



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

STATE OF CALIFORNIA

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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)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)**  
**MOTION FOR SUMMARY ADJUDICATION OF**  
**SPOILIATION OF EVIDENCE CLAIM**

*(ORAL ARGUMENT REQUESTED)*

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## **I. INTRODUCTION**

Southern California Edison Company (“SCE”) moves for summary adjudication of CPSD’s claim related to spoliation of evidence and its request for an “adverse evidentiary inference.” CPSD’s claim of spoliation against SCE stems from the fact that SCE did not retain three standard pieces of equipment attached to the failed poles: (1) a small portion of damaged conductor; (2) damaged telecommunication cable, and (3) a KPF switch. CPSD ignores SCE’s efforts to collect and preserve as much physical evidence as reasonably possible given the emergency circumstances of firefighting, system restoration, and salvage. SCE transported and retained literally tons of equipment, starting with the failed poles but including cross-arms, anchors, insulators, and related hardware.

There is no dispute that portions of damaged conductor and telecommunications cable were discarded and parts of a KPF switch were reused following the Malibu Canyon fire. But CPSD cannot establish the legal concept of spoliation or that an evidentiary sanction is warranted, because SCE did not “destroy” these items in “anticipation of litigation,” and their unavailability could not have been expected to, nor did it, cause prejudice to CPSD’s case against SCE or other respondents. Despite the unavailability of these pieces of equipment, CPSD has conducted multiple pole loading analyses on which it bases claims of overloading and is now recommending tens of millions of dollars in fines against SCE and other respondents. CPSD has been fully able to construct its case by utilizing product specifications supplied by SCE and the KPF switch manufacturer as a substitute for actual visual examination of the missing items. Such a practice is routinely employed by CPSD investigators as it is rare for every piece of equipment retained for later examination. Neither SCE nor any other respondent challenges the inclusion of these specifications in CPSD’s pole loading calculations. The physical absence of these few items simply has had no impact on CPSD’s case.

Granting this motion would significantly simplify and speed up the hearings, briefing and decision in this case.

## II. FACTUAL BACKGROUND

### A. **SCE Undertook Substantial Efforts To Preserve Evidence At The Scene Of The Malibu Canyon Fire.**

SCE has a longstanding practice in incidents where litigation or Commission inquiry is anticipated to preserve equipment its investigators on the scene believe is reasonably likely to assist in the determination of the cause of a particular incident, and which is not essential for the restoration of service and safe system operation. *See* SCE Surrebuttal Testimony (Ramos) at 1 (June 29, 2010).<sup>1</sup> Various factors affect whether and to what extent specific equipment will be preserved, including, but not limited to, the expected importance of the equipment to any potential investigation, emergency operational needs, difficulties in retrieving specific pieces of equipment, and logistics. *Id.*

Consistent with this practice and in response to the Malibu Canyon fire, SCE undertook to preserve the failed poles (*i.e.*, pole numbers 1169252E, 1169253E, and 2279212E) and as much of the attached equipment as reasonably practical under the circumstances. *Id.* At Mr. McCollum's instruction, SCE work crews preserved tons of equipment, including the failed poles, cross-arms, conductors, cables, anchors, antennae, insulators, and other hardware attached to the failed poles. *Id.* at 1-2. These items were secured and transported to a storage facility in Westminster, California, where they have been stored since late October 2007. *Id.* Of the material preserved, only three pieces of equipment are the subject of CPSD's spoliation claim against SCE: (1) a KPF switch (a piece of equipment used to allow crews to de-energize a portion of a circuit for safety reasons); (2) sections of Edison Carrier Solutions ("ECS") fiber

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<sup>1</sup> All references to "Ex. \_" are to the exhibits attached to the Declaration of John Gehart filed herewith. To reduce the volume of this filing, SCE attaches to the declaration deposition transcripts and documents cited in this motion but not cited testimony or filings available on the Commission's website. SCE will provide cited testimony or filings at the ALJ's request. For ease of reference, testimony served by CPSD on May 3, 2010 is referenced as "CPSD Direct Testimony," testimony served on April 29, 2011 is "CPSD Rebuttal Testimony," and testimony served on August 29, 2011 is "CPSD Reply Testimony." Testimony served by SCE on November 18, 2010 is referenced as "SCE Responsive Testimony" and testimony served on June 29, 2011 is "SCE Surrebuttal Testimony."

optic cable; and (3) a small portion of 336 ACSR conductor. *See* CPSD Rebuttal Testimony (Moshfegh) at 92-95 (Apr. 29, 2011).

**B. SCE Reused The KPF Switch And Discarded Damaged Conductor And ECS Cable.**

SCE's investigator, Frederick McCollum, responded to the scene of the Malibu Canyon fire at approximately 11 a.m., on the first day of the fire. SCE Surrebuttal Testimony (Ramos) at 2. The conditions at the scene were difficult due the wind, smoke, fire suppression efforts, and work to restore service disrupted by the fire. *Id.* Mr. McCollum supervised SCE's evidence preservation efforts and has testified about this several times. *Id.* In this regard, Mr. McCollum instructed SCE Foreman Matthew Payne to preserve evidence from the scene. *Id.* While the evidence gathering was taking place, SCE and its crews were also taking steps to ensure public safety and restore the power system. *Id.* Under the emergency conditions in the field, a decision was made that undamaged components of the KPF switch on pole 252 should be retained for use in the area. *Id.* Since this switch is designed to isolate a circuit under emergency conditions, its reuse for system operational purposes was consistent with prudent and safe utility operating practice. *Id.* The KPF switch was dismantled only after photographs of it were taken, and parts of the KPF switch that were not reusable were taken to the storage facility in Westminster. *Id.*

Mr. McCollum originally believed all of the conductors and the ECS fiber optic communications cable on the failed poles would be put back in service and therefore retention would not be an issue because they would be available for subsequent inspection at any time. *Id.* He later learned, however, that Mr. Payne's crew discarded several feet of conductor that SCE work rules required be replaced before the conductors were reattached to the insulator shoes. *Id.* at 2-3. Mr. McCollum also learned later that an SCE telecommunications crew led by Joe Rodriguez found that a quantity of ECS fiber optic cable (including the span between poles 252 and 253) had been damaged; the crew removed and discarded this cable. *Id.* at 3.

SCE reasonably believed at the time that the failed poles would be the significant equipment for evaluating causation in any Commission investigation or future litigation

concerning the Malibu Canyon fire. *See, e.g.*, Deposition of Frederick McCollum at 174:12-14 (Dec. 20, 2010) (“McCollum 12/20/Dep.”), Ex. 1; Deposition of Matthew Payne (“Payne Dep.”) at 46:26-47:5 (Feb. 3, 2011), Ex. 2; SCE Surrebuttal Testimony (Ramos) at 1. In contrast, the KPF switch, conductor, and ECS cable are standard commodities whose physical characteristics can be determined from like materials in the field or from manufacturer specifications. SCE Surrebuttal Testimony (Ramos) at 3. None of these items was unique; the weight and dimensions of each (relevant for pole-loading calculations) can be verified through information provided by SCE and manufacturers’ specifications and by visual inspection of the cable and conductor splice points. *Id.* The specifications of the conductor and fiber optic cable were known to SCE, and the switch manufacturer can and did provide information regarding the dimensions and weight of the KPF switch. *Id.*

**C. CPSD Learned That Portions Of Conductor Had Been Discarded In 2007 But Expressed No Concern And Prepared Its Direct Testimony Based On A “Minimum Design Wind Speed” Theory.**

On November 8, 2007, three weeks after the fire, CPSD’s Kan-Wai Tong inspected the fallen poles and attachments at the SCE warehouse and visited the scene of the incident. SCE Surrebuttal Testimony (Ramos) at 3. While at the site of the failed poles, Mr. Tong noticed new splices in the conductor at one of the replacement poles and asked why this had been done. *Id.* Mr. Tong was advised soon after his visit that a small section of conductor was damaged and replaced; this information also was included in SCE’s December 2007 response to a data request from CPSD. *Id.*; Letter from F. McCollum to K. Tong at 2 (Dec. 20, 2007) (“The conductors for both circuits experienced minor damage, and were repaired and placed back into service. This repair includes the splicing in of several feet of new 336 ACSR conductor to ensure the serviceability of the wire at the damage location.”), Ex. 3. Mr. Tong testified at his deposition that he did not see any conductors at the warehouse. Deposition of Kan-Wai Tong (Aug. 3, 2010) (“Tong 8/3/10 Dep.”) at 159:9-22, Ex. 4.

At that time, CPSD expressed no concern regarding the discarded conductor and no interest in other equipment in the warehouse. SCE Surrebuttal Testimony (Ramos) at 4. In fact, the actual equipment on the poles was irrelevant to the approach taken by CPSD for the first three years of the investigation. *See generally* CPSD Direct Testimony (May 3, 2010). Mr. Tong testified that within the first month of his investigation, he decided not to attempt an actual pole loading analysis but rather chose to calculate a “minimum design wind speed,” *i.e.*, a wind speed below which the Commission could assume that any pole failure must have been due to overloading. Tong 8/3/10 Dep. at 66:13-22, Ex. 4. Or, stated another way, he claimed to have calculated 92.4 mph as the wind speed below which no properly loaded pole will fail. *See, e.g.*, CPSD Direct Testimony (Tong) at 3-1. Availability or unavailability of equipment attached to the poles had nothing to do with Mr. Tong’s theory.

**D. After Joint Respondents Filed Testimony In November 2010, CPSD Alleged Spoliation And Visited SCE’s Warehouse To Conduct A Poleloading Analysis.**

Respondents filed responsive testimony on November 18, 2010, explaining why Mr. Tong’s effort to compute a “minimum design wind speed requirement” lacks any scientific basis or support. *See* SCE Responsive Testimony at SCE-1 (Stewart) & SCE-4 (Stark) (Nov. 18, 2010). It was not until after this testimony was filed – three years after the Malibu Canyon fire – that CPSD decided to visit SCE’s warehouse to obtain information about the poles and their attachments for use in a pole-loading calculation. Deposition of Raymond Fugere (May 26, 2011) (“Fugere 5/26/11 Dep.”) at 32:21-33:5, Ex. 5. Mr. Fugere admitted that nothing would have prevented CPSD from earlier visiting the warehouse and incident site for purposes of pole loading or serving follow up data requests to clarify certain information. *Id.* at 33:6-25.

It was at this same time that CPSD obtained Mr. McCollum’s civil deposition transcript and first raised a claim of spoliation – despite having known about the discarded conductor since 2007. *See* CPSD Reply Testimony (Moshfegh) at 29 (Aug. 29, 2011). In January 2011, CPSD moved for a continuance of the schedule, citing among other reasons, the need to pursue its claim

of spoliation. Motion of CPSD For a Continuance of Schedule (Jan. 3, 2011). CPSD indicated that it learned about the “spoliation” through an October 2010 deposition of Mr. McCollum in the civil litigation resulting from the fire. CPSD Reply Testimony (Moshfegh) at 29 (“Sometime shortly following Mr. McCollum’s October 14, 2010 deposition, taken by the deputy attorney general, information regarding spoliation was relayed to CPSD.”). Without knowledge of that communication, SCE voluntarily provided to CPSD the transcript from the deposition in the civil action in anticipation that it might expedite the upcoming deposition of Mr. McCollum by CPSD. SCE Surrebuttal Testimony (Ramos) at 4. At that December 20, 2010 deposition and on three additional days, Mr. McCollum testified fully regarding his evidence preservation efforts. *Id.* Mr. Payne and Mr. Rodriguez also have been deposed by CPSD and testified consistently with Mr. McCollum. *See, e.g.,* Payne Dep. at 26:4-12, 27:5-12, & 46:26-47:15, Ex. 2; Deposition of Joe Rodriguez at 29:27-30:27 (“Rodriguez Dep.”) (Feb. 3, 2011), Ex. 6.

