

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

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

**REPLY TO SOUTHERN CALIFORNIA EDISON COMPANY'S
RESPONSE TO 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**

Pursuant to Rules 11.1 and 11.3 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division ("CPSD") hereby replies to the response filed by Southern California Edison ("SCE") on April 5, 2010, in regards to 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 ("SCE's Response"). Pursuant to Rule 11.1(f), CPSD sought leave to file this reply from Administrative Law Judges Reed and Kenney on April 6, 2010, via an email to the service list of this proceeding. Administrative Law Judges Reed and Kenney authorized this reply in an email to the service list of this proceeding on April 8, 2010.

I. INTRODUCTION

Pursuant to its duty to investigate utility-caused accidents under Section 315 of the Public Utilities Code, CPSD has been trying to assist this Commission in understanding the underlying facts of the Malibu Canyon Fire. CPSD strongly opposes SCE's Response, which contravenes this Commission's ability to conduct a meaningful safety investigation.

SCE's Response confuses the distinction between a "communication" and underlying facts.¹ While SCE's Response concedes that underlying facts cannot be withheld from this Commission, it belabors the point that communications should be privileged. However, SCE cannot withhold critical underlying facts by sending such facts to counsel and instructing a deposed witness not to answer key questions.² CPSD's Motion seeks the underlying facts, not the advice given by or sought from SCE's Legal Department. SCE proposes no valid basis for denying CPSD's Motion.

SCE's Response also fails to disprove that SCE has already waived any privilege that could have purportedly attached to the Wind Load Data through its regulatory disclosures. On October 25, 2007, SCE's Frederick C. McCollum wrote a letter to the Commission in regards to this accident, purportedly in compliance with the Accident Reporting Requirements.³ Based on available evidence, there is a strong inference that Mr. McCollum reviewed and relied on the Wind Load Data in generating the October 25, 2007 letter to the Commission. CPSD clearly has the right to obtain such underlying data, and not be forced to accept the "selective disclosure" of information by SCE.

SCE also incorrectly seeks to categorize the Wind Load Data under the work product doctrine.⁴ Though such data is clearly not "absolutely" protected attorney-generated material, SCE cites inconsistent precedent in an attempt to argue that it is.

¹ See SCE Response at 6-11.

² See, e.g., Zurich American Insurance Co. v. Superior Court of Los Angeles, 155 Cal.App.4th 1485, 1504. See also State Farm Fire & Casualty Co. v. Superior Court of Los Angeles County, 54 Cal.App.4th 624.

³ See Attachment 1.

⁴ See SCE Response at 11-16.

Beyond that, even if “qualified” work product doctrine were applicable to the data, SCE fails rebut CPSD’s showing of prejudice. CPSD would be clearly prejudiced considering the incomplete memory of Mr. Peralta, SCE’s improper refusal to allow Mr. Peralta to answer key questions, and the fact that Mr. Peralta had the opportunity to witness unique information that cannot be re-created.

SCE also confuses the distinction between the investigatory powers of this Commission, and the discovery rights of civil plaintiffs.⁵ CPSD reminds SCE that all factual evidence must be turned over to this Commission during a safety investigation, and that such information can be submitted to this Commission under Section 583 of the Public Utilities Code and General Order 66-C, as a means of protecting confidential information. Further, Section 315 of the Public Utilities Code prevents the admission of certain information related to this investigation in civil proceedings.

II. SCE’S RESPONSE DIRECTLY CONTRAVENES THIS COMMISSION’S ABILITY TO CONDUCT A MEANINGFUL SAFETY INVESTIGATION

SCE takes issue with CPSD’s discussion of SCE’s statutory and regulatory requirements.⁶ However, SCE’s analysis ignores the broader public safety context. In R.08-11-005, the Commission observed that:

As required by the Public Utilities Code, ‘[e]very public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.’ (Pub. Util. Code § 451.) In our broad grant of jurisdiction over public utilities in California, we are authorized to ‘do all things, whether specifically designated in ... [the Public Utilities Act] or in addition thereto, which are necessary and convenient’ to our regulation of public utilities, including, though not limited to, adopting necessary rules and requirements in furtherance of our constitutional and statutory duties to regulate and oversee public utilities operating in California. (Id. § 701.)

⁵ See SCE Response at 2, 16.

⁶ See SCE Response at 4-5.

This Commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations. (San Diego Gas & Electric v. Superior Court ('Covalt') (1996), 13 Cal.4th 893, 923-924.) Our jurisdiction to regulate these entities is set forth in the California Constitution and in the Public Utilities Code. (Cal. Const., Art. 12, §§ 3, 6; Pub. Util. Code §§ 216, 701, 768, 1001.) Such utilities are required to 'obey and comply with every order, decision, direction, or rule made or prescribed by the [C]ommission' (Pub. Util. Code § 702; see also, id. §§ 761, 762, 767.5, 768, 770.) The Commission is obligated to see that the provisions of the Constitution and state statutes affecting public utilities are enforced and obeyed. (Pub. Util. Code § 2101.)⁷

In order for this Commission to do its job in protecting the People of the State of California, it must have access to utility–facility data, such as the Wind Load Data. If this Commission adopts SCE's interpretation of attorney-client privilege and work product doctrine, then the Commission may as well also stop enforcing safety General Orders altogether. SCE's interpretation renders the Commission's authority meaningless and proposes a glaring loophole to the Commission's investigatory powers and mandate. According to SCE, the only thing that a utility under investigation needs to do in order to withhold "bad facts" from Commission scrutiny is to assign a lawyer to given investigation.⁸ Adopting such an interpretation would endanger the People of the State of California. This is because it would vest the discretion of determining which facts are discoverable in a Commission safety investigation in a utility's legal department, rather than the Commission. This contravenes every statute and regulation that vests the Commission with its broad powers.

⁷ OIR 08-11-005 at 6.

⁸ See SCE Response at 3-17.

III. SCE CONCEDES CPSD'S CENTRAL THESIS THAT UNDERLYING FACTS OF THE MALIBU FIRE, SUCH AS THE WIND LOAD DATA, CANNOT BE CONCEALED FROM COMMISSION SCRUTINY, AND THUS SCE'S ASSERTION OF ATTORNEY-CLIENT PRIVILEGE IS ERRONEOUS

SCE's Response concedes CPSD's central thesis in seeking the Wind Load Data. SCE states: "SCE does not dispute the CPSD has the right to inquire about the underlying facts."⁹ SCE, however, rests its opposition to CPSD's Motion on a misconstruction of CPSD's "primary argument." SCE incorrectly states that: "CPSD's primary argument is that the Peralta documents are not subject to the attorney-client privilege because they contain factual information."¹⁰ Yet the specific "contents" of each of Mr. Peralta's documents are irrelevant to CPSD's argument. Indeed, CPSD's Proposed Order, which was attached to its Motion, does not seek communications as defined by SCE.¹¹ Rather, CPSD seeks the factual information itself, regardless of how or whether it was communicated to counsel. The Order specifically seeks:

The wind load data to be produced includes: the wind load results generated by Mr. Peralta and SCE's wind load computer program as to the poles at issue in this investigation, any and all data inputs into SCE's wind load computer program regarding the facilities at issue (including any and all computational assumptions and parameters within SCE's wind load computer program), any and all data outputs of SCE's wind load computer program regarding the facilities at issue, any and all observations, measurements and calculations gathered and/or utilized by Mr. Peralta regarding the Malibu Poles, and any and all numeric, categorical, and/or descriptive specifications (including diagrams and graphic representations) gathered and/or utilized by Mr. Peralta regarding the Malibu Poles (collectively "Wind Load Data")¹²

In other words, the method by which SCE's Legal Department was contacted, the nature of the communications between SCE and its Legal Department, and legal advice

⁹ SCE Response at 6.

