

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA



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

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

**DECLARATION OF EDWARD MOLDAVSKY IN SUPPORT OF
SUPPLEMENTAL BRIEF OF THE CONSUMER PROTECTION AND
SAFETY DIVISION**

I, Edward Moldavsky, declare under penalty of perjury that the following is true to my best knowledge and belief:

1. Attached hereto as Exhibit EDM-1 is a true and correct copy of a letter produced by AT&T in this proceeding in response to a data request of CPSD. This letter, dated June 13, 2008, is addressed to "Louisa" of Bradley Landfill and Recycling, which is the location where AT&T indicates that its fiber optic cable was discarded after the Malibu Canyon Fire in October 2007. In that letter, counsel for AT&T states:

Because of the possibility of litigation from this incident, AT&T Mobility requests that you determine whether you have maintained AT&T Mobility's fiber, which was turned over to you in or around the second week of January 2008 by contractor, Kirk Bouchard. If so, we request that you adequately preserve that fiber.

AT&T also requested that the landfill not conduct any destructive testing. CPSD received this letter from AT&T on January 12, 2011.

2. Prior to the March 8, 2010 discovery cutoff and the filing of CPSD's initial testimony, CPSD's last deposition was of Arthur Peralta, a percipient witness for SCE. Mr. Peralta was at the scene of the Malibu Fire shortly after the incident, and conducted a pole loading study of the facilities as they existed at the time of the incident. At his deposition on March 5, 2010, SCE's counsel instructed Mr. Peralta not to answer numerous questions about his pole loading study on the grounds of the attorney-client privilege and the work-product doctrine. On March 26, 2010, CPSD filed a motion to compel Mr. Peralta's Wind Load Data, including the results of his pole loading study.

3. On November 18, 2010, SCE served its testimony in this proceeding, including the prepared testimony of Mr. Jack Van Beyeren, which included a type of pole loading analysis. Attached hereto as Exhibit EDM-2 is a true and correct copy of Mr. Van Beyeren's prepared testimony.

4. On December 10, 2010, in response to CPSD Data Requests 2-1 and 2-5, regarding the preservation of evidence, subject to objections, SCE stated as follows:

SCE responds that all of the "physical evidence" associated with the failed poles was removed from Malibu Canyon and retained is located in a SCE facility in Westminster, California. The CPSD has already observed this "evidence" during its visit to the Westminster facility and has had continuous access thereto.

SCE response to Data Request 2-5 added:

The evidence was taken into custody under the supervision of Fredrick McCollum.

Attached hereto as Exhibit EDM-3 are true and correct copies of SCE's December 10, 2010 responses to CPSD's Data Requests 2-1 and 2-5.

5. On December 10, 2010, I received Data Request Responses of Respondents AT&T, Verizon and NextG to Data Requests 2-1 and 2-5, regarding the preservation of evidence. In response to Data Request 2-5, subject to objections, AT&T stated:

AT&T's fiber optic cable attached to the subject poles was damaged as a result of the fire and was removed after the Malibu Canyon fire by Bouchard Communications. AT&T understands that the fiber was discarded upon removal. See response to CPSD Data Request 4-5 for Bouchard Communication's contact information. It is AT&T's belief that other physical evidence removed and retained from the site of the fire is located at a warehouse controlled by Southern California Edison Company in Westminster, CA, which has always been available for inspection by CPSD.

In response to Data Request 2-1, subject to objections, Verizon's response included the following statement:

Verizon Wireless's fiber optic lines on the subject poles at the time of the fire were replaced and the existing line discarded.

In response to Data Request 2-1, subject to objections, NextG's response included the following statement:

Physical evidence of the subject poles and some of the related equipment is maintained by SCE at its warehouse in Westminster, California. CPSD has inspected that evidence. NextG's fiber optic lines on the subject poles at the time of the incident were damaged and consequently replaced. The damaged lines were discarded.

Attached hereto as Exhibit EDM-4 are true and correct copies of AT&T's, Verizon's, and Sprint's December 10, 2010 responses to CPSD's Data Requests 2-1 and 2-5.

6. On December 10, 2010, I received data request responses from SCE, including its responses to CPSD Data Requests 6-7, 6-8, and 6-9. Data Request 6-7 states:

Does any witness who testified in this proceeding know the results of the Peralta Wind Load Analysis? If yes, identify the witness and produce the results.

Data Request 6-8 states:

Has any witness who testified in this proceeding reviewed or relied upon the Peralta Wind Load Analysis? If yes, identify the witness and produce all data reviewed or relied upon.

Data Request 6-9 states:

Has any witness who testified in this proceeding received in any form information related to the Peralta Wind Load Analysis? If yes, identify the witness and produce all information received by that witness.

SCE's December 10, 2010 responses to each of these three data requests was, subject to certain objections, "No." Attached hereto as Exhibit EDM-5 are true and correct copies of SCE's December 10, 2010 responses to CPSD Data Requests 6-7, 6-8 and 6-9.

7. After CPSD noticed Frederick McCollum's deposition, SCE, for the first time, on December 15, 2010, provided CPSD with a copy of the transcript of Mr. McCollum's October 14, 2010 deposition taken in the civil litigation. At that deposition, Mr. McCollum admitted that the Edison Carrier Solutions cable had been discarded, and that SCE cannibalized parts of SCE's own KPF switch(es), and discarded certain conductor splices, which were previously loaded on the Malibu Poles. Attached hereto as Exhibit EDM-6 are true and correct copies of excerpts from the deposition transcript from the civil litigation provided by SCE.