**E. The Specifications Of The Reused KPF Switch And The Conductor And ECS Cable Could Have Been Confirmed At Any Time.**

Mr. Fugere testified that when evidence is not available, using information from a data request to conduct pole loading analyses “is perfectly acceptable.” Deposition of Raymond (June 6, 2011) (“Fugere 6/6/11 Dep.”) at 388:17-18, Ex. 7. In fact, he has investigated many other incidents in which not all physical evidence was preserved and never has this prevented him from conducting an accurate and complete analysis. *Id.* at 338:10-339:1. There is no information about the KPF switch, ECS cable, and conductor that is unknown and cannot be confirmed.

**(a) The Specifications Of The Unavailable Conductor Can Be Confirmed.**

The type of conductor discarded was 336 ACSR – a standard type with easily-obtained specifications. *See* Letter from F. McCollum to K. Tong at 2 (Dec. 20, 2007), Ex. 3. Mr. Fugere used the diameter and weight of 336 ACSR conductor in his pole loading calculations, and there no claim by any Respondent that another specification would be more appropriate. *See* CPSD Rebuttal Testimony (Fugere) at 18. Because the dimension, weight, and other characteristics of

the new spliced-in conductor must be identical to the original conductor, the information can be easily confirmed by observing the old and new conductor on either side of the splice point. *See* Payne Dep. at 97:25-98:7, Ex. 2. In fact, CPSD’s Mr. Tong observed the new conductor and splice point during his visit to Malibu Canyon in November 2007. SCE Surrebuttal Testimony (Ramos) at 3.

**(b) The Specifications Of The ECS Cable Can Be Confirmed.**

The type of cable discarded was 1996 48 fiber All-Dielectric Self-Supporting cable. SCE Surrebuttal Testimony (Ramos) at 8. SCE provided this information to CPSD, and Mr. Fugere used the specifications of this cable in conducting his pole loading calculations. *See* CPSD Rebuttal Testimony (Fugere) at 18; *see also* Fugere 5/26/11 Dep. at 76:15-25, Ex. 5 (“Now, do you have any -- based on the letter that was sent to you and the cable map that was attached, do you have any doubt that the information provided by SCE in this supplemental response is correct as to the size of and weight of the Edison cable on the pole at the time of the fire?... A. It appears to be accurate. I cannot think of a reason right now to doubt that information.”).<sup>2</sup> CPSD could have confirmed that information by visiting the location where the new cable was spliced with the old after the fire; the old and new ECS cables are identical. Rodriguez Dep. at 77:19-78:22, Ex. 6. CPSD never asked for such a site verification.

CPSD claims that verifying the “actual lengths” of the cables is important because “they are a variable in the determination of the tension on the cables and messengers.” CPSD Rebuttal (Fugere) at 3-4. But Mr. Fugere admitted that even knowing the lengths of the cables, calculating the tension would be “difficult” because the attachment point is unknown. *See* Fugere 5/26/11 Dep. at 84:13-85:1, Ex. 5. As explained by SCE’s expert Andrew Stewart, measuring the length of the ECS cable would not be a reliable means to determine tension. SCE

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<sup>2</sup> CPSD claims that SCE violated Rule 1.1 for initially failing to provide CPSD with an accurate and verified data request response regarding this cable. SCE is also filing a motion for summary adjudication on that claim. While SCE’s initial data request response did contain a mistake, SCE corrected its response only 11 days after its original response and provided to CPSD a detailed explanation regarding the mistake.

Surrebuttal Testimony (Stewart) at 5. Even if Mr. Fugere had access to the physical cable, he would not be able to make the length measurements to any reasonable degree of certainty and even a small error would result in a large miscalculation of tension. *Id.* Mr. Stewart concluded that the ECS cable tensions would not affect pole 252 (because there is no reason to believe that the ECS cable tensions were unbalanced), and for pole 253, the tensions can be approximated and would only have *increased* the safety factor on that pole. *Id.* In his final round of testimony, Mr. Fugere does not dispute Mr. Stewart's observations regarding the lack of prejudice in not having access to the ECS cable.<sup>3</sup>

**(c) SCE Has Provided And Mr. Fugere Used The Manufacturer's Specifications For The KPF Switch.**

SCE offered CPSD the opportunity to observe a comparable KPF switch on a pole in the field, but CPSD declined. SCE Supplemental Response to Request 2-1 of CPSD's Third Set of Data Requests (Jan. 12, 2011), Ex. 8. Instead, SCE provided to CPSD the manufacturer's specifications for KPF switches, because the switches are nearly identical, commodity devices. Email from G. King to S. Smith (Apr. 18, 2011) and SCE 7477-SCE 7485, Ex. 9. To account for the loading impact of the KPF switch, Mr. Fugere's pole loading analysis used the weight and dimensions of a standard KPF switch. *See* CPSD Rebuttal Testimony (Fugere) at 23-24. No Respondent has challenged this input value.

**III. ARGUMENT**

**A. Summary Adjudication Standard**

Under California law, a motion for summary judgment must be granted if the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. Cal. Civ. Proc. Code § 437c(c). The Commission has applied this standard when considering motions for summary judgment and summary adjudication. *Cox*

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<sup>3</sup> Instead, Mr. Fugere introduced an entirely new and different topic of tension caused by the termination of an SCE secondary conductor on pole 252. CPSD Reply Testimony at 46-47. This issue has nothing to do with the discarded ECS cable.

*Cal. Telecom, LLC v. Global NAPs Cal., Inc.*, D.07-01-004, 2007 Cal. PUC LEXIS 8 at \*4;  
*Westcom Long Distance, Inc. v. Pac. Bell*, D.94-04-082, 1994 Cal. PUC LEXIS 339 at \*11-13;  
*County Sanitation Dist. v. S. Cal. Edison Co.*, D.02-04-051, 2002 Cal. PUC LEXIS 275 at \*8.  
Also, the Commission has recognized that the summary judgment procedure “promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.”  
*Westcom*, 1994 Cal. PUC LEXIS 339 at \*12.<sup>4</sup>

**B. CPSD Cannot Establish Spoliation Because SCE Did Not Knowingly Discard Equipment Relevant To This Investigation And Any Unavailability Of Equipment Has Not Prejudiced CPSD.**

CPSD alleges that SCE spoliated evidence and that “a negative evidentiary evidence should be applied” because SCE discarded portions of the damaged conductor and ECS cable and reused the KPF switch elsewhere in Malibu Canyon. *See* CPSD Prehearing Conference Statement (Oct. 21, 2011); CPSD Rebuttal Testimony (Moshfegh) at Chapter 1. While there is no dispute that SCE discarded the damaged ECS cable and conductor and permitted the dismantling and reuse of some parts of the KPF switch, the mere fact that a party has not preserved every possible piece of “evidence” does not constitute spoliation or justify the imposition of discovery sanctions.

Spoliation of evidence is “the destruction or significant alteration of evidence or the failure to preserve evidence for another’s use in pending or future litigation,” and in order to obtain discovery sanctions based on spoliation, the moving party must show the responding party destroyed evidence “that had a substantial probability of damaging the moving party’s ability to establish an essential element of his claim or defense.” *Williams v. Russ*, 167 Cal. App. 4th 1215, 1223, 1227 (Cal. App. 2009).<sup>5</sup> Discovery sanctions should be tailored to remedy discovery

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<sup>4</sup> *Westcom* concerned a motion to dismiss pursuant to the precursor to Rule 11.2. In D.11-01-017, the Commission found that the legal standards and objectives applicable to a motion to dismiss were also appropriate with respect to a motion for summary judgment. *See OII Into the Operations, Practices and Conduct of Contractors Strategies Group, Inc. et al.*, D.11-01-017; 2011 Cal. PUC LEXIS 14, \*28-29.

<sup>5</sup> *See also Investigation on the Comm’n’s Own Motion into the Practices of the S. Cal. Edison Co. to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking*, D.08-09-

abuse and should not put the moving party in a better position than he would otherwise have been. *Id.* In other words, there must first be a showing that the party claimed to have engaged in spoliation had an awareness that the failure to preserve the evidence would prejudice the ability of other parties to establish the facts.<sup>6</sup>

The Commission's *Brewer* decision provides guidance in this area. *Brewer v. S. Cal. Gas Co.*, D.89-07-011, 1989 Cal. PUC LEXIS 759 at 1 (CPUC July 6, 1989). In that case, customers of Southern California Gas Company claimed that they had been overcharged for gas and that their old meter was faulty, evidenced by their recorded usage dropping when the meter was replaced. SoCalGas denied the allegations but – with knowledge of the allegation –destroyed the old meter without investigating the alleged malfunction. The Commission found SoCalGas's disposal of the meter "disingenuous."

[SoCalGas] knew or should have known how crucial the operation of the meter was to the complainant's pending claim for relief from high bills. . . . It should have acted reasonably to preserve evidence of the meter's accuracy. Instead, by failing to investigate the cause of the meter's nonregistration and losing track of the subsequent whereabouts of the meter, it has made it *impossible* for [the Brewers] to prove their case. *Id.* at 11-12 (emphasis added). As a result of SoCalGas's conduct, the Commission adopted a negative inference and held SoCalGas could no longer argue the meter was accurate.

In the instant case, CPSD presents no evidence that the unavailable equipment was discarded or reused in anticipation of its relevance to litigation or of actual prejudice resulting from its unavailability.

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(continued...)

038, 2008 Cal. PUC LEXIS 401 at 139 n. 11 (CPUC Sept. 18, 2008) (defining spoliation as "the destruction of evidence in anticipation of its relevance to pending or future litigation.").

<sup>6</sup> See, e.g., *AmeriPride Serv., Inc. v. Valley Indus. Serv., Inc.*, No. CIV S-00113, 2006 WL 2308442 (E.D. Cal. Aug. 9, 2006) (applying spoliation sanctions to party destroying 100 tons of soil and sections of pipe essential to testing claim regarding chemical spill); *Williams v. Russ*, 167 Cal. App. 4th 1215 (Cal. App. 2009) (legal malpractice claim dismissed because plaintiff destroyed files relating to representation).

**1. SCE Had No Reason To Expect The Discarded Or Reused Equipment Would Be Relevant To This OIL.**

Ignoring the Commission's recognition that spoliation can only occur when evidence is destroyed with an awareness of its value to current or future litigation, Pejman Moshfegh, CPSD's sponsoring witness for this testimony, admits that he did not even consider SCE's explanation for what it preserved, what it did not, and why:

Q. ...Do you believe that SCE's purpose should have been considered by CPSD in trying to understand whether or not SCE was engaged in spoliation of evidence?

A. And you're presuming that it wasn't considered?

Q. I don't know. Was it considered?

A. I –

Q. You're the one who – who wrote this testimony about spoliation of evidence. Was it considered?

A. Well, to the extent to which it was considered, I don't know.

Deposition of Pejman Moshfegh (June 10, 2011) (“Moshfegh 6/10/11 Dep.”) at 331:1-13, Ex. 10.

Mr. Moshfegh acknowledges that a fire scene “could be chaotic depending on at what point in time the utility is attempting to collect the evidence and remove it” (*id.* at 94:6-13) but nonetheless has a personal belief that *all* evidence must be retained. *See id.* at 102:19-103:2 (“Q. Given all those – all the logistics, all the difficulties Edison would have encountered in trying to gather up all this material and place it in its warehouse for future evaluation, is it your belief that because Edison didn't maintain a KPF switch, scoop up some of its Carrier Solution cable, that that supports a finding of spoliation of evidence? A. Absolutely.”).