¹⁰ SCE Response at 6.

¹¹ CPSD Motion, Attachment 1, at 1-2.

¹² CPSD Motion, Attachment 1, at 1-2.

given or sought, is not the subject of the request. Rather, CPSD is seeking the underlying utility facility-related data. SCE cannot conceal this data by simply sending it to its counsel.¹³

SCE's Response focuses on attorney involvement in its investigation, sidestepping the nature of the actual facts being sought by CPSD. Indeed, in a recent data request, SCE clarified the type of factual information that would be included in a given wind load analysis. SCE states:

Wind loading analysis for distribution, transmission and distribution/transmission facilities take into account the following data:

- Pole species
- Pole length
- Pole class
- Year installed
- Circumference
- Setting depth
- Design criteria (e.g. 8 pound wind)
- Deterioration type and amount (if applicable)
- Conductor information (including communication conductor):
 - o Conductor type/size
 - o Attachment height
 - o Span ahead/back
 - o Angle ahead/back
 - o Tension (lbs.)
 - o Quantity of attachments
- Equipment information:
 - o Equipment description
 - o Area (sq. ft.)
 - o Weight
 - o Attachment height
 - o Transverse offset (ft.)
 - o Quantity of attachments
- Guy information (if applicable):
 - o Guy type (size)
 - o Angle from line (degree)
 - o Angle type

¹³ See, e.g., Zurich American Insurance Co. v. Superior Court of Los Angeles, 155 Cal.App.4th 1485, 1504. See also State Farm Fire & Casualty Co. v. Superior Court of Los Angeles County, 54 Cal.App.4th 624.

- o Attachment height
- o Lead length
- o Number of guys
- o Strut height
- o Assign conductor supported by the guy, including % of tension.¹⁴

Essentially, SCE is trying to argue that the above-listed data, and related data categories, can be withheld from the Commission based on attorney-client privilege and work product doctrine. SCE bases these propositions on the fact that Mr. Peralta was allegedly acting under the direction of counsel when he made his observations, measurements, calculations and ran his analysis.¹⁵ However, the fact that SCE allegedly involved its legal department in its investigation is completely inapposite to the question of whether or not the Commission can access such factual data about utility facilities from a utility. If the Commission holds that such technical factual information can be shielded based on bare assertions of privilege, then the Commission's ability to protect the People of the State of California, by learning the underlying facts of an accident, will be severely limited if not completely abrogated.¹⁶

SCE further states that Mr. Peralta testified to certain categories of information at his deposition.¹⁷ SCE notes that "SCE's counsel expressly invited CPSD to ask Peralta about his recollection of the facts, and CPSD did so."¹⁸ Yet, SCE incorrectly believes that "CPSD ... may not go beyond such questions."¹⁹ Specifically, SCE had stated at Mr. Peralta's deposition:

But if you have questions about his observations and to the extent he can recall what he observed, go ahead ask him what he recalls. **But I will not allow him to talk about what he conveyed to the law department.**²⁰

¹⁴ See Attachment 2.

¹⁵ See SCE Motion at 3-17.

¹⁶ See Public Utilities Code § 315; General Order 95, Rule 17; General Order 95, Rule 19; D.06-04-055.

¹⁷ SCE Response at 4.

¹⁸ SCE Response at 6.

¹⁹ SCE Response at 2.

²⁰ See Attachment 3 at 26. (Emphasis added.)

In other words, SCE is apparently operating under the erroneous assumption that all facts communicated to counsel are privileged, whereas un-communicated facts may be discovered to the extent that such facts are recalled by a witness. This assumption is patently wrong. This Commission and CPSD have the right to obtain the underlying facts regardless of whether such facts were communicated to an attorney or not.²¹ To hold otherwise would allow for the improper concealment of “bad facts” by virtue of simply sending such “bad facts” to counsel.

Utility-facility data is clearly accessible to the Commission and its staff.²² Yet, under SCE’s approach, data such as pole design criteria, deterioration, and equipment specifications, could be concealed from the Commission any time that SCE sends said information to a counsel. Indeed, such a methodology would result in the concealment of critical data any time a major accident occurs, which is precisely when the Commission needs that data the most.

Similarly, SCE apparently believes that CPSD should be stuck with Mr. Peralta’s incomplete memory, such as his “I do not recall” response as to pole degradation, an important element in wind loading analysis.²³ SCE’s approach blurs the line between underlying facts and a witness’ recollection of said facts.

Moreover, without even reaching the issue of Mr. Peralta’s credibility as to whether or not he recalled certain observations, the fact remains that he had written notes of his thoughts, observations, impressions and analysis on October 22, 2007, the day after the fire had occurred and the poles had fallen down.²⁴ He then sent his handwritten notes and hard copies of his analysis to SCE’s Senior Investigator in its Claims Department, Frederick C. McCollum, who, on October 23, 2007, reviewed these recorded documents and discussed them with Mr. Peralta. Mr. McCollum then sent these contemporaneous

²¹ See, e.g., Zurich American Insurance Co. v. Superior Court of Los Angeles, 155 Cal.App.4th 1485, 1504. See also State Farm Fire & Casualty Co. v. Superior Court of Los Angeles County, 54 Cal.App.4th 624.

²² See Public Utilities Code § 315; General Order 95, Rule 17; General Order 95, Rule 19; D.06-04-055.

²³ See Attachment 3 at 132.

