at data request five. I

1 you're saying does he see something that isn't
2 actually there --

3 MR. READ: Okay.

4 MR. MOLDAVSKY: -- I'm clarifying the record.

5 MR. READ: Q. So you see the reference to
6 the fact that among other objections, Mr. Cardoza is
7 indicating to Mr. Cagen that this request seeks
8 privileged information which is protected from
9 disclosure?

10 A Yes, I see it.

11 Q Okay. Now, is there any reason to think that
12 that did not put Mr. Cagen on notice, that SCE took
13 the position that if there were any retrospective
14 pole-loading calculations done by experts, that they
15 were claiming privilege?

16 MR. MOLDAVSKY: Objection; calls for a legal
17 conclusion.

18 Go ahead.

19 THE VIDEOGRAPHER: We need to go off the
20 record. I apologize.

21 MR. READ: Well, let's get the answer first.

22 THE WITNESS: I -- I don't know.

23 MR. READ: We have to go off the record for a
24 moment.

25 THE VIDEOGRAPHER: This marks the end of

1 Q And I think you said with respect to the
2 earlier letter, SCE 2, that you thought you might have
3 seen that before. Let me ask the same question.

4 Have you seen -- prior to today, you have a
5 recollection of seeing the letter of July 9, 2009?

6 A I may have. Same answer stands.

7 Q So you're -- you're not sure?

8 A I can't be -- I've reviewed thousands and
9 thousands of pieces of paper.

10 Q Okay. With respect to the remarks of
11 Mr. Cardoza about questions five and six, you see that
12 he, again, asserts that this -- these data requests
13 seek, on a premature basis, expert work product and
14 that Edison continues to stand on its previous
15 objections? Do you see that?

16 A Yes, sir.

17 Q And do you know whether Mr. Cagen, after
18 receiving either or both of these letters, SCE 2 or 3,
19 Mr. Cagen register any objections with respect to this
20 claim of privilege by SCE, to your knowledge?

21 A I'm not sure. I didn't personally work with
22 Mr. Cagen, so I -- I don't know exactly what he did.

23 Q Did you interview Mr. Cagen, as you proceeded
24 to work on your testimony concluding that Edison
25 should be charged with a Rule 1.1 violation?

1 A Mr. Cagen had already left the Commission
2 when I came -- when I started on this case.

3 Q Well, did you try to track him down and ask
4 him some questions?

5 MR. MOLDAVSKY: Let the record reflect that
6 Mr. Cagen is currently retired from state service.

7 MR. READ: Understood.

8 Q Did Mr. Cagen refuse to talk to you?

9 A I did not approach Mr. Cagen.

10 Q Okay. And do you know whether Mr. Cagen or
11 anybody at CPSD in response to these claims of
12 privilege sought -- in these letters, sought a
13 privilege log from SCE?

14 A I believe you asked that before; didn't you?
15 Can you restate your question?

16 Q I actually asked it with respect to a
17 follow-up to the data request response.

18 A Okay.

19 Q Now I'm asking a parallel question about a
20 follow-up to these assertions of similar privilege in
21 SCE 2 or 3.

22 A I don't know about any request for a
23 privilege log.

24 Q Do you know -- it's correct, isn't it, that
25 S -- nobody from CPSD filed any motion to compel

1 Q -- prior to the Peralta deposition?

2 A I don't have that knowledge.

3 Q Did you make any inquiry about that?

4 A No, sir.

5 Q In your view, are the answers that SCE gave
6 to data request five and the claims of privilege
7 stated in SCE 2 and SCE 3, are those consistent in
8 your view with an intent to deceive the commission and
9 its staff?

10 A I don't know.

11 Q You've never thought about that before I
12 asked the question, have you, Mr. Moshfegh?

13 MR. MOLDAVSKY: Objection; vague and
14 ambiguous.

15 Go ahead.

16 THE WITNESS: I'm not sure I understand your
17 question.

18 MR. READ: Q. I'm asking whether or not you
19 have ever thought about whether the answers to --
20 Edison's answers to the data request and these
21 letters, whether they are consistent in any way with
22 an intent to deceive the Commission?

23 MR. MOLDAVSKY: Objection; vague as to these
24 data requests.

25 Go ahead.

1 THE WITNESS: Considering that I -- I -- I
2 don't exactly remember the specifics of these two
3 documents that you handed us, I -- I don't know. I
4 just -- I guess I can't say that I did consider them.

5 MR. READ: Okay. Thank you. Nothing
6 further.

7 MR. MOLDAVSKY: No redirect.

8 THE VIDEOGRAPHER: This marks the end of
9 Volume 1, Disk 5, and concludes today's deposition of
10 Pejman Moshfegh.

11 The time is 6:35 p.m., and we are off the
12 record.

13 (Recess taken.)

14 MR. MOLDAVSKY: Let the record reflect that
15 parties have stipulated that within 45 days of when
16 CPSD receives the deposition transcript of the witness
17 that was deposed today, Mr. Pejman Moshfegh, it shall
18 endeavor to provide any corrections/signature back to
19 the court reporting service so that the transcript can
20 be used for other purposes in this proceeding.

21 MR. READ: Yeah, and that if that deadline is
22 not met, then we are free to proceed as though the
23 court reporter's version is the final one, so --

24 MR. MOLDAVSKY: So stipulated.

25 ///



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