Mr. Moshfegh's incorrect understanding of spoliation is based on the only legal decision on this subject that he has read. *Id.* at 80:6-11 (“Q. Okay. Mr. Moshfegh, do you understand that the principle of spoliation of evidence is based on – in California it's based on authority other than the Cedars-Sinai case? A. I don't – I don't have knowledge one way or the other.”); *id.* at 78:17-19. The only case Mr. Moshfegh has read involved allegations that the defendant hospital had intentionally destroyed essential medical records to prevent plaintiff from prevailing in his malpractice action; the case does not address the requirements for spoliation or examine whether spoliation occurred but rather holds there is no tort remedy for intentional spoliation of

evidence, explicitly stating that this is “an issue of law that does not turn on the facts of [the] case.” *See Cedars-Sinai Medical Center v. Superior Court*, 18 Cal. 4th 1 (1998).

There is no requirement that utilities save every piece of equipment related to a pole failure, and, to this day, Raymond Fugere, the person at CPSD responsible for “oversee[ing] all electric incidents in the State of California” (Qualifications and Prepared Testimony of Raymond Fugere (Apr. 29, 2011)), has never made a recommendation that all evidence related to pole failures be preserved:

Q. And have you ever made such a recommendation to your management; that utilities be put on notice that whenever poles fail for whatever reason and there’s an investigation that may commence that all evidence of any type with regards to those facilities must be maintained? Have you ever made that recommendation?

Mr. Moldavsky: Objection. Incomplete hypothetical. Go ahead.

A. Not that I recall.

Fugere 6/6/11 Dep. at 398:2-10, Ex. 7.

In the aftermath of the Malibu Canyon Fire, SCE focused preservation efforts on equipment that would likely be relevant in determining the cause of the pole failures. *See* McCollum 12/20/10 Dep. at 174:12-14 (“I was focused on Edison facilities – poles and wires and transformers and things of that nature”), Ex. 1. The poles themselves were understood to be critical to understanding the cause of the failures and were preserved for inspection and possible destructive testing. *See, e.g.*, Payne Dep. 46:26-47:5, Ex. 2; SCE’s Report Responding to Requests for Information in the OII at 16 (Apr. 20, 2009). Unlike the utility in the *Brewer* case which, according to the Commission, “knew or should have known how crucial the operation of the meter was to the complainant’s pending claim,” SCE had no reason to believe that the KPF switch, the length of conductor, and the ECS cable would have any relevance to future litigation or investigation concerning the Malibu Canyon fire. To this day, there are no allegations that the missing equipment *caused* the fire; instead, CPSD claims only that its ability to conduct a pole loading analysis was negatively impacted, which Mr. Fugere’s testimony proves is not the case. *See* CPSD Rebuttal Testimony (Moshfegh) at Chapter 4 & (Fugere) at Chapter 1.

For purposes of pole loading, relevant information about the missing conductor, cable, and KPF switch is known; the items are commodities with easily-obtained specifications. *Id.*; SCE Surrebuttal Testimony (Ramos) at 3 & (Stewart) at 4. The range of possible pole loading inputs for the missing items is very narrow and not subject to significant uncertainty. In cases where spoliation has been found and evidentiary sanctions have been adopted, the significance for the complaining party of unique pieces of missing evidence or the contents of missing documents is assumed because items are no longer available for testing or inspection. *Brewer v. S. Cal. Gas Co.*, D.89-07-011, 1989 Cal. PUC LEXIS 759 at 11-12 (CPUC July 6, 1989) (disposal of a gas meter made it “impossible” for plaintiffs to prove their case); *La v. Nokia*, No. B183735, 2010 Cal. App. Unpub. LEXIS 8558, at \*11, \*15 (Cal. App. 2010) (unpublished) (finding that trial court did not abuse its discretion in dismissing claims as a sanction for the failure to preserve a Nokia phone in a class action suit alleging a known defect in the phone because “[w]ithout La’s cellular phone, Nokia could not present a causation defense...”). Those cases do *not* involve evidence where readily available alternative information exists, such as the case here.

**2. The Unavailability Of The Equipment Caused No Prejudice To CPSD.**

CPSD cannot establish the prejudice required for an evidentiary inference based on spoliation. *See, e.g., Williams*, 167 Cal. App. 4th at 1223 & 1227; *Brosnan v. Tradeline Solutions, Inc.*, 681 F. Supp. 2d 1094, 1104-1105 (N.D. Cal. 2010) (denying plaintiff’s motion for sanctions related to alleged spoliation of digital files, because “[p]laintiff makes no showing that the specific evidence lost would in any way aid him in this case, and therefore, that its loss was prejudicial.”); *In re Hitachi Television Optical Block Cases*, No. 08cv1746 DMS, 2011 U.S. Dist. Lexis 90882, at \*35-36 (S.D. Cal. 2011) (denying plaintiffs’ motion for sanctions related to alleged spoliation of electronic documents because “the Court has found little or no prejudice to Plaintiffs” and “evidentiary sanctions are not necessary to place the risk of an erroneous

judgment on the party who wrongfully created the risk or to restore the prejudiced party to the same position he would have been in absent the spoliation.”).

CPSD alleges that its ability to conduct a pole loading analysis was compromised, because “we don’t have all the specific equipment or the exact identical specific evidence that was either discarded or cannibalized that was attached to the subject poles to own our own – on our own volition analyze and verify the parameters of and specifications of.” Moshfegh 6/10/11 Dep. at 81:10-16, Ex. 10. Since we know that Mr. Fugere was able to conduct pole-loading analyses that included data for the unavailable pieces of equipment, Mr. Moshfegh is left to complain that the true prejudice to CPSD was not in its ability to prove its claims (*id.* at 80:21-81:2), but rather that the measurements of the items cannot be “verified.” *See, e.g., id.* at 273:12-14 (“CPSD still has a right to independently verify the facilities that were otherwise discarded”); *id.* at 344:22-24 (“CPSD needs to be able to verify the exact equipment that was discarded, verify the specifications and parameters of the equipment that was discarded.”). What Mr. Moshfegh appears to mean by “verification” is seeing the actual discarded evidence.<sup>7</sup> His logic is circular; missing evidence can never be “verified” by physical examination and therefore he automatically assumes prejudice to CPSD which is directly contrary to the law of spoliation. *Williams*, 167 Cal. App. 4th at 1227 (holding that “a party moving for discovery sanctions based on the spoliation of evidence must make an initial prima facie showing that the responding party in fact destroyed evidence that had a substantial probability of damaging the moving party’s ability to establish an essential element of his claim or defense.”).

CPSD’s argument is a red herring; there is no information about the discarded equipment that cannot be verified for use in a pole loading calculation, and as a result, there is no prejudice to CPSD’s investigation in this case. Mr. Fugere testified that he has investigated many other

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<sup>7</sup> *See, e.g.,* CPSD Reply Testimony (Moshfegh) at 3-4 (“[T]he specifications of the discarded evidence are necessary to accurately calculate the load on the subject poles. Further, the availability of the specifications of the discarded equipment is irrelevant if CPSD cannot independently verify those specifications using the actual evidence that was discarded. To this day, CPSD is unable to verify the specifications of the actual evidence that was discarded.”).

incidents in which not all physical evidence was preserved and never has this prevented him from conducting an accurate and complete analysis. Fugere 6/6/11 Dep. at 338:10-339:1, Ex. 7. In this case, Mr. Fugere conducted a pole loading analysis using some of his own measurements and some information provided by the utilities; nothing about the information provided by the utilities prevented him from conducting a pole loading analysis. *See id.* at 336:14-20.<sup>8</sup> In no other investigation does he recall CPSD claiming spoliation with respect to missing equipment:

Q. ...I believe you also testified that there were instances where you did not have access to all of the facilities that may have been involved, such as crossarms or guy wires or conductors or other facilities and equipment that may have been involved in the poles that you were doing the pole-loading analysis for. Is that a correct understanding?

Mr. Moldavsky: Vague and ambiguous. Go ahead.

A. That would be correct.

Q. So in any of those instances, to your knowledge were you prevented actually from doing a pole-loading analysis that you considered to be accurate and complete to the best of your knowledge?

Mr. Moldavsky: Objection. Overbroad. Out of scope. Go ahead.

A. Not that I recall.

Q. Okay. Do you recall in any of those instances whether CPSD or the Commission claimed that any of the parties that were involved in those pole-loading analyses had allegedly spoliated evidence or, you know, deliberately or knowingly discarded facilities and equipment?

Mr. Moldavsky: Objection. Vague and ambiguous. Overbroad. Go ahead.

A. Not that I'm aware of.

*Id.* at 338:10-339:10.

Despite *Mr. Moshfegh's* claims that CPSD was prejudiced by the inability to inspect the discarded or reused equipment, he admits that he lacks the expertise to make such a determination and would defer to *Mr. Fugere* on the subject.

Q. ... And do you think that Mr. Fugere's opinions, whatever they may be, with regards to pole loading would be superior to your own.

A. I would have to say yes.

Q. Okay. And you'd defer to him on that subject; correct?

---

<sup>8</sup> SCE's expert witness Andrew Stewart similarly explained that he had performed hundreds of pole-loading calculations, many of which were "forensic", and in many if not all of the cases, he did not have nor need the opportunity to physically examine every component. SCE Surrebuttal Testimony (Stewart) at 4. As Mr. Stewart explains, pole loading is not an exact science. *Id.*

- A. Pole loading?  
Q. Yes.  
A. Yes.

Moshfegh 6/10/11 Dep. at 44:21-45:4, Ex. 10; *id.* at 87:20-21 (“I would defer to Mr. Fugere to the extent that the KPF switch impacts his calculation.”). *See also id.* at 43:2-3 (“I do not have the expertise to – to determine what inputs may go into an equation.”); *id.* at 40:18-21 (“to the extent that it requires a calculation or some sort of technical or engineering calculation that I – it would just be beyond my expertise.”); *id.* at 41:13-21 (“I probably wouldn’t have the requisite expertise [to critique responses by CPSD’s internal experts with regards to pole loading equations].”).

The fact that SCE reused the KPF switch elsewhere in Malibu Canyon and discarded the cable and portions of the conductor caused no prejudice to CPSD. To account for the loading impact of the cable and conductor, Mr. Fugere’s pole loading analysis used specifications of 1996 48 fiber All-Dielectric Self-Supporting cable and 336 ACSR, and he used weight and dimensions of a standard KPF switch. CPSD Rebuttal Testimony (Fugere) at 18, 23-24. Mr. Fugere concluded that the poles were overloaded, at least in certain scenarios. *See, e.g., id.* at 1. CPSD’s claims for spoliation fail because it cannot show SCE destroyed evidence “that had a substantial probability of damaging [CPSD’s] ability to establish an essential element of [its] claim...” *Williams*, 167 Cal. App. 4th at 1223 & 1227. There simply is no adverse inference to be drawn; the specifications of the conductors and cables are known and the switch manufacturer provided reliable information regarding the approximate weight of the KPF switch. Nor has any Respondent attacked Mr. Fugere’s pole-loading calculations on the basis that the inputs he used related to any of these pieces of equipment were inaccurate or should have been more favorable to Respondents. In other words, CPSD has no need for the “evidentiary inference” to which it would be entitled if it could show spoliation.

#### **IV. CONCLUSION**

CPSD’s spoliation claim cannot be established and is a distraction from the key issue CPSD has raised: were the poles overloaded and did that cause or contribute to the pole failures?