²⁴ See Attachment 4.

documents recording the factual matters to SCE's attorneys, as if Mr. Peralta's and Mr. McCollum's factual knowledge at that time could forever be withheld from discovery by sending these documents to the attorneys.²⁵ As discussed below in the waiver section of this reply, two days later on October 25, 2007, Mr. McCollum sent his report to the Commission in response to the Accident Reporting Requirements in D.06-04-055, Appendix B, which explicitly required SCE to provide, among other things, a detailed description of the nature of the incident, its **cause,the utility's response to the incident and the measures the utility took to repair facilities and/or remedy any related problems on the system which may have contributed to the incident.**"²⁶

CPSD strongly disagrees with SCE's approach, and believes that since SCE has possession of the Wind Load Data, said data should be promptly turned over. As stated in the CPSD's Motion to Compel, at page 4, the Notice of Depositions had instructed Mr. Peralta to bring to the deposition documents that refer to inspections, maintenance, testing and studies relating to the utility facilities involved in the Malibu Fire, and followed up with data requests.²⁷ Indeed, any of the Wind Load Data cannot be legally withheld as such an action directly contravenes this Commission's ability to access utility facility information for public safety purposes.²⁸ Notwithstanding SCE's refusal to turn over the documents of factual information to CPSD reflecting the witness' observations and calculations, on the grounds of attorney-client privilege or work product doctrine, there is no basis under the law for claiming that the underlying facts are privileged.

Even a case that SCE relies on to support the proposition that "suppression of relevant evidence" may result from assertions of privilege, Costco Wholesale Corp. v. Superior Court²⁹, acknowledges the right to access underlying facts. Costco recognized that: "[o]bviously, a client may be examined on deposition or at trial as to the facts of the

²⁵ See Attachment 4, at 1, Paragraphs 2-4.

²⁶ D.06-04-055, Appendix B. (Emphasis added.)

²⁷ A copy the Notice of Depositions (Attachment 5) and an excerpt from the written data requests (Attachment 6) are attached to this filing.

²⁸ See Public Utilities Code § 315; General Order 95, Rule 17; General Order 95, Rule 19; D.06-04-055.

²⁹ 47 Cal. 4th 725 (2009).

case, whether or not he has communicated them to his attorney.”³⁰ SCE also concedes that Costco acknowledged “the presence of factual information ‘discoverable by other means’”³¹

Yet, SCE’s improper withholding of information at Mr. Peralta’s deposition precluded the “other means” of obtaining said information. For example, SCE instructed Mr. Peralta not to reveal the results of the wind load study, or even his recollection of those results.³² SCE’s instructions were improper because the fact that said results may have been sent over to the Legal Department, even at the direction of counsel, does not immunize such results from discovery.³³ SCE’s approach should be rejected because it results in the withholding of key, non-privileged data from the Commission.

IV. SCE WAIVED ANY PRIVILEGE THAT COULD HAVE ATTACHED TO THE WIND LOAD DATA THROUGH ITS REGULATORY DISCLOSURES

SCE cites Kerns Construction Co. v. Superior Court³⁴ for the inapposite proposition that attorneys can order the production of privileged reports.³⁵ Yet, Kerns did not address the facts of this matter, where SCE is required to make regulatory disclosures that include causal factual information.³⁶ Further, SCE concedes in a footnote that that Kerns is really a waiver case that established that Southern California Gas Company had waived any privilege by a witness’ reliance on “privileged” reports.³⁷ Such waiver also exists in this matter based on SCE’s regulatory disclosures, as discussed below.

³⁰ Costco Wholesale Corp. v. Superior Court, 47 Cal. 4th 725, 766 (2009). (Internal citations omitted.)

³¹ SCE Response at 9. Similarly, Scripps Health v. Superior Court, which SCE cited for a similar proposition, also recognized that “[i]t may be that the factual aspect of the reports will be revealed during some other aspect of discovery.” 109 Cal. App. 4th 529, 536 (2003). Neither case counters CPSD’s central thesis that it has the right to access the underlying wind load data.

³² See Attachment 3 at 36, 113-114.

³³ See, e.g., Zurich American Insurance Co. v. Superior Court of Los Angeles, 155 Cal.App.4th 1485, 1504. See also State Farm Fire & Casualty Co. v. Superior Court of Los Angeles County, 54 Cal.App.4th 624.

³⁴ 266 Cal. App. 2d 405 (1968).

³⁵ SCE Response at 7-8.

³⁶ See Public Utilities Code § 315; General Order 95, Rule 17; General Order 95, Rule 19; D.06-04-055.

³⁷ 266 Cal. App. 2d 405 at 413-414. See SCE Response at 8.

On October 25, 2007, SCE's Frederick C. McCollum wrote a letter to the Commission in regards to this accident, purportedly in compliance with the Accident Reporting Requirements.³⁸ SCE concedes that those Accident Reporting Requirements require a report containing "a description of the incident **and its cause**, identification of casualties and property damage, and **a description of a utility's response** to the incident as well as measures the utility took to repair affected facilities."³⁹ The same Frederick C. McCollum, an SCE Investigator, reviewed Mr. Peralta's notes, thoughts, and observations with Mr. Peralta by telephone on October 23, 2007, and received Mr. Peratla's wind load analysis "shortly afterwards."⁴⁰

These facts create a strong inference that Mr. McCollum reviewed and relied on the Wind Load Data in generating the October 25, 2007 letter to the Commission. CPSD clearly has the right to obtain such underlying data, and not be forced to accept the "selective disclosure" of information by SCE.

Further, the October 25, 2007 letter, within the context of the Accident Reporting Requirements, directly contravenes SCE's arguments that the "sole" or "dominant" purpose was attorney-client communication.⁴¹ Rather, SCE has a statutory and regulatory obligation to relay detailed accident cause information to the Commission.⁴² In fact, Mr. McCollum stated in his October 25, 2007 letter that: "the initial reports indicate the wind gusts exceeded 100 mph at the time the circuit relayed."⁴³ Thus, SCE was providing the Commission with an opinion that high winds had caused the poles to fall, rather than pole overloading, in purported compliance with the Accident Reporting Requirements. CPSD has the right to access the information that Mr. McCollum reviewed prior to issuing his required opinion as to cause (i.e.: the Wind Load Data).⁴⁴

³⁸ See Attachment 1.

³⁹ SCE Response at 5. (Emphasis added.)

⁴⁰ See Attachment 4.

⁴¹ See SCE Response at 7-8.

⁴² See Public Utilities Code § 315; General Order 95, Rule 17; General Order 95, Rule 19; D.06-04-055.

⁴³ See Attachment 1.

⁴⁴ See, e.g., National Steel Products Company v. Superior Court of Riverside County, 164 Cal.App.3d 476 (1985).

If SCE believes that its reporting obligations interfere with attorney-client communications, then SCE could have appealed those requirements. What SCE cannot do is purport to comply with those requirements through selective disclosure, and then withhold the “bad facts.”⁴⁵ SCE has waived any privilege that could have attached to the Wind Load Data.

V. SCE ASSERTION THAT THE WIND LOAD DATA ARE PROTECTED UNDER ABSOLUTE WORK PRODUCT DOCTRINE IS ERRONEOUS

SCE makes the strained argument that the Wind Load Data should be protected under absolute work product doctrine.⁴⁶ SCE relies on the proposition that a non-attorney’s observations and impressions (such as Mr. Peralta’s) could be treated as absolute attorney-work product, if said non-attorney was acting under the direction of counsel.⁴⁷ CPSD notes that the older case relied on by SCE in support of its proposition added parenthetical language to indicate its interpretation of work product doctrine, as it had previously been codified in the California Code of Civil Procedure section 2016.