8. On December 17, 2010, I received from SCE certain letters sent from Mr. Fred McCollum (an SCE investigator) to each of the CIP Respondents. In the letters, SCE requests that documents and "item(s) which may reasonably be identified as potential evidence" be preserved. The letters are dated January 15,

2008. Attached hereto as Exhibit EDM-7 are true and correct copies of SCE's January 15, 2008 Letters to each of the CIP Respondents.

9. Attached hereto as Exhibit EDM-8 is a true and correct copy of a December 31, 2010 email from counsel for NextG responding to a CPSD email of December 28, 2010.

10. On January 10, 2011, I received SCE's Supplemental Responses to CPSD Data Requests 6-7 and 6-9. SCE's January 10, 2011 Supplemental Responses, subject to certain objections, admitted the following:

With respect to Mr. Van Beyeren, SCE's December 10, 2010 answer to this data request was based upon information provided to SCE counsel by Mr. Van Beyeren at that time. In a communication with SCE counsel on Monday, January 10, 2011, Mr. Van Beyeren provided additional information that requires the following revised response:

While engaged in work requested by SCE counsel prior to and unrelated to Mr. Van Beyeren's prepared testimony, Mr. Van Beyeren had an oral communication with Mr. Peralta in which Mr. Van Beyeren learned limited information regarding "the Peralta Wind Load Analysis."

SCE will not disclose the substance of the information Mr. Van Beyeren learned because it remains privileged work product and the communication between Mr. Van Beyeren and Mr. Peralta was a privileged communication between two persons working for and at the direction of SCE counsel. Furthermore, Mr. Van Beyeren did not review, rely upon, or consider this information in the preparation of his testimony.

Attached hereto as Exhibit EDM-9 are true and correct copies of SCE's January 10, 2010 responses to Data Requests 6-7 and 6-9, excluding general objections.

11. On January 11, 2011, I took the deposition of Mr. Jack Van Beyeren. SCE Counsel interjected numerous objections and instructions not to answer

questions regarding Mr. Van Beyeren's knowledge of the Arthur Peralta wind load data. Nevertheless, Mr. Van Beyeren admitted that he had received a "little hint of some of the results." Attached hereto as Exhibit EDM-10 are true and correct copies of relevant excerpts of Mr. Van Beyeren's January 11, 2011 deposition.

12. On January 12, 2011, I received an email from Verizon's counsel which included the following updated statements regarding Verizon's responses to CPSD Data Requests 2-1 and 2-5:

In its December 10, 2010 response to Data Requests 2-1 and 2-5, Verizon Wireless mistakenly advised that its fiber optic line on the subject poles at the time of the fire was replaced and discarded. Verizon Wireless has now verified that the fiber optic cable and messenger cable that was on pole numbers 1169252 and 1169253 in Malibu Canyon at the time of the fire were **not** damaged. Rather than being replaced and discarded following the fire, the fiber optic cable and messenger cable were in fact re-attached to the replacement poles by Bouchard Communications.

We apologize for any inconvenience that our previous answers may have caused the CPSD. Verizon Wireless discovered its error following CPSD's December 24, 2010 e-mail inquiry, when it requested Bouchard Communications find a location in the Malibu Canyon area where the original fiber cable had not been replaced so that CPSD could verify the size and weight of the original fiber. Verizon Wireless was trying to assist the CPSD in its investigation because Verizon Wireless was under the mistaken belief that the original cable had been replaced and discarded. To Verizon Wireless's surprise, Bouchard Communications reported back that the original fiber and messenger cable on pole numbers 1169252 and 1169253 had not been replaced, but instead had been re-attached to the new replacement poles. Malcolm Brown, formerly of Verizon Wireless, subsequently went to the site with Bouchard Communications and verified this fact.

Attached hereto as Exhibit EDM-11 is a true and correct copy Verizon's January 12, 2011 email regarding Data Requests 2-1 and 2-5.

13. On January 12, 2011, I received supplemental responses from SCE regarding CPSD Data Requests 2-1 and 2-5. In its supplemental response to Data Request 2-1, subject to objections, SCE states:

SCE is aware of three pieces of equipment that have been discarded or used elsewhere. These are: (1) a KPF switch that SCE decided to dismantle and use to rebuild another KPF switch elsewhere in Malibu that was urgently needed in order to restore power; (2) several feet of conductor that SCE work rules required to be replaced before the conductors could be reattached to the insulator shoes; and (3) the Edison Carrier Solutions ("ECS") fiber optic communications cable which had been damaged in the fire and could not be re-used.

In its supplemental response to Data Request 2-5, subject to objections, SCE identified Matt Payne as the Crew Chief for the crew that removed the KPF switch and the portions of the conductor. SCE also identified Joe Rodriguez as the Crew Chief for the crew that removed the damaged fiber optic cable. Attached hereto as Exhibit EDM-12 are true and correct copies of SCE's, January 12, 2011 supplemental responses to Data Requests 2-1 and 2-5.

14. Attached hereto as Exhibit EDM-13 is a true and correct copy of NextG's and AT&T's supplemental responses to Data Requests 2-1 and 2-5, dated January 12, 2011.

15. On February 3, 2011, I took the depositions of Mr. Matt Payne and Mr. Joe Rodriguez, who were identified by SCE as the personnel who supervised crews that removed some of the evidence from the scene of the Malibu Canyon Fire. I do not yet have the transcripts for those depositions, but recall that Mr. Rodriguez stated that nobody told him to preserve the Edison Carrier Solutions cable.

16. On February 10, 2011, CPSD and SCE entered into a discovery stipulation in this case. Attached hereto as Exhibit EDM-14 is a true and correct copy of the February 10, 2011 Stipulation.

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

/s/ EDWARD MOLDAVSKY

EDWARD MOLDAVSKY