If the absence of the equipment at issue were so critical to CPSD's case, why did CPSD not go to the Westminster warehouse immediately after the fire and take an inventory to be sure it had what it needed? Why did Mr. Tong express no concern at all when he learned in 2007 that some of the 336 ACSR conductor had been discarded? The answer is that CPSD was pursuing an entirely different theory to allege the failed poles were overloaded, *i.e.*, Mr. Tong's 92.4 mph minimum design wind speed requirement. Only in late 2010 did CPSD first make its spoliation claim. Notwithstanding that claim, Mr. Fugere completed his pole loading calculations that he believes are accurate enough to justify the imposition of nearly \$20 million in penalties against SCE and other Respondents.

In this context, CPSD's claims of spoliation and request for an evidentiary inference must be dismissed. CPSD cannot establish that the three pieces of unavailable equipment were disposed of in anticipation of their relevance to this OII or that their unavailability resulted in prejudice to CPSD. Granting any evidentiary sanctions would be impermissible because it would put CPSD in a better position than it would otherwise have been. *Williams*, 167 Cal. App. 4th at 1223 & 1227. For these reasons, SCE respectfully requests summary adjudication of CPSD's spoliation claim in order to concentrate the parties' and the Commission's attentions on the real issues in this case.

SCE respectfully requests oral argument on this motion.

Dated: December 5, 2011

Respectfully submitted,

/s/ Charles C. Read

---

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Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

**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 (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)

**DECLARATION OF JOHN J. GEHART IN SUPPORT OF  
SOUTHERN CALIFORNIA EDISON COMPANY'S  
MOTION FOR SUMMARY ADJUDICATION OF  
SPOILIATION OF EVIDENCE CLAIM**

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Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

December 5, 2011



1 Pejman Moshfegh, taken on June 10, 2011, is attached hereto as **Exhibit 10**.

2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct.

4 Executed on December 5, 2011, at Los Angeles, California.

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John J. Gehart

LAI-3154621v1

# EXHIBIT 1

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

9                           **FREDERICK McCOLLUM,**

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

13                           \* \* \* \* \*

14                           EXAMINATION

15 BY MR. MOLDAVSKY:

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

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

1           A    But I didn't learn of it for months  
2 and months and months afterwards.

3           Q    But Southern California Edison  
4 would not have gone its protocol with  
5 Cal Fire and discarded the Edison Carrier  
6 Solutions cable prior to being authorized to  
7 do -- to remove evidence from the scene?

8           A    Oh that's my mea culpa. That's --  
9 that was my -- I wasn't fo- -- when I was out  
10 there, I was focused on the Edison facilities  
11 and in my being so caught up in the moment.  
12 I was focused on Edison facilities -- poles  
13 and wires and transformers and things of that  
14 nature -- it just didn't hit my radar  
15 about -- didn't even think about it. I  
16 thought it was going to be put back up. And  
17 you know that was -- my apologies.

18          Q    I appreciate that. And you know,  
19 we're -- you know, we're sort of more focused  
20 on just a quick factual inquiry as far as  
21 that's concerned. Because you'd already  
22 indicated that you were respecting  
23 the protocol of Cal Fire and not remove --  
24 I'm not using the word discarding -- not  
25 removing evidence from the scene until you  
26 will got the okay from Cal Fire, correct?

27          A    That's correct.

28          Q    So that happened at the earliest

# EXHIBIT 2

## DEPOSITION OF MATTHEW PAYNE

1 BE IT REMEMBERED THAT, by Notice,  
2 and on Thursday, February 3, 2011, commencing  
3 at the hour of 10:00 a.m., thereof, at the  
4 offices of the CALIFORNIA PUBLIC UTILITIES  
5 COMMISSION, 320 W. 4th Street, Suite 500, Los  
6 Angeles, California 90013, before ANA M.  
7 GONZALEZ, CSR No. 11320, personally appeared

8 **MATTHEW PAYNE,**

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

12 \* \* \* \* \*

13 EXAMINATION

14 BY MR. MOLDAVSKY:

15 Q Mr. Payne, you've been administered  
16 an oath to tell the truth. It is the same  
17 oath that you would be given if you were  
18 testifying in a court of law. Even though we  
19 are in a somewhat more informal setting, the  
20 oath that you have taken and your testimony  
21 here today has the same effect as if you were  
22 testifying before a judge and jury. Do you  
23 understand?

24 A Yes.

25 MR. READ: Are we doing a roll call?

26 MR. MOLDOVASKY: Good point, Mr. Read.

27 If everyone on the phone could  
28 please identify themselves for the record.

## DEPOSITION OF MATTHEW PAYNE

1           MR. MOLDAVSKY: Or if he knows while he  
2 was there.

3           MR. READ: If he knows, yes.

4           MR. MOLDAVSKY: Q Do you have some  
5 familiarity what your crew was doing under  
6 your supervision in Malibu Canyon on the  
7 subject poles?

8           A Yes. I know we had to clear up the  
9 existing poles that had fallen over. And  
10 then it would be a matter of getting new  
11 poles in location, framing them, setting  
12 them, and putting the existing wire back.

13          Q Did you talk to Fred McCullum while  
14 you were at the scene of the incident in  
15 October of 2007?

16          A The name, I don't recall the name.

17          Q Do you know who Fred McCullum is?

18          A No, I do not.

19          Q When did you find out that the  
20 subject poles may have been implicated in  
21 causing the Malibu Canyon fire?

22          A I can't remember if it was before I  
23 got there or once I got to the scene, but I  
24 was met by a claims, one of our claims  
25 department guys who notified me of that. I  
26 can't remember if -- I remember him being out  
27 there. I don't remember if there was a phone  
28 call prior to me actually getting to the job

1 site or not.

2 Q That would have been in October of  
3 2007 after the fire had started, correct?

4 A Correct.

5 Q What did the claims person tell  
6 you?

7 A Just that those couple of poles  
8 there, that we need to save everything from  
9 those poles. I can't remember specific  
10 details exactly what he said as far as why.  
11 I just remember that we had to save  
12 everything from those poles.

13 Q Did you -- did he tell you to wait  
14 until clearance was given from Cal Fire prior  
15 to beginning repairs and pole replacements?

16 A I can't remember specifically if  
17 that happened or not. I can't remember.

18 Q He told you to preserve evidence?

19 MR. READ: Objection, he has described  
20 the conversation.

21 MR. MOLDAVSKY: Well, this is a  
22 separate question.

23 MR. READ: Calls for a legal  
24 conclusion.

25 MR. MOLDAVSKY: Q Do you know what  
26 evidence is?

27 A Yes, I do. I'm not sure if he  
28 actually stated it as evidence. I don't

## DEPOSITION OF MATTHEW PAYNE

1 make sense to you?

2 MR. MOLDAVSKY: Q It doesn't. Just to  
3 clarify, the repair that Southern California  
4 Edison engaged in on the subject poles  
5 happened under your supervision?

6 A Yes.

7 Q Now, you mentioned having a  
8 conversation with the claims representative  
9 at the scene. How many times did you talk to  
10 him?

11 A I can't recall how many times.

12 Q More than three times?

13 A I don't recall.

14 Q More than once?

15 MR. READ: He said he doesn't recall.

16 MR. MOLDAVSKY: He can recall more than  
17 three times.

18 THE WITNESS: I don't recall. Like I  
19 said before, I was back and forth all over  
20 the place. There was several poles down. I  
21 was back and forth.

22 MR. MOLDAVSKY: Q You do recall him  
23 telling you about sort of keeping, not  
24 discarding items. You recall that, right?

25 A Yes.

26 Q You recall him talking to you about  
27 the poles being potentially implicated in the  
28 cause of the Malibu Canyon fire, correct?

1           A    I don't -- like I said, I don't  
2 remember how much detail he went into, if at  
3 all, as far as why we were keeping them,  
4 excuse me. I did notice they were definitely  
5 of some importance, and we had to keep them.  
6 As far as specifically what caused, I had no  
7 idea.

8           Q    Okay. Now, regarding the first  
9 definition of removal, the physically taking  
10 of a KPF switch off of the pole and  
11 presumably placing it on the ground, your  
12 crew engaged in that, correct?

13          A    Yes.

14          Q    That was under your supervision?

15          A    Yes.

16          Q    How long did that process take?

17          MR. READ:  Objection, I think there is  
18 maybe a lack of foundation. I don't recall  
19 whether the witness said he recalls actually  
20 being there.

21          MR. MOLDAVSKY:  He says he was back and  
22 forth.

23          MR. READ:  Right, but there may be a  
24 lack of foundation when you get to specifics  
25 like how long did it take to remove, take the  
26 switch off.

27          MR. MOLDAVSKY:  I appreciate that point  
28 as to physically being there and perceiving

1 regular basis through the same dimension,  
2 size, weight, and so forth?

3 MR. MOLDAVSKY: Objection, vague and  
4 ambiguous, calls for speculation. Go ahead.

5 THE WITNESS: It varies depending on  
6 voltage, which I believe I said earlier. But  
7 based off of the voltage that it -- a 16 kV  
8 KPF switch versus another one would be the  
9 same.

10 MR. READ: Q In other words, if it is  
11 a 16 kV KPF switch, it is going to be the  
12 same from place to place in the Edison  
13 system?

14 MR. MOLDAVSKY: Objection, vague and  
15 ambiguous, calls for speculation.

16 MR. READ: Q You can answer.

17 A The switch itself doesn't change.  
18 The configuration might possibly change, but  
19 the switch itself doesn't change, no.

20 Q And are you aware of other  
21 locations even in your district where there  
22 are 16 kV KPF switches installed?

23 A Yes, there is -- they are all over  
24 the place.

25 Q With respect to the conductor, and  
26 assuming it was spliced for some distance on  
27 the subject poles, would the conductor that  
28 was inserted, the spliced conductor, would

## DEPOSITION OF MATTHEW PAYNE

1 that have been of the same type and size as  
2 the original conductor?

3 A Yes.

4 Q Same diameter?

5 A Yes.

6 Q Same weight?

7 A Yes.

8 MR. READ: Nothing further. Thank you.

9 MR. MOLDAVSKY: All right. Anything  
10 from the others?

11 MR. HUNTER: No.

12 (Whereupon, the deposition proceedings  
13 were concluded at 12:20 p.m. on February  
14 3, 2011.)

15 \* \* \* \* \*

16

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21 Signed this \_\_\_\_\_ day of \_\_\_\_\_,  
2011.

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(Matthew Payne)

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# EXHIBIT 3



Frederick C. McCollum  
Senior Investigator

December 20, 2007

200711340  
Canyon Fire

CALIFORNIA PUBLIC UTILITIES COMMISSION  
ATTENTION: KAN-WAI TONG  
320 WEST 4TH STREET, SUITE 500  
LOS ANGELES CA 90013

Re: Malibu Canyon Fire Incident, October 21, 2007

Dear Mr. Tong:

Pursuant to your electronic message dated November 8, 2007, I am providing the following information as requested.

Request No. 1: *"A copy of the Circuit Patrol Records for the 16kV and 66kV lines over the past 2 years."*

Response No. 1: Please see Circuit Patrol Records for the Serra 16kV and Crater-Reclaim-Tapia 66kV Circuits, Tab "A".

Request No. 2: *"A copy of the Detailed Inspection Records for the 16kV and 66kV Circuits over the past 5 years."*

Response No. 2: SCE performs a detailed inspection by structure, not circuit. Enclosed under Tab "B" are Detailed Inspection Records for Structure Nos. 1169252E, 1169253E, and 2279212E.

Request No. 3: *"A copy of the Circuit Inventory Map for the location of the incident."*

Response No. 3: SCE Inventory Map, Los Angeles County 66-47, Tab "C".

Request No. 4: *"A set of the photos taken at the scene."*

Response No. 4: 38 color digital photographs, Tab "D".