Rodriguez v. McDonnell Douglas Corp stated that:

But that portion of Miller's notes which consisted of Miller's own comments about Higgins' statement is protected absolutely from disclosure by the attorney's work-product privilege as a ‘writing that reflects an attorney's [or attorney's agent's] impressions, conclusions, opinions, or legal research or theories.’⁴⁸

In apparent contradiction with Rodriguez, the more recent case cited by SCE neglected to add the parenthetical language “[or attorney's agent’s]” in its explanation of the doctrine.⁴⁹ CPSD notes that Rico referenced the current work product doctrine statute, and that the facts in Rico involved a paralegal’s summaries intertwined with counsel’s thoughts.⁵⁰

⁴⁵ See Kerns, 266 Cal.App.2d 405 at 414.

⁴⁶ SCE Response at 11-14.

⁴⁷ SCE Response at 11-14.

⁴⁸ 87 Cal.App.3d 626, 648 (1978). (Emphasis added.)

⁴⁹ Rico v. Mitsubishi Motors Corp., 42 Cal. 4th 807, 814-15 (2007).

⁵⁰ 42 Cal. 4th 807, 814-15.

In any case, neither Mr. Peralta nor Mr. McCollum are lawyers. The work that they conducted was part of their standard job functions, and had nothing to do with attorney impressions, conclusions, opinions, legal research or theories of any sort. In view of the Commission's Accident Reporting Requirements, SCE is required to report the cause of the fire to the Commission, which requires the reporting of SCE's witnesses' thoughts, not their attorneys' mental impressions. The current work product statute states that:

- (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
- (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.⁵¹

Since Mr. Peralta's Wind Load Data, and Mr. McCollum's review of the cause of the fire, do not fall under subpart (a), they should not be afforded absolute protection. SCE's claim regarding absolute work product doctrine should be rejected.

VI. SCE ASSERTION THAT THE WIND LOAD DATA ARE PROTECTED UNDER QUALIFIED WORK PRODUCT DOCTRINE IS ERRONEOUS

Ignoring its concession that CPSD should have access to underlying facts, SCE seeks to improperly veil the Wind Load Data under qualified work product doctrine.⁵² Yet even if SCE's view would be adopted on this issue, CPSD could nevertheless establish unfair prejudice and injustice if it were denied access to the Wind Load Data.

SCE apparently takes issue with the fact that CPSD did not identify all of the portions of the record where Mr. Peralta failed to provide underlying facts to CPSD.⁵³ In

⁵¹ Cal. Code Civ. Proc. § 2018.030.

⁵² See SCE Response at 14-16.

⁵³ SCE Response at 15.

response, CPSD would note the following deposition responses regarding Mr. Peralta's observations of the Malibu Poles⁵⁴:

Q: Do you recall what street you were on?

A: I couldn't tell you the name of the road.⁵⁵

...

Q: What time of day did Rick McCollum call you?

Mr. Cardoza: Don't guess. If you know you can testify.

A: I can't give you the time.

Q: But you recall it being in late October of 2007?

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

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

A: I could tell you there were conductors and communication on the pole that I remember.⁵⁶

...

Q: Do you recall the pole numbers?

A: No.

...

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

A: That there were three poles down.

Q: When you say "down," what do you mean?

A: They were laying on the ground.

Q: All three of them?

A: Yes.

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

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

...

Q: What did you write in those notes?

A: Just information that -- what was on the poles, wrote them on a worksheet.⁵⁷

...

Q: When you talked to him [Mr. McCollum], what did you talk about?

Mr. Cardoza: Okay. I'm going to object to that question. [Witness was instructed not to answer].⁵⁸

⁵⁴ CPSD notes that this is not an exhaustive list of all of the occasions where Mr. Peralta could not remember factual information.

⁵⁵ Attachment 3 at 17.

⁵⁶ Attachment 3 at 18.

⁵⁷ Attachment 3 at 19-20.

⁵⁸ Attachment 3 at 22.

...

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

A: I don't recall.

Q: Do you recall seeing the three poles?

A: Yes.

Q: Okay. Okay. Now, going through categories. Did you see any shell rot on any of the poles?

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

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

Mr. Cardoza: I'll object as vague as phrased.

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

Q: Did you note any insect damage on the poles?

A: Not that I'm aware of.

Q: What do you mean when you say, "Not that I'm aware of"?

A: **It's been two, two and a half years, and I don't remember. I've looked at so many poles that have gone down that I don't recall.**

Q: How about woodpecker holes?

A: I don't remember seeing woodpecker holes. I don't recall.

Q: Were the poles laying down on the road?

A: No.

Q: Where were they?

A: Majority of the poles were laying down into the canyon (indicating).

Q: Were the poles cut in sections?

A: I don't recall, because crews were working on them.

Q: What were the crews doing to them?

A: They were removing conductors and just trying to remove the poles. But like I said, I was only there probably less than an hour.

Q: Do you recall looking at the pole identification numbers?

A: Only based on what the inventory match showed me.

Q: Right. But did you see the pole identification numbers on the pole?

A: I could have, but I don't recall.

Q: Did you confirm that you were looking at the right poles?

A: Based on the inventory. But I couldn't remember whether or not I confirmed the down poles with the associated number that was on the inventory map.⁵⁹

⁵⁹ Attachment 3 at 132-134. (Emphasis added.)

While Peralta did recall some information, the quality of his memory of important factual information was clearly limited. Further, SCE's counsel instructed him not to answer CPSD's questions on discoverable topics such as the results of his study and his recollection of those results.⁶⁰ According to the deposition transcript, SCE's counsel instructed Mr. Peralta not to answer CPSD's questions on 11 separate occasions.⁶¹

Thus, SCE's reference to Mr. Peralta providing some information⁶² does not mean that SCE has satisfied its requirements to turn over the underlying facts to CPSD. CPSD would be prejudiced by being forced to rely on Mr. Peralta's incomplete recollections, among improper instructions not to answer. SCE has the ability to produce the Wind Load Data to CPSD, and cannot veil said data in improper objections and memory loss.

Beyond that, CPSD notes that Mr. Peralta was sent to the scene right after the accident for a reason. He was in the unique position to view the poles prior to them being taken away from the scene. He was also able to view the poles as they existed the day after the accident. Pole degradation is a process that occurs over time, and Mr. Peralta's observations were thus unique and impossible to replicate. CPSD would thus be prejudiced by not being able to access such information.