Request No. 5: *"What kinds of damages to SCE facilities were caused by the incident? Please itemize."*

Response No. 5: On Malibu Canyon Road, near mile marker 1.86 and at the area of origin as identified by the Los Angeles County Fire Department, three (3) poles bearing Nos. 1169252E, 1169253E and 2279213E were felled by extreme winds on October 21, 2007. These damaged poles and related hardware

were taken out of service and new poles were installed. The conductors for both circuits experienced minor damage, and were repaired and placed back into service. This repair includes the splicing in of several feet of new 336 ACSR conductor to ensure the serviceability of the wire at the damage location.

- Request No. 6: *"Why new splices were installed on the 16kV Circuit after the incident? Please explain."*
- Response No. 6: Please see response to Request No. 5 above.
- Request No. 7: *"Do all the replacement parts/equipment/facilities have the same ratings/specifications as the ones prior to the incident? If not, please explain."*
- Response No. 7: Both the original pole line involved in the incident, as well as the new, replacement poles, were built to a 8 lb. wind standard as required by General Order 95, Rule 43.2. However, since the replacement poles are new construction, the new poles have a higher safety factor rating than what existed prior to the accident.
- Request No. 8: *"What was the weight of the concrete anchor used to support the stub pole prior to the incident?"*
- Response No. 8: Approximately 2,600 lbs.
- Request No. 9: *"What was the wind speed at the time of the incident? Please include the source of the wind data and distance from the location of the incident?"*
- Response No. 9: 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, Whitaker Peak and Laguna Peak. Whitaker Peak is located approximately 39 miles north of the incident location. Laguna Peak is located approximately 21 miles east of the incident location.
- Request No. 10: *"What was the design load factor of each pole damaged in the incident? Please provide calculations."*
- Response No. 10: SCE does not have a design load factor calculation for the specific poles involved in the incident and identified above. The subject poles which supported the conductors for the two circuits were installed in 1957 and reconfigured in 1976 to accommodate the addition of the Crater-Reclaim-Tapia 66kV circuit. In 1976, the pole line was designed in accordance with Edison's "Distribution and Transmission Construction Methods", which incorporated the Construction Standards mandated by General Order 95 in 1976. An excerpt of the Construction Methods Manual applicable at the time is included under Tab "E".

- Request No. 11: *"A copy of the System Logs for the 16kV and 66kV circuits 24 hours prior to the incident."*
- Response No. 11: DNA History Plots for the Serra 16kV and the Crater-Reclaim-Tapia 66kV, Tab "F".
- Request No. 12: *"Were there any injuries or fatalities caused by the incident? If so, please explain."*
- Response No. 12: No.
- Request No. 13: *"A copy of the SCE Investigation Report including any findings."*
- Response No. 13: The SCE Investigation report was prepared at the request and direction of Edison's attorney in anticipation of potential litigation. This document is considered confidential based on the attorney/client privilege and work product doctrine. SCE therefore respectfully denies the request for this document.

This information is submitted pursuant to Commission instructions and it is requested the information be held confidential under Public Utilities Code Sections 315 and 583, and General Order 66C.

Sincerely,



Frederick C. McCollum

FCM/sb  
enclosures

# EXHIBIT 4



1 notes.

2 I'll represent to you that this collection of  
3 documents was provided to respondents by CPSD as -- in  
4 the form you see here.

5 I just wondered if you could identify the  
6 three pages of notations, diagrams, as -- are those the  
7 notations that you made on your trip to Westminster?

8 A. They appear to be.

9 Q. And do you recall any other notations or --  
10 or -- or notes that you made beyond the three pages seen  
11 here?

12 A. That's pretty much it.

13 Q. Okay. I believe you said, before lunch, that  
14 not long after you made your visit to Westminster, which  
15 was November of '08, I believe, that you decided that  
16 you would pursue your analysis in the form of the  
17 equation that we have been talking about on Page 3-4 and  
18 calculating what you call a minimum design wind speed  
19 requirement, rather than trying to replicate the  
20 conditions on the poles.

21 Is that right?

22 A. That's correct.

23 Q. And in making that decision, did you consult  
24 with anybody else at CPSD as to whether that was the  
25 right course of action?

1 report?

2 A. Oh, I'm sorry.

3 MR. MOLDAVSKY: You're referring the  
4 accident report, not the testimony?

5 MR. HANSCHEN: Yes.

6 A. That would be Mr. Cliff Hauser's report only.

7 Q. Okay. Now, I believe what you told Mr. --  
8 Mr. Read is that -- well, let me ask you this.

9 When you're out at the Westminster facility on  
10 November the 8th, is -- the only measurements that you  
11 took are reflected in your notes on Exhibit SCE-4; is  
12 that correct?

13 A. I may have taken other measurements, but I  
14 don't recall I ever put it down.

15 Q. You didn't measure, for example, the  
16 circumference of the guy wires; is that right?

17 A. Correct.

18 Q. You didn't measure the circumference of the  
19 conductors; is that right?

20 A. I don't remember seeing any conductors.

21 Q. Okay.

22 A. At that facility.

23 Q. Okay. Did you make a determination of the  
24 manufacturer of the insulators or the possible weight?

25 MR. MOLDAVSKY: Objection. Vague. Go

# EXHIBIT 5

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

3  
4

5   INVESTIGATION OF THE COMMISSION'S OWN MOTION  
6   INTO THE OPERATIONS AND PRACTICES OF SOUTHERN  
7   CALIFORNIA EDISON COMPANY (U388-E); CELLCO           I.09.018  
8   PARTNERSHIP LLC, D/B/A VERIZON NETWORKS OF           Filed  
9   CALIFORNIA, INC.; AND PACIFIC BELL TELEPHONE        1/9/2009  
10   COMPANY, D/B/A AT&T MOBILITY LLC, REGARDING  
11   THE UTILITY FACILITIES AND THE CANYON FIRE IN  
12   MALIBU OF OCTOBER 2007.

13

14   \*\*DESIGNATED CONFIDENTIAL PURSUANT TO PUC 583/G066C\*\*

15                           \*\*REDACTED\*\*

16                   VIDEOTAPED DEPOSITION OF RAYMOND FUGERE

17                                   VOLUME I

18   LOS ANGELES, CALIFORNIA

19   MAY 26, 2011

20

21

22

23   REPORTED BY:

24   CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR

25   JOB NO.: 39076

1 MR. READ: Oh, sure. Read anything you need  
2 in this area before answering my question.

3 MR. MOLDAVSKY: That's just for completion, if  
4 we're going to be reviewing documents. It's good to read  
5 the question as well as the answer.

6 But go ahead and answer after you do.

7 A. Just for my memory, the question was that if I  
8 agree with this statement; correct?

9 Q. Yes, sir.

10 A. Yes. That is correct.

11 Q. Okay. This is as of about June of 2010. Is  
12 this statement about your attempt to perform pole-loading  
13 calculation this corresponds to what you just said earlier  
14 was your first assignment in this case?

15 A. From what I recall, yes.

16 Q. Okay. Now, you have in your -- in your  
17 testimony, your prepared testimony, you have now completed  
18 what you consider to be pole-loading calculations for Pole  
19 252 and 253; have you not?

20 A. Correct.

21 Q. And what has happened between June 10 or so,  
22 June 24, pardon me, when this response was prepared and  
23 the time of your testimony preparation that has now  
24 permitted you to do a pole-loading calculation that you  
25 were unable to do in June of 2010?

1           A.       What happened was I visited the storage  
2       facility of Edison where the poles are stored. Also I  
3       visited the incident location. And additionally there was  
4       data requests that were sent to the Respondents to clarify  
5       some of the information that was unclear.

6           Q.       Now, is there any -- there was nothing that  
7       prevented you from visiting the storage facility prior to  
8       June 2010, was there?

9           A.       Not that I'm aware of.

10          Q.       And nothing that would have prevented you from  
11       visiting the location of the failed poles prior to June of  
12       2010; correct?

13          A.       Yes, sir.

14          Q.       Now, the data requests that you said provided  
15       some clarification that you utilized in your testimony.  
16       Do you know when those data requests were issued by CPSD?

17               MR. MOLDAVSKY: Objection. Vague and  
18       ambiguous. Also misstates testimony. Go ahead.

19          A.       It was -- I believe the first one was later  
20       2010, towards the end months of 2010, if that's my  
21       recollection, I believe.

22          Q.       Is there anything that you're aware of that  
23       would have prevented CPSD from asking those data requests  
24       prior to June of 2010?

25          A.       Not that I'm aware of.

1 Q. Oh, I was looking at the first line underneath  
2 the heading Tapia Thousand Oaks DO fiber optic cable at  
3 the lower left.

4 A. Yes.

5 Q. And the letter explains the circumstances or  
6 reasons why the SCE first provided the erroneous  
7 information about the size of the ECS cable and the  
8 messenger, doesn't it?

9 MR. MOLDAVSKY: Objection. The document  
10 speaks for itself.

11 A. I believe so. Yes.

12 Q. Okay. And then it refers to the cable map  
13 showing the ADSS self-supporting cable installed per a  
14 work order in 1996.

15 Now, do you have any -- based on the letter  
16 that was sent to you and the cable map that was attached,  
17 do you have any doubt that the information provided by SCE  
18 in this supplemental response is correct as to the size of  
19 and weight of the Edison cable on the pole at the time of  
20 the fire?

21 MR. MOLDAVSKY: Objection. Calls for  
22 speculation as to whether or not Edison provided correct  
23 information. Go ahead.

24 A. It appears to be accurate. I cannot think of  
25 a reason right now to doubt that information.

1 physical length of wire between the primarily on the 253  
2 pole and how it connected to the 252 pole and to the other  
3 pole, if I had those actual lengths of wires, you can  
4 construct what's called a catenary curve, which will then  
5 tell you tension. And that's what I could have done then.

6 Q. But to do that you do need to know the actual  
7 as you say, the physical length of the cable between the  
8 two poles that are of interest.

9 A. Correct.

10 Q. And to do that you'd need to know the point of  
11 attachments.

12 A. Correct.

13 Q. Do you have any idea how difficult it would be  
14 or is to identify points of attachment for cable on poles  
15 in a forensic context? In other words, after a failure?

16 MR. MOLDAVSKY: Objection. Calls for  
17 speculation. Incomplete hypothetical. Go ahead.

18 A. It would be more difficult than obviously if  
19 it was on the pole. So it would be more difficult. To  
20 the extent of how difficult it would be, it would depend  
21 on some variables, whether or not there were some  
22 markings, how it was connected. There are sometimes marks  
23 that could be left on the cable so you could actually see  
24 where it was connected to the pole. So with that, it's  
25 harder, but it's not always impossible. So it's harder,

1 then.

2 Q. Have you ever made that measurement and  
3 computation in a failed pole context?

4 A. In a failed pole context, I have worked with  
5 somebody on that calculation. Yes.

6 Q. Well, have you actually made that computation?

7 MR. MOLDAVSKY: Well, I have to lodge an  
8 objection. Again, it's the same deliberative process  
9 objection. If he's testifying about a case that has not  
10 been opened or where a report has not been issued that  
11 falls within the deliberative process of the Commission.  
12 So if you are, I'm going to instruct you not to answer.

13 MR. READ: But I think he can clearly answer  
14 my question without revealing anything of the nature of  
15 the investigation or overall conclusions or identity of  
16 parties.

17 MR. MOLDAVSKY: Maybe yes; maybe no. If you  
18 can go ahead and answer without revealing the substance of  
19 -- if it's currently pending, a currently pending  
20 investigation, do not reveal the substance of the  
21 currently pending investigation. If it's an already  
22 released investigation, you can testify as to what  
23 occurred.

24 A. Okay. I worked with somebody, and we did the  
25 calculation together to -- with knowing a length of wire

# EXHIBIT 6



1 the Edison Carrier Solutions cable and  
2 discarded the portions that had been damaged,  
3 correct?

4 MR. READ: Objection, there has been no  
5 testimony of repair of fiberoptic cable as  
6 opposed to replacements.

7 MR. MOLDAVSKY: Charlie, there is  
8 replacements as well as repair. Reaffixing  
9 it to the poles is a repair.

10 MR. READ: Oh, well, I wouldn't have  
11 interpreted that. In other words, your view  
12 is if you reaffix existing cable to a pole or  
13 a new pole that is a repair? I would not --

14 MR. MOLDAVSKY: What is your  
15 characterization of that?

16 MR. READ: That would be reaffixing  
17 cable, to me. I don't know. Maybe the  
18 witness uses words totally different than  
19 either you or I. As you say, we are here for  
20 this testimony, not mine.

21 MR. MOLDAVSKY: Q Great. So do you  
22 have the question in mind?

23 MR. READ: I think you better reask the  
24 question.

25 THE WITNESS: There is a difference  
26 between repair and replacement.

27 MR. MOLDAVSKY: Q Well, you replaced  
28 certain portions of the Edison Carrier

1 Solutions cable, right?

2 A That is correct.

3 Q A crew under your supervision,  
4 right?

5 A Yes.

6 Q A crew under your supervision also  
7 repaired portions of the Edison Carrier  
8 Solutions cable in Malibu Canyon?

9 A We reattached or -- we reattached  
10 cables on new pole lines on the cable wasn't  
11 damaged in that area, yes, we did.

12 Q And under your supervision the  
13 portions of the Edison Carrier Solutions  
14 cable in Malibu Canyon that had been damaged  
15 by the event were discarded, correct.

16 A What little pieces of cable that we  
17 did take off at a downed pole, probably was  
18 discarded right there. My concern was just  
19 getting new cable up, getting circuits  
20 restored.

21 Q Sure. When -- okay, just so I  
22 understand how this works in your department.  
23 If a fiberoptic cable is damaged and that  
24 segment needs to be replaced, is a new  
25 section respliced or somehow reconnected to  
26 the wire that was not damaged?

27 A That is correct.

28 Q Did you tell anyone at Southern

1 Edison ask you about the Edison Carrier  
2 Solutions cable after the incident?

3 MR. READ: Well, you can exclude  
4 counsel inquiry. Anybody outside of counsel?

5 THE WITNESS: No.

6 MR. MOLDAVSKY: Q But counsel did,  
7 right?

8 MR. READ: Yeah, I'll permit that.  
9 That is a yes or no.

10 THE WITNESS: Within a week or two ago,  
11 that is when I found out.

12 MR. MOLDAVSKY: Okay. I have nothing  
13 further. Thank you.

14 EXAMINATION

15 BY MR. READ:

16 Q I've a question or two. Mine are  
17 short, I hope.

18 A Okay.

19 Q The portion, at least a portion of  
20 the replacement fiberoptic cable that your  
21 crew installed between what has been  
22 identified as Splice Points 3 and 4, was that  
23 cable identical in size, weight, diameter to  
24 the cable that had been there before the  
25 fire?

26 MR. MOLDAVSKY: Objection, calls for  
27 speculation, vague and ambiguous.

28 MR. READ: Q Was it identical?



# EXHIBIT 7

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

3  
4  
5   INVESTIGATION OF THE COMMISSION'S OWN MOTION  
6   INTO THE OPERATIONS AND PRACTICES OF SOUTHERN  
7   CALIFORNIA EDISON COMPANY (U388-E); CELLCO           I.09.018  
8   PARTNERSHIP LLC, D/B/A VERIZON NETWORKS OF           Filed  
9   CALIFORNIA, INC.; AND PACIFIC BELL TELEPHONE        1/9/2009  
10   COMPANY, D/B/A AT&T MOBILITY LLC, REGARDING  
11   THE UTILITY FACILITIES AND THE CANYON FIRE IN  
12   MALIBU OF OCTOBER 2007.

13  
14   \*\*DESIGNATED CONFIDENTIAL PURSUANT TO PUC 583/G066C\*\*

15                           \*\*REDACTED\*\*

16                   VIDEOTAPED DEPOSITION OF RAYMOND FUGERE

17                           VOLUME II

18                           LOS ANGELES, CALIFORNIA

19                           JUNE 6, 2011

20  
21  
22  
23   REPORTED BY:

24   CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR

25   JOB NO.: 39405

1 MR. MOLDAVSKY: Objection.

2 Q. Pole-loading analysis.

3 MR. MOLDAVSKY: Vague and ambiguous. Go  
4 ahead.

5 A. That is correct.

6 Q. Okay. So as you sit here today, you cannot  
7 point to anything from my client Sprint that prevented you  
8 from preparing what you consider to be a correct  
9 pole-loading analysis; correct?

10 MR. MOLDAVSKY: Objection. Misstates  
11 testimony. Go ahead.

12 A. I believe that's correct.

13 Q. All right. Now, --

14 MR. CARDOZA: Nick, can we just expand on that  
15 question with regards any of the other -- the information  
16 provided by any of the other utilities that is prevented  
17 you from completing a pole-loading analysis.

18 MR. MOLDAVSKY: Objection. Overbroad. Go  
19 ahead.

20 THE WITNESS: I don't believe it has.

21 Q. BY MR. SELBY: Now, Mr. Fugere, I don't  
22 believe that CPSD is claiming that my client Sprint was  
23 involved in spoliation of evidence or information, but  
24 nonetheless I do have to ask this for the record. And I  
25 just want to understand as a matter of your own -- your

1 that you had done in your past experience some work with  
2 the Commission. Was it approximately 60 different  
3 pole-loading analyses? Is that correct?

4 MR. MOLDAVSKY: Objection. Misstates  
5 testimony. He said "at least." Go ahead.

6 A. I believe it was at least 60. Yes.

7 Q. At least 60. I'm sorry. Okay. And again,  
8 I'm not asking you to testify with respect to any matter  
9 that is currently under investigation.

10 But I believe you also testified that there  
11 were instances where you did not have access to all of the  
12 facilities that may have been involved, such as crossarms  
13 or guy wires or conductors or other facilities and  
14 equipment that may have been involved in the poles that  
15 you were doing the pole-loading analysis for. Is that a  
16 correct understanding?

17 MR. MOLDAVSKY: Vague and ambiguous. Go  
18 ahead.

19 A. That would be correct.

20 Q. So in any of those instances, to your  
21 knowledge were you prevented actually from doing a  
22 pole-loading analysis that you considered to be accurate  
23 and complete to the best of your knowledge?

24 MR. MOLDAVSKY: Objection. Overbroad. Out of  
25 scope. Go ahead.

1 A. Not that I recall.

2 Q. Okay. Do you recall in any of those instances  
3 whether CPSD or the Commission claimed that any of the  
4 parties that were involved in those pole-loading analyses  
5 had allegedly spoliated evidence or, you know,  
6 deliberately or knowingly discarded facilities and  
7 equipment?

8 MR. MOLDAVSKY: Objection. Vague and  
9 ambiguous. Overbroad. Go ahead.

10 A. Not that I'm aware of.

11 MR. SELBY: Thank you. Let me just review my  
12 notes for a moment. We'll be off the record, and I may be  
13 done.

14 THE VIDEOGRAPHER: Off video at 1:19 p.m.

15 (Recess.)

16 THE VIDEOGRAPHER: Back on video at 1:25 p.m.

17 Q. BY MR. SELBY: Okay. Thanks. Mr. Fugere, I  
18 did unfortunately over look a couple things, so I will try  
19 and close up very quickly.

20 With respect to following up, a few more  
21 questions with respect to this question of spoliation.

22 You said you've done at least 60 pole-loading  
23 analyses; is that correct?

24 A. Yes.

25 Q. All right. Now, in how many of those analyses

1 answered. Go ahead.

2 A. That is correct.

3 Q. I'm sure you recognize that evidence can be  
4 destroyed or lost for reasons having nothing to do with  
5 any bad intent on the part of the utility; correct?

6 MR. MOLDAVSKY: Objection. Outside the scope  
7 of this witness's testimony. Go ahead.

8 A. I understand that it's not available for a  
9 host of reasons.

10 Q. Okay. And do you recognize, sir, that in  
11 those cases where that evidence is not available that a  
12 perfectly reasonable method for determining or getting the  
13 information you need to perform your pole loading is  
14 through data requests; correct?

15 MR. MOLDAVSKY: Objection. Incomplete  
16 hypothetical. Go ahead.

17 A. Yes, it is. If it's not available, a data  
18 request is perfectly acceptable. Yes.

19 Q. In this case have you reviewed at all any of  
20 the data requests that were submitted by a Mr. Tong in  
21 connection with this case prior to the issuance of the  
22 OII?

23 A. Prior to the issuance of the OII, no, I did  
24 not -- I don't recall reviewing any of his data requests.

25 Q. Do you know whether anyone reviewed Mr. Tong's

1 recommendation to the utilities.

2 Q. And have you ever made such a recommendation  
3 to your management; that utilities be put on notice that  
4 whenever poles fail for whatever reason and there's an  
5 investigation that may commence that all evidence of any  
6 type with regards to those facilities must be maintained?  
7 Have you ever made that recommendation?

8 MR. MOLDAVSKY: Objection. Incomplete  
9 hypothetical. Go ahead.

10 A. Not that I recall.

11 MR. CARDOZA: I don't have anything further.  
12 Any redirect?

13 MR. MOLDAVSKY: No.

14 THE VIDEOGRAPHER: This concludes today's  
15 deposition. Off video at 3:00 p.m.

16 (Proceedings concluded.)

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# EXHIBIT 8

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

**DATA REQUEST SET Malibu Fire CPSD-03 November 29, 2010**

**Prepared by: SCE Counsel**  
**Witness: Frederick McCollum**

**Data Request 2-1:** Please provide the location of any and all physical or factual evidence under your or your agent's physical control, custody, or possession related to the incident. Identify with particularity each piece of evidence. Provide all measurements and technical specifications of said evidence. Identify with specificity the height/location that said evidence had previously been affixed to the subject poles.

**Objection:**

Incorporating all general objections, SCE objects to this Request.

SCE objects to this Request because it is vague or ambiguous, or both, and, as such, would require SCE to speculate as to the meaning of the Request.

SCE objects to this Request because it asks questions duplicative of and/or seeks to obtain information, documents or other materials previously provided, requested or otherwise available to the CPSD, and/or are within the possession, custody, or control of the CPSD, and/or are publicly available.

SCE objects to this Request because it calls for excessive time and resources of Respondents to complete, compared to the value of the information sought; compared to alternative, more defined requests; and/or compared to other sources of information available to CPSD.

SCE objects to this Request because it fails to include appropriate limitations as to time, location, or subject matter, and as such, is overbroad. Without such limitations, this Request is unduly burdensome and seek irrelevant information.

**Supplemental Response to Data Request 2-1:**

Subject to all objections, SCE responds as follows:

SCE is aware of three pieces of SCE 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.

With respect to the KPF switch, SCE offers to show CPSD a similar KPF switch located elsewhere. After such investigation, SCE will provide whatever physical specifications CPSD still requires.

With respect to the conductor, SCE offers to show CPSD the point in Malibu Canyon where the conductor was spliced. SCE believes that the conductor that replaced the damaged section has the same specifications as the conductor that was removed.

With respect to the ECS fiber optic communications cable, SCE offers to show CPSD the point in Malibu Canyon at which the new cable was spliced to the old cable. The old cable would have the same specifications as the cable that was discarded.