VII. COMPELLING THE WIND LOAD DATA IN THIS PROCEEDING SHOULD NOT IMPACT THE CIVIL LITIGATION

SCE implies that if the Wind Load Data is compelled in this proceeding, it may be forced to turn over such information in the associated civil litigation regarding the Malibu Fire.⁶³ SCE is mistaken. SCE can invoke Section 583 of the Public Utilities Code and General Order 66-C, as a means of asserting confidentiality. This process would offer protection to the Wind Load Data from civil plaintiffs. Further, SCE can already rely on Section 315 of the Public Utilities Code, which prevents the admission of certain information related to this investigation in civil proceedings. As discussed above, in regards to utility facilities, the Commission has far broader investigatory powers than

⁶⁰ See Attachment 3 at 36, 113-114.

⁶¹ See Attachment 3 at 5.

⁶² See SCE Response at 2.

⁶³ See SCE Response at 2, 16.

civil plaintiffs, and SCE cannot point to civil litigation concerns as a means of frustrating a Commission inquiry. This is particularly true when SCE can rely on Sections 315 and 583 of the Public Utilities Code, as well as General Order 66-C, as protective measures.

VIII. CONCLUSION

SCE's arguments, as well as the similar arguments raised by other Respondents in this proceeding, should be rejected. CPSD's Motion to Compel the Wind Load Data should be granted.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

Edward Moldavsky

Attorney for the Consumer Protection
and Safety Division

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703 5134
Fax: (415) 703-2262

April 15, 2010

ATTACHMENT 1

Frederick C. McCollum Letter to the Commission, dated:
October 25, 2007



Frederick C. McCollum
Senior Investigator

October 25, 2007

200711340
Canyon Fire

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
ATTENTION: CONSUMER SERVICE DIVISION
505 VAN NESS AVENUE, ROOM 2-A
SAN FRANCISCO CA 94102

Gentlemen:

In accordance with the Commission's directions, this letter supplements our notice to your Los Angeles Office by telephone on October 21, 2007, at 8:35 a.m., and via facsimile transmission on October 22, 2007, at 12:12 p.m., concerning an incident that occurred on October 21, 2007, at approximately 4:51 a.m. in Malibu, California.

A brush fire erupted in Malibu Canyon at approximately 4:51 a.m., on Sunday, October 21, 2007, during the course of an extreme "Santa Ana" wind condition. Two Southern California Edison Company owned poles, which supported a section of the Crater-Reclaim-Tapia 66kV circuit were knocked down approximately 4 minutes before the fire was reported to the authorities. The initial reports indicate the wind gusts exceeded 100 mph at the time the circuit relayed.

It is believed the fire damaged approximately 4,400 acres of brush in the Malibu area. It is also believed that 6 to 8 structures were damaged or destroyed during the course of the fire.

Southern California Edison Company's facilities at the incident location consisted of a section of the Crater-Reclaim-Tapia 66kV circuit suspended on two poles located near Mile Marker 1.86 along Malibu Canyon Road. Repairs consisted of replacing the two poles damaged by the windstorm.

SCE submits this information pursuant to Commission instructions, and requests that the Commission hold this information confidential under Public Utilities Code Sections 315 and 583 and General Order 66C.

Regards,

A handwritten signature in black ink, appearing to read "F. C. McCollum".

Frederick C. McCollum

FCM/sb

cc: Public Utilities Commission
Los Angeles Office
Attn: Consumer Service Division

ATTACHMENT 2

SCE Data Request Response Regarding Data Used in Wind Load Analysis

Southern California Edison
Malibu Fire I.09-01-018

DATA REQUEST SET Malibu Fire CPSD-02

To: CPSD
Prepared by: Melvin Stark
Title: Manager
Dated: 03/08/2010

Question 10:

(All Respondents) Please identify every element that is included in a wind loading analysis. If applicable, answer this data request both as to transmission facilities, distribution facilities, and facilities that have both transmission and distribution elements.

Response to Question 10:

Wind loading analysis for distribution, transmission and distribution/transmission facilities take into account the following data:

- Pole species
- Pole length
- Pole class
- Year installed
- Circumference
- Setting depth
- Design criteria (e.g. 8 pound wind)
- Deterioration type and amount (if applicable)
- Conductor information (including communication conductor):
 - Conductor type/size
 - Attachment height
 - Span ahead/back
 - Angle ahead/back
 - Tension (lbs.)
 - Quantity of attachments
- Equipment information:
 - Equipment description
 - Area (sq. ft.)
 - Weight
 - Attachment height
 - Transverse offset (ft.)
 - Quantity of attachments
- Guy information (if applicable):
 - Guy type (size)

- Angle from line (degree)
- Angle type
- Attachment height
- Lead length
- Number of guys
- Strut height
- Assign conductor supported by the guy, including % of tension.

Which data elements are used in a particular wind loading analysis may depend on the specific program used and data available.

ATTACHMENT 3

Excerpts Taken from Arthur Peralta's Deposition Transcript,
dated: March 5, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

- - -

Investigation on the)
Commission's Own Motion into the)
Operations and Practices of)
Southern California Edison)
Company, Cellco Partnership LLP)
d/b/a Verizon Wireless, Sprint)
Communications Company LP, NextG) Investigation 09-01-018
Networks of California, Inc. and) (Filed January 29, 2009)
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.)
-----)

CERTIFIED COPY

DEPOSITION OF

ARTHUR DEAN PERALTA

LOS ANGELES, CALIFORNIA

MARCH 5, 2010

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

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

FILE NO.: A401EA6

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

- - -

Investigation on the)
 Commission's Own Motion into the)
 Operations and Practices of)
 Southern California Edison)
 Company, Cellco Partnership LLP)
 d/b/a Verizon Wireless, Sprint)
 Communications Company LP, NextG) Investigation 09-01-018
 Networks of California, Inc. and) (Filed January 29, 2009)
 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.)
 -----)

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

A P P E A R A N C E S

1
2
3 For Public Utilities Commission of the State of
4 California:

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Also Present:

Kan-Wai Tong

Rick McCollum

I N D E X

WITNESS: ARTHUR DEAN PERALTA

EXAMINATION	PAGE
By MR. MOLDAVSKY	6, 61
By MR. CARDOZA	142

EXHIBITS

PUBLIC UTILITIES COMMISSION ("PUC")

NUMBER	DESCRIPTION	PAGE
1	- Excerpt from General Order 95	115
2	- 10/22/03 letter with attachments	121

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

PAGE/LINE

22/20	29/4	30/1	30/16	30/18	30/23
36/10	50/19	62/4	113/8	114/19	

INFORMATION TO BE SUPPLIED:

(NONE)

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 with regard to percipient observations.

2 I will not allow the witness, however, to
3 comment to communications made to the law department
4 post-accident with regard to its investigation. Those
5 are objected to, those communications, on the basis of
6 attorney-client and work product privileges.

7 So I would instruct him not to answer and ask
8 you not to ask him questions about his conversations with
9 members of the law department in terms of its
10 investigation.