# EXHIBIT 9

From: "King, Greg" <Greg.King@cooperindustries.com>  
To: <scott.smith@sce.com>  
Date: 04/18/2011 02:26 PM  
Subject: Cooper KPF U-3 Weight

---

Hello Scott,

This email is to confirm the weight of the Cooper "Kearney" KPF U-3 600A switch. As discussed, our literature quotes a total shipping weight per switch of 555lbs which includes the packaging/crate. The net weight of the switch is approximately 475lbs., with a tolerance of +/- 20lbs., due to possible weight variances of the various components used in the switch. If you or anyone else needs to discuss this further, please do not hesitate to give me a call.

Sincerely,

Greg King  
Sr. Sales Engineer, Southern California

 **COOPER** Power Systems

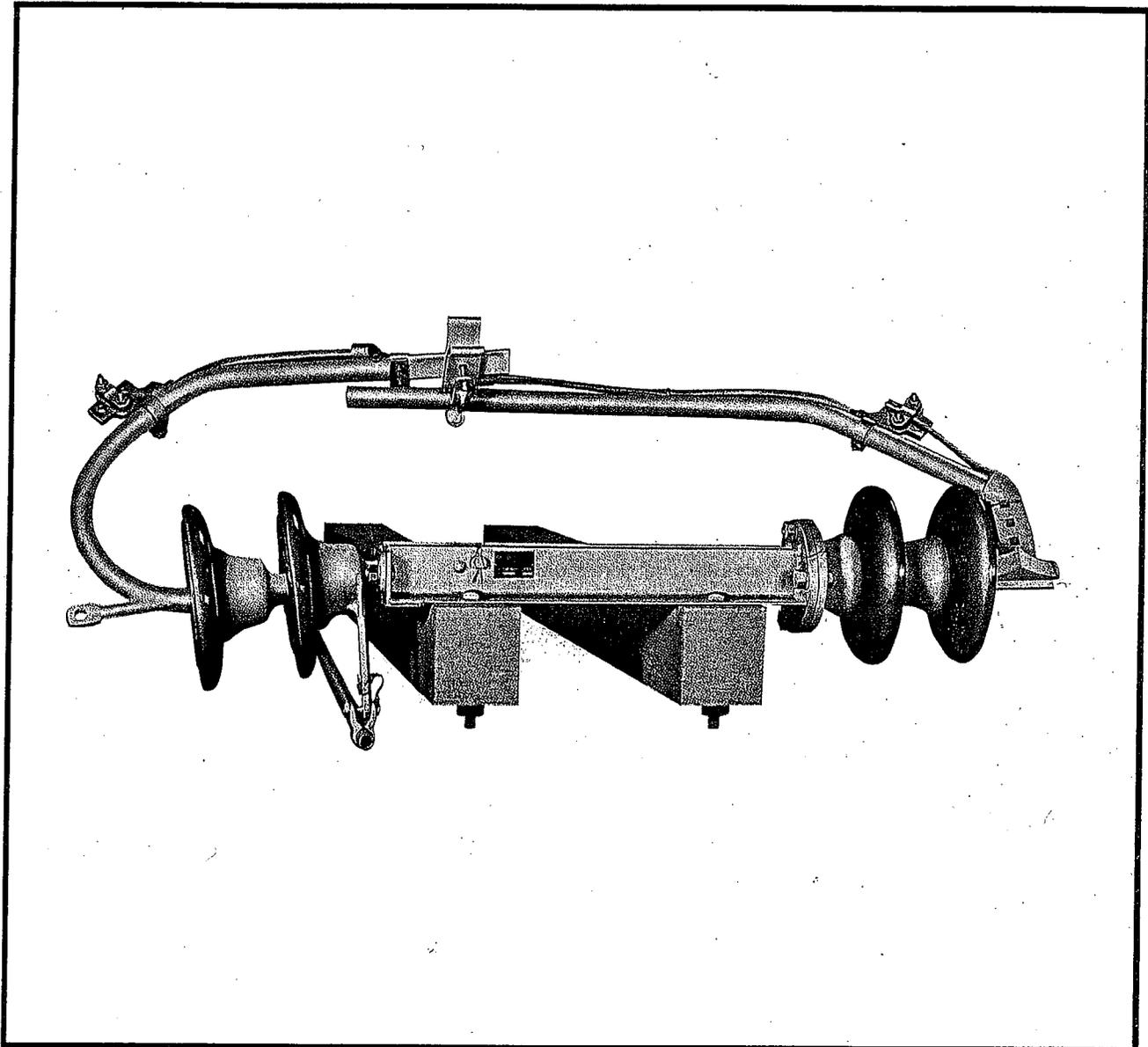
[Greg.King@cooperindustries.com](mailto:Greg.King@cooperindustries.com)  
Office/Mobile: 951-252-5114

SCE 007497

# Type U Switch

- RUGGED, SIMPLE CONSTRUCTION
- IDEAL FOR END-POLE USE
- BOLTS TO DOUBLE CROSSARMS
- MOUNTS IN SEVERAL CONFIGURATIONS
- OPTIONS AVAILABLE

The KPF Type U switch is similar to the Type A, but is designed to mount to a double crossarm. Four bolts—two in each crossarm—solidly anchor each phase unit. Three-inch slots along its base permit the Type U to be mounted on crossarms that are various distances apart. The switch mounts in horizontal, vertical, triangular or wishbone configurations. To compensate for line sag, a bearing assembly on the line side of the switch pivots the insulator stack as much as 7 degrees below horizontal. Hot lines may be dead-ended directly to the switch. Tension may or may not be applied. The Type U switch is available in 250, 400, 600, 800 and 1200 amp ratings.



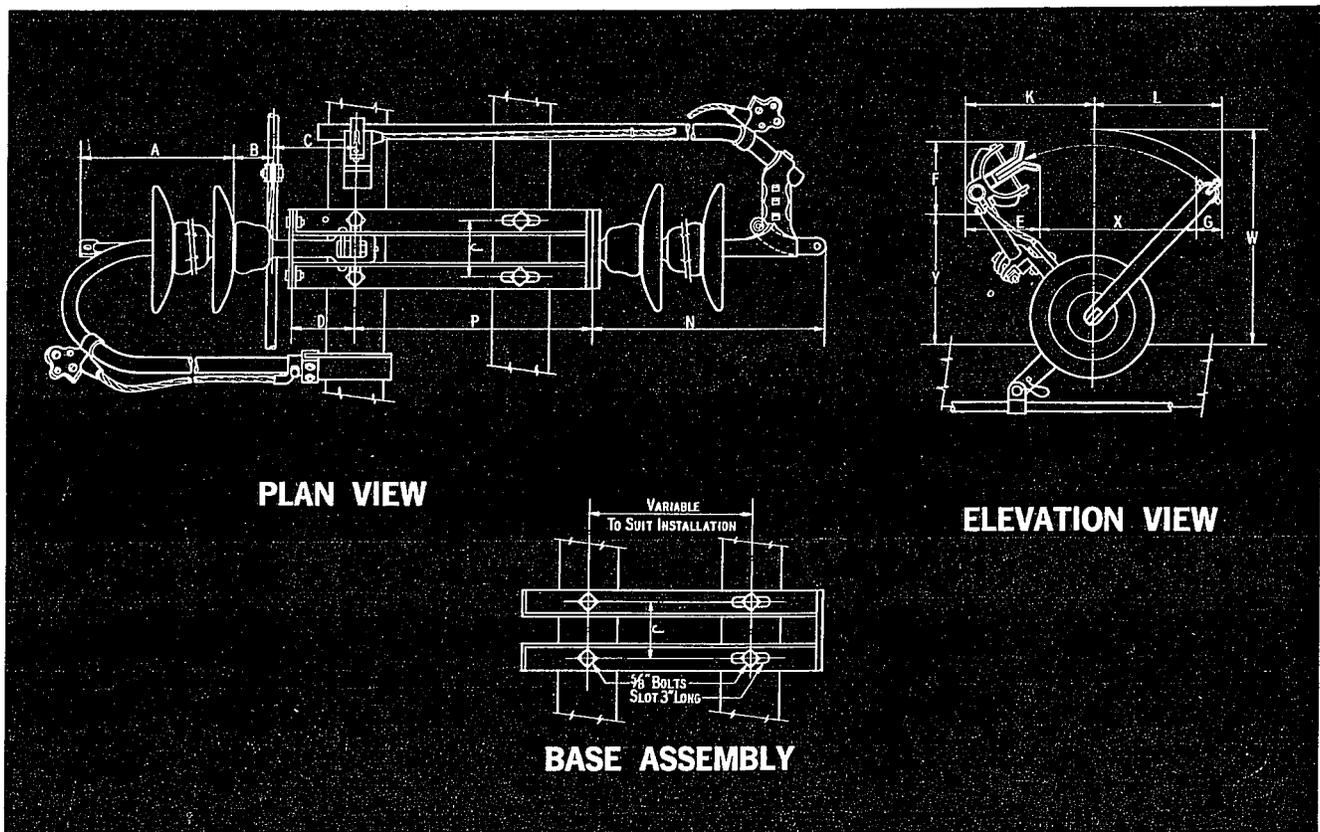
# MODEL SPECIFICATIONS FOR TYPE U SWITCH

## MODEL DESIGNATION

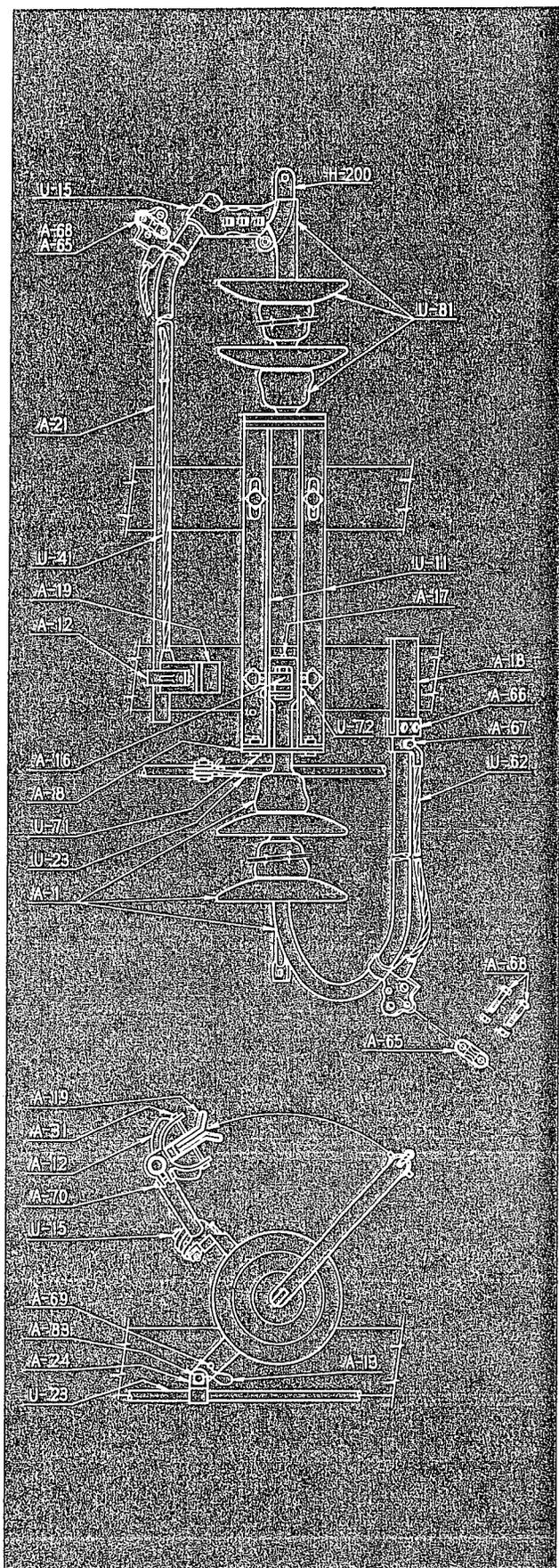
Type	U-1	U-2	U-3	U-4	U-5	U-6
Voltage Rating	7.5Kv	15-23Kv	34.5Kv	46Kv	60Kv	69Kv
Dimension (inches)						
A	8½	13¾	19	24½	29½	34¾
B	1½	1½	1½	1½	1½	1½
C	6¼	6¼	6¼	6¼	6¼	6¼
D	4¼	4¼	4¼	4¼	4¼	4¼
E	6½	6½	6½	6½	6½	6½
F	6¼	6¼	6¼	6¼	6¼	6¼
G	2	2	2	2	2	2
J	4½	4½	4½	4½	4½	4½
K	10¼	11	13½	16¼	18	20
L	8½	10	12½	14½	18	20
N	11½	16¾	22	27¼	32½	37¾
P	20	20	20	20	20	20
W	16¼	18	21½	25	29	31¾
X	10¼	12½	17½	22¼	27½	31½
Y	8	10	12	15	18	20

Note: The last number of the model designation (for example "4" of "U-4") equals the number of insulators per stack.

(Specifications are subject to change.)



## PARTS LIST



Part No.	Name	Material
A-1	Rotating stack	Porcelain & nodular
A-8	Sag guide	Galv. steel
A-12	Clip holder	Nodular
A-13	Radio bond	Copper
A-16	Bearing trunnion	Everdur
A-17	Bearing pivot	Monel
A-18	Switch blade	Silver-plated copper
A-19	Switch clip	Silver-plated copper
A-24	Pipe clamp	Galv. steel
A-31	Toggle bolt	Brass
A-65	Keeper	Brass
A-66	5/16" x 1" Machine bolt	Everdur
A-67	3/8" x 2 1/4" Machine bolt	Everdur
A-68	3/8" x 1 3/4" Machine bolt	Everdur
A-69	5/16" x 3/4" Machine screw	Brass
A-70	3/8" x 2" Machine bolt	Galv. steel
A-83	3/8" x 1 3/4" Machine bolt	Galv. steel
U-11	Switch base	Galv. steel
U-15	5/8" x 2 1/2" Machine bolt	Galv. steel
U-21	Stationary arm	Galv. pipe
U-23	Interphase control rod	Galv. pipe
U-41	Clip lead	Copper
U-62	Switch blade lead	Copper
U-71	1/2" x 1 1/4" Machine bolt	Galv. steel
U-72	3/8" Rivet	Galv. steel
U-81	Stationary insulator stack	Porcelain & nodular
H-200	Clevis adapter	Galv. steel

Order parts by switch serial number, type and amperage.

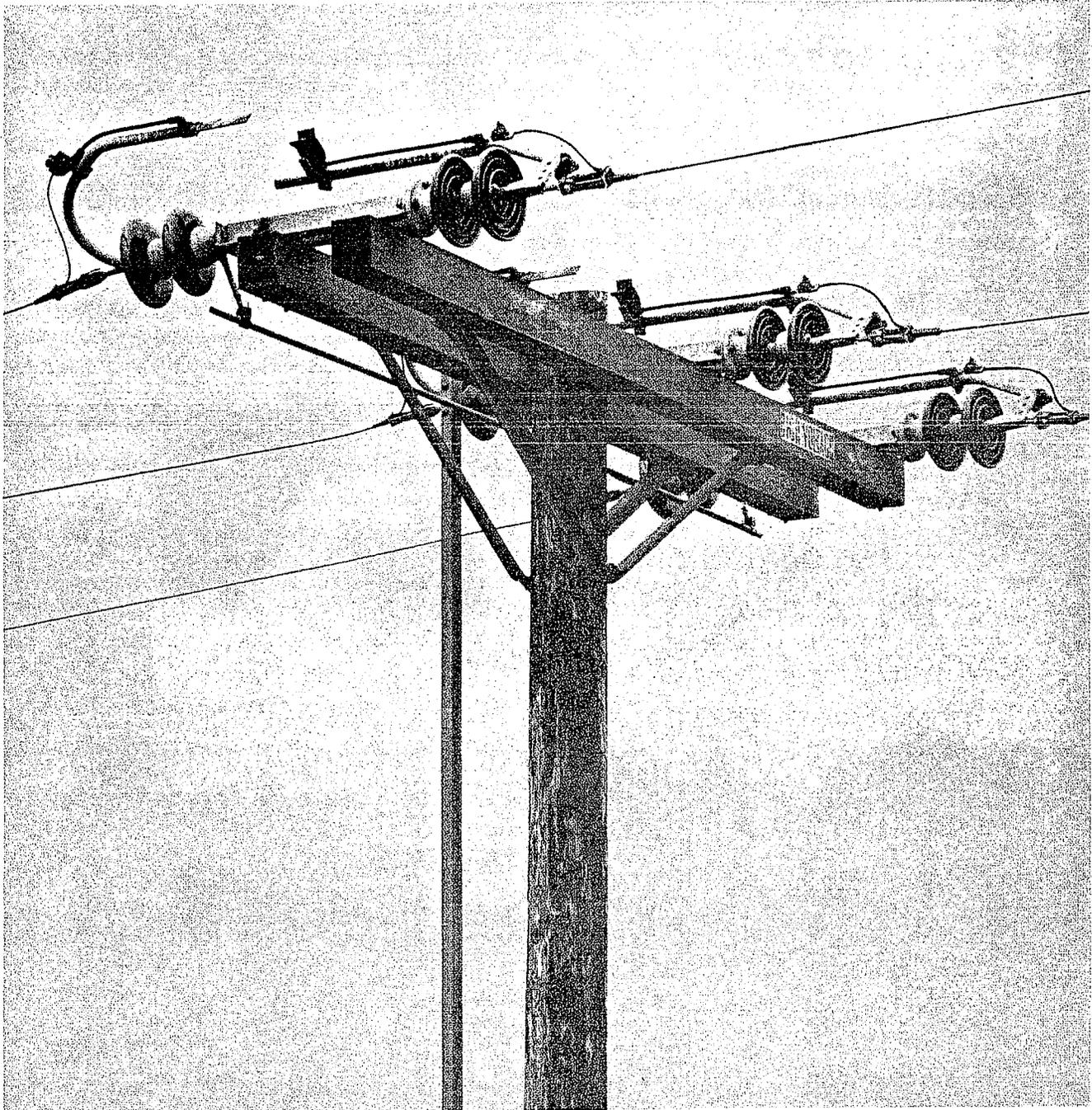
# Ordering

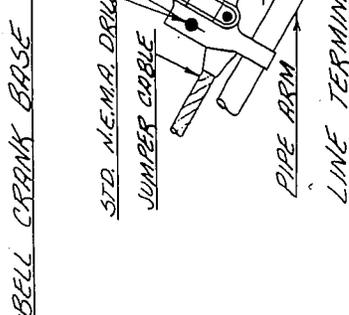
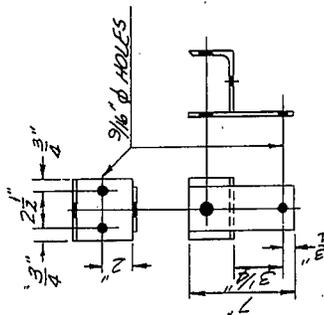
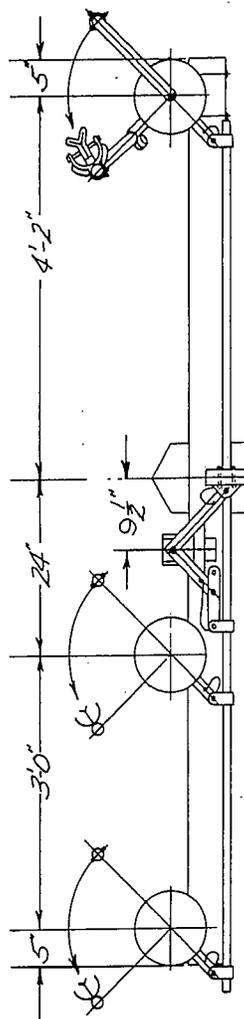
Specify voltage, amperage, Quick-Break attachment if desired, type and length of controls, size and type of conductor being used, phase spacing and configuration.

THE KPF TYPE U SWITCH BOLTS TO A DOUBLE CROSSARM. ITS FUNCTIONAL DESIGN AND STURDY CONSTRUCTION MAKE IT IDEAL FOR END-POLE USE OR AS AN IN-LINE SWITCH SHOWN BELOW.

## APPROXIMATE SHIPPING WEIGHTS

U-1	350 lbs.
U-2	440 lbs.
U-3	545 lbs.
U-4	655 lbs.
U-5	700 lbs.
U-6	825 lbs.



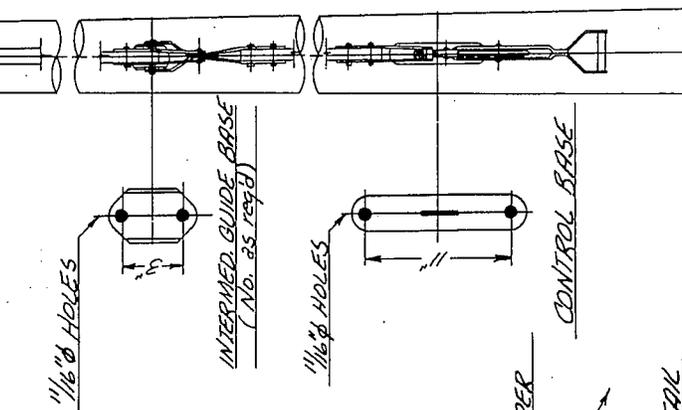
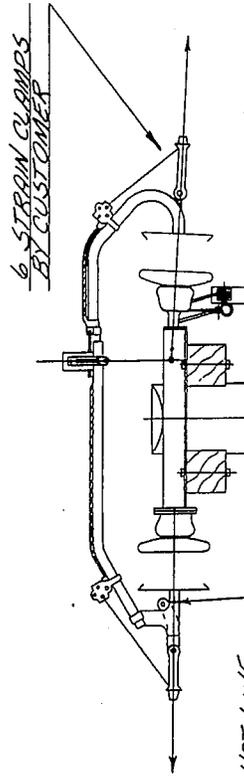


SWITCH BASE

FURNISHED IN 400, 600, 800 & 1200 AMP.  
K-P-F TYPE "U-2" - 15-23KV.  
HORIZONTAL MOUNTED AIR  
BREAK SWITCH

K-P-F ELECTRIC CO.  
1924 E. ALPINE AVENUE, STOCKTON, CALIF.

SIDE ELEV.



END ELEV.

DRAWING LIST		NO.		APPROVED	
DATE	SCALE	None	None	DRAWING NO.	A-37
4-20-65	4-20-65			CUSTOMER'S NO.	
1	1	REDRAWN			
CHG. NO.	DATE	REV. NO.	DESCRIPTION		

## DESCRIPTION

### Type U Switch

The Kearney Type U Switch is similar to the Type A Switch, but is designed to mount to a double crossarm. Four bolts, two in each crossarm, solidly anchor each phase unit. Three-inch slots along its base permit the Type U Switch to be mounted on crossarms that are various distances apart. The switch mounts in horizontal, vertical, triangular or wishbone configurations. To compensate for line sag, a bearing assembly on the line side of the switch pivots the insulator stack as much as 7° below horizontal. Hot lines may be dead-ended directly to the switch. Tension may or may not be applied. The Type U Switch is available in 600, 800 and 1200 A ratings.