11 MR. MOLDAVSKY: Is Mr. McCollum a member of the law
12 department?

13 MR. CARDOZA: He is.

14 THE WITNESS: Yes.

15 MR. CARDOZA: And I'll represent that he is.

16 BY MR. MOLDAVSKY:

17 Q. Is he an attorney?

18 A. I couldn't tell you. I don't know whether or
19 not he's an attorney or not.

20 MR. CARDOZA: While we're on this subject, I do want
21 to clarify or make a point.

22 The post-accident investigation documents
23 related to that investigation, Edison also stands by the
24 assertion of a privilege in terms of work product and
25 attorney-client.

1 In terms of the deposition request for today,
2 there was a request for documents in a
3 broad -- you know -- framework that related to the
4 incident, but those -- that request was couched in terms
5 of nonprivileged.

6 Any documents generated by Edison at the
7 direction of the law department, in terms of
8 post-incident investigation, we would submit is protected
9 under the privilege.

10 So with regard to any reports Mr. Peralta would
11 have prepared that were done at the direction or request
12 of the law department, those would be materials that we
13 would assert a privilege on.

14 MR. MOLDAVSKY: Okay.

15 MR. CARDOZA: And prior -- Just so that you know,
16 too, prior inspection demands with regard to this OII
17 were limited to pre-incident documents.

18 MR. MOLDAVSKY: Okay. Your objections are noted,
19 Mr. Cardoza.

20 Just to clarify --

21 MR. CARDOZA: Sure.

22 MR. MOLDAVSKY: -- the witness has testified that he
23 generated notes from the poles that he observed in
24 Malibu. You asserted all kinds of privileges when we got
25 onto this topic.

1 Are these poles the poles that failed that you
2 indicate are the subject of this investigation?

3 MR. CARDOZA: I believe so --

4 THE WITNESS: Yes.

5 MR. CARDOZA: -- yes.

6 MR. MOLDAVSKY: So these are the three poles that
7 failed in the vicinity of the ignition source of the
8 Malibu Canyon.

9 MR. CARDOZA: That's correct.

10 MR. MOLDAVSKY: Okay. And a document was identified
11 in the course of this deposition, which are Art Peralta's
12 notes taken from the scene -- taken from the poles that
13 he observed that had failed in Malibu --

14 MR. CARDOZA: That's correct.

15 MR. MOLDAVSKY: -- correct?

16 MR. CARDOZA: Correct.

17 MR. MOLDAVSKY: And CPSD is affirmatively requesting
18 those notes at this time.

19 MR. CARDOZA: Well, I'm objecting to those. No. 1,
20 you requested nonprivileged documents. I'm informing you
21 that we are taking the view that those are privileged --

22 MR. MOLDAVSKY: Okay.

23 MR. CARDOZA: -- No. 1.

24 And No. 2, they'd not been previously
25 requested, so to the extent there is a request, we'll

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 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 BY MR. MOLDAVSKY:

2 Q. On the ones that you do, how do you keep track
3 of it?

4 MR. CARDOZA: Same objection.

5 BY MR. MOLDAVSKY:

6 Q. If you know.

7 A. I keep them in a folder.

8 Q. Did you keep documents related to the poles
9 that you observed in Malibu in the folder?

10 A. No.

11 Q. As you sit here today, do you have any
12 documents in your possession in regard to the poles that
13 you observed in Malibu?

14 A. No.

15 Q. How about on your computer?

16 A. Only what's in my software that I use.

17 Q. What do you mean by that?

18 A. I have a poleloading software.

19 Q. When you say "poleloading software," what are
20 you referring to?

21 A. A software that runs analysis.

22 Q. Did you run an analysis on the poles that
23 failed in Malibu?

24 A. Yes.

25 Q. What kind of analysis did you run?

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 misstates testimony.

2 But he can respond.

3 MR. MOLDAVSKY: He said it.

4 MR. CARDOZA: No. He said he has the program. I'm
5 not sure that he said he has the data.

6 MR. MOLDAVSKY: He said it.

7 THE WITNESS: It may be in the software.

8 BY MR. MOLDAVSKY:

9 Q. When you say "it may be in the software," what
10 do you mean?

11 A. We're constantly readjusting the software to
12 new versions.

13 Q. Why would that impact whether or not your
14 findings would be in the software?

15 A. Because sometimes we -- we store records, and
16 we go to a newer version.

17 Q. Did you print out your -- the results of your
18 windload analysis on the Malibu poles?

19 A. I don't recall whether I did or not.

20 Q. Did you communicate the results of your
21 analysis regarding the poles that failed in Malibu?

22 A. I believe I did.

23 Q. Okay. Was that a communication to
24 Mr. McCollum?

25 A. I could have, but I don't recall.

1 Q. Do you remember who you communicated with in
2 regard to the poles that failed in Malibu as to your
3 analysis results?

4 A. With our attorney.

5 Q. (Indicating.)

6 Mr. Cardoza.

7 A. Yes.

8 Q. Was that the only time you ran a poleloading
9 analysis on those poles that failed in Malibu?

10 A. Yes.

11 MR. MOLDAVSKY: Okay. So CPSD issues an oral data
12 request for the results of the poleloading analysis
13 conducted by Mr. Peralta regarding the poles that failed.

14 MR. CARDOZA: And I think, as I stated before, we
15 object to the production on the basis of attorney-client
16 and work product privilege, and it's also post-accident
17 reconstruction that is expert discovery that we've
18 already objected to in a variety of contexts in this
19 proceeding.

20 And Mr. Cagen, I believe, in our prior
21 meet-and-confers, was very clear that he would not pursue
22 post-accident reconstruction efforts and efforts of
23 experts and consultants with regard to their opinions and
24 conclusions regarding cause and origin of the fire. So
25 I'm objecting.

1 BY MR. MOLDAVSKY:

2 Q. What do you mean when you say, "I don't respond
3 to fire"?

4 A. The type of structures I respond to is if we
5 have a Santa Ana event, and let's say the wind was the
6 main cause of why these structures went down. If we have
7 a fire that may go through an area and they burn
8 structures that go down, I don't inspect those.

9 Q. To your knowledge, is there another person at
10 Southern California Edison that does that?

11 A. I'm not aware if anybody else does that.

12 Q. So to clarify, the fact that a pole fails in
13 Southern California Edison's territory doesn't trigger
14 your observation of that pole; correct?

15 A. Not all the time.

16 Q. Well, what other factors are there? The fact
17 that a pole fails in Southern California Edison's
18 territory, and what else would trigger your observation
19 of that pole?

20 A. If I have a pole goes down due to ice load. If
21 I have a pole goes down just because it goes down. If I
22 have a pole that goes down due to wind, a microburst, or
23 any other event that is associated with wind or -- or
24 storm-type conditions, I'll respond to those.

25 But for car-hit poles, fire, that involves

1 fire, I won't respond.

2 Q. Okay.

3 (Off the record.)

4 MR. MOLDAVSKY: Now, I'm not going to ask you for
5 the results, which we've had a long discussion about
6 today, so we're going to leave that to subsequent
7 actions.

8 Q. But as you sit here today, do you recall the
9 result of the windload study that you did regarding the
10 three poles that failed in Malibu in 2007?

11 MR. CARDOZA: I'll object; instruct him not to
12 answer.

13 MR. MOLDAVSKY: As to whether or not he recalls it?

14 MR. CARDOZA: I think it's irrelevant whether or not
15 he recalls it, frankly. It suits no valid purpose.
16 We've discussed that there is data that exists regarding
17 his findings, so whether he recalls it but is not
18 permitted to discuss it because it's under claim of
19 privilege, I would submit is irrelevant.

20 MR. MOLDAVSKY: I think the fact that he would
21 recall it provides a different avenue of obtaining that
22 evidence depending on the result of that dispute, which
23 is apparently going to be a dispute.

24 But the fact that he recalls it right now is
25 not protected under the attorney-client privilege or the

1 attorney work privilege.

2 You're objecting just on relevance grounds, and
3 I think if you're instructing him not to answer,
4 generally that instruction is done after a claim of
5 privilege.

6 I don't think this is privileged information,
7 Counsel, and I think that he should answer this question.

8 MR. CARDOZA: What possible value is it whether he
9 recalls it but can't testify to it because we claim
10 privilege?

11 MR. MOLDAVSKY: Well, he may have to testify to it
12 at a certain point later in this proceeding, so the fact
13 that he recalls it is material to this case.

14 MR. CARDOZA: Does he have any independent
15 recollection of what the result is?

16 MR. MOLDAVSKY: That's the question.

17 MR. SELBY: By the way, Mr. Moldavsky, could you
18 please specify, again, what result are we talking about?

19 MR. MOLDAVSKY: And again, not asking for the result
20 itself, because that's a subject of dispute, but whether
21 or not the witness recalls the result of the windload
22 analysis that was conducted in October of 2007 regarding
23 the three poles that failed in Malibu.

24 MR. CARDOZA: I'm going to instruct him not to
25 answer based on privilege, attorney-client, and work

1 product.

2 MR. MOLDAVSKY: Please mark --

3 MR. CARDOZA: You may differ with me, but I'm
4 objecting on that basis, in addition to relevancy,
5 although relevancy should be used sparingly. At some
6 point, it becomes harassive if it's totally irrelevant to
7 the proceeding, so I'm objecting on that basis.

8 MR. MOLDAVSKY: And you're also --

9 MR. CARDOZA: Instructing him not to answer.

10 MR. MOLDAVSKY: And I'd like the transcript marked.

11 THE REPORTER: I do it anyway.

12 MR. MOLDAVSKY: Okay. All right.

13 I can take a break, go off the record, see if
14 there's anything else.

15 MR. CARDOZA: Okay, thanks. Off the record, gang.

16 (Recess taken.)

17 MR. MOLDAVSKY: First I'd like to distribute what
18 I'd like marked as Exhibit No. 1, so

19 (Exhibit 1 marked for identification and
20 attached hereto.)

21 MR. MOLDAVSKY: Are we on the record?

22 THE REPORTER: Yes.

23 BY MR. MOLDAVSKY:

24 Q. Mr. Peralta, could you review what has been
25 marked as Exhibit No. 1. And I'm not asking you to read

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

1 aware of"?

2 A. It's been two, two and a half years, and I
3 don't remember. I've looked at so many poles that have
4 gone down that I don't recall.

5 Q. How about woodpecker holes?

6 A. I don't remember seeing woodpecker holes. I
7 don't recall.

8 Q. Were the poles laying down on the road?

9 A. No.

10 Q. Where were they?

11 A. Majority of the poles were laying down into the
12 canyon (indicating).

13 Q. Were the poles cut in sections?

14 A. I don't recall, because crews were working on
15 them.

16 Q. What were the crews doing to them?

17 A. They were removing conductors and just trying
18 to remove the poles.

19 But like I said, I was only there probably less
20 than an hour.

21 Q. Do you recall looking at the pole
22 identification numbers?

23 A. Only based on what the inventory match showed
24 me.

25 Q. Right.

1 But did you see the pole identification numbers
2 on the pole?

3 A. I could have, but I don't recall.

4 Q. Did you confirm that you were looking at the
5 right poles?

6 A. Based on the inventory.

7 But I couldn't remember whether or not I
8 confirmed the down poles with the associated number that
9 was on the inventory map.

10 Q. So you didn't indicate pole numbers subsequent
11 to observing them?

12 MR. CARDOZA: Just object; vague as phrased.

13 THE WITNESS: The only way that I noted if there was
14 a pole number was, I looked at the pole directly south of
15 the down poles, got that number, and walked to the pole
16 that was north of there that was still standing, and
17 correlate the two poles, or the poles that were laying
18 down on the ground, based on what was on the inventory
19 map.

20 MR. MOLDAVSKY: Okay.

21 Q. How far away were you from the poles that had
22 failed at the time you arrived at the scene?

23 MR. CARDOZA: Objection; vague.

24 BY MR. MOLDAVSKY:

25 Q. Okay. What's the closest that you got to the

1 poles that failed?

2 A. Probably about me to you, about 5 feet.

3 Q. Okay. And how long did you stay approximately
4 5 feet away from the poles that failed?

5 A. Oh, I don't know. I was there, I didn't want
6 to get -- I didn't want to get too close because crews
7 were working, and I didn't want to create an unsafe
8 environment for them as well as for me.

9 Q. Of course.

10 If you had noticed any pole degradation on the
11 poles that had failed in Malibu in 2007, would that have
12 impacted your poleloading analysis?

13 A. Could have if they were there.

14 Q. How so?

15 A. Well, if you have --

16 MR. CARDOZA: Let me just object as calling for
17 speculation, lacks foundation, and vague as phrased.

18 You can respond.

19 THE WITNESS: If you have degradation, the amount of
20 remaining -- the remaining wood or the amount of section
21 modulus affects the overall safety measure, as far as
22 what's actually left.

23 In other words, when you have a brand-new pole,
24 you start out with 100 percent. If you have degradation,
25 it may reduce the strength by 50 percent. Well, that

1 affects your overall safety factor, as an example.

2 MR. MOLDAVSKY: I see. Thank you.

3 Q. Throughout the course of this deposition, there
4 have been occasions where your counsel, Mr. Cardoza, has
5 instructed you not to answer.

6 Do you recall that, Mr. Peralta?

7 A. Yes.

8 Q. And you chose not to answer those questions
9 based on your counsel's instruction; correct?

10 A. Correct.

11 MR. MOLDAVSKY: Okay. All right. We can go off the
12 record.

13 There's one more document that I may enter into
14 the record or may not. I want to review that document
15 before doing that.

16 MR. CARDOZA: Okay. Will this take very long?

17 MR. MOLDAVSKY: Just need to look at my file and
18 make copies, if necessary.

19 MR. CARDOZA: Okay.

20 (Off the record.)

21 MR. MOLDAVSKY: There won't be a third exhibit; just
22 an oral data request to Southern California Edison --

23 MR. CARDOZA: Another one?

24 MR. MOLDAVSKY: Well --

25 MR. CARDOZA: Holy smoke. Okay.

ATTACHMENT 4

Declaration of Frederick C. McCollum

I, FREDERICK C. MCCOLLUM, declare:

1. I am a Senior Investigator in the Claims Department, a division of the Legal Department for Southern California Edison ("Edison"). I have been a Senior Investigator since 2007. Before becoming a Senior Investigator, I had been a Senior Claims Representative in the Edison Claims Department since 2000. I have personal knowledge of the matters stated below and, if called as a witness, could and would testify competently as set forth below. I make this declaration in support of Edison's Opposition to the Consumer Protection and Safety Division's Motion to Compel.

2. On Sunday, October 21, 2007, I spoke with Claims Manager Patrick Spence, who was the Claims Manager on duty at the time, regarding a fire in Malibu Canyon. I was the Investigator on duty at the time. Mr. Spence dispatched me to the Malibu area. Mr. Spence subsequently called me while I was enroute and advised me that he had spoken with Patricia Cirucci, an Edison in-house attorney, and that Ms. Cirucci had directed Mr. Spence to open a confidential investigation into all matters surrounding the fire. All information collected in the investigation was to be compiled into a report which would be used by Edison counsel in connection with any litigation arising out of the fire. In accordance with Ms. Cirucci's instruction, Mr. Spence instructed me to initiate an investigation of the Malibu fire.

3. On Monday, October 22, 2007, I contacted Art Peralta by phone to tell him that, at the request of Edison's attorneys, he was to observe the poles involved in the Malibu fire before they were removed from their location. I told Mr. Peralta to take notes of his thoughts, observations, impressions and analysis so that I could include them in the investigation file.

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

5. Shortly afterwards, I received a sealed envelope from Mr. Peralta by Edison's internal mail system. The envelope contained Mr. Peralta's handwritten notes as well as hard copies of his analysis. I placed these documents in the investigation file for the Malibu fire.

6. On or about April 1, 2008, I gave the investigation file to Friedrich Seitz, Esq., of Murchison & Cumming, LLP. It was my understanding that Mr. Seitz was Edison's outside

counsel.

7. Other than Mr. Seitz, no one outside of Edison's Law Department has reviewed the investigation file.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 5, 2010



Frederick C. McCollum

ATTACHMENT 5

Notice of Depositions, dated: February 22, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
02-22-10
04:59 PM

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

Investigation 09-01-018
(Filed January 29, 2009)

**CONSUMER PROTECTION AND SAFETY DIVISION'S
NOTICE OF TAKING DEPOSITIONS**

TO ALL PARTIES ON SERVICE LIST I.09-01-018:

PLEASE TAKE NOTICE that on Wednesday, March 3, 2010, Thursday, March 4, 2010 and Friday, March 5, 2010 the Consumer Protection and Safety Division (CPSD) will take the depositions of Richard Cromer, June Santiago and Art Peralta. These individuals are former and current Southern California Edison Company employees.

The deposition of Richard Cromer will commence at 1:00 p.m. on Wednesday, March 3, 2010. This deposition will be held at the Southern California Edison Company Valencia Service Center, located at: 25625 West Rye Canyon Road, Valencia, 91355.

The deposition of June Santiago will commence at 11:00 a.m. on Thursday, March 4, 2010. The deposition of Art Peralta will commence at 11:00 a.m. on Friday March 5, 2010. These depositions will be held at the Commission's Los Angeles Office, located at: 320 West 4th Street, Suite 500, Los Angeles, 90013.

All of the abovementioned depositions will continue day to day until completed. CPSD requests that deponents bring with them to the deposition all non-privileged documents, in their possession, that refer to inspections, maintenance, testing and studies

related to the utility facilities involved in the Malibu fire at issue in this proceeding. CPSD further requests that deponents bring with them to the deposition all non-privileged correspondences that refer to inspections, maintenance, testing and studies related to the utility facilities involved in the Malibu fire at issue in this proceeding.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

Edward Moldavsky

Attorney for the Consumer Protection
and Safety Division

California Public Utilities Commission
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San Francisco, CA 94102
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February 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **CONSUMER PROTECTION AND SAFETY DIVISION'S NOTICE OF TAKING DEPOSITIONS** to the official service list in **L09-01-018** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **February 22, 2010** at San Francisco, California.

/s/ CHARLENE D. LUNDY

Charlene D. Lundy

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I.09-01-018

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ATTACHMENT 6

Excerpt from CPSD Data Requests, dated: March 5, 2010

9. (All Respondents) **Please provide an itemized list of the total amount claimed as damages resulting from the Malibu Fire at issue in this proceeding.**
10. (All Respondents) **Please identify every element that is included in a wind loading analysis. If applicable, answer this data request both as to transmission facilities, distribution facilities, and facilities that have both transmission and distribution elements.**
11. (All Respondents) **What qualifications are required for a person to perform wind loading analysis? If applicable, answer this data request both as to transmission facilities, distribution facilities, and facilities that have both transmission and distribution elements.**
12. (All Respondents) **Retrospective Wind Load Analysis. Please provide a wind loading analysis for the poles at issue in this investigation, as the poles existed prior to the 2003-2004 NextG installation in Malibu., after the 2003-2004 NextG installation in Malibu, and prior to the 2007 Malibu Fire.**
13. (All Respondents) **Regarding Exhibit 1 of the June Santiago deposition, taken on March 4, 2010, please state whether the "30 Mile Topanga Fiber project" was in any way related to the 2003-2004 NextG installation in Malibu. If so, how was it related?**
14. (All Respondents) **Please provide all materials, handouts, and other documents, related Joint Pole Committee memoranda from October 2007-present.**
15. (All Respondents) **In Richard Cromer's Deposition, taken on March 3, 2010, Exhibits 2 and 3 include handwritten notes and marks. Please specify the individuals that generated the handwritten notes and/or marks in the exhibits and connect any listed individual to the notes and/or marks that they generated.**
16. (All Respondents) **In Mr. Peralta's deposition, taken on March 5, 2010, Mr. Peralta indicated that he had conducted a wind load analysis of the three poles at issue in this investigation.**
 - a. **Please provide that analysis.**
 - b. **Please provide the raw data underlying that analysis.**
 - c. **Please provide any notes or other documents that Mr. Peralta may have generated in connection with the wind load analysis that he conducted.**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY TO SOUTHERN CALIFORNIA EDISON COMPANY’S RESPONSE TO 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”** to the official service list in **I.09-01-018** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **April 15, 2010** at San Francisco, California.

/s/ JOANNE LARK
JOANNE LARK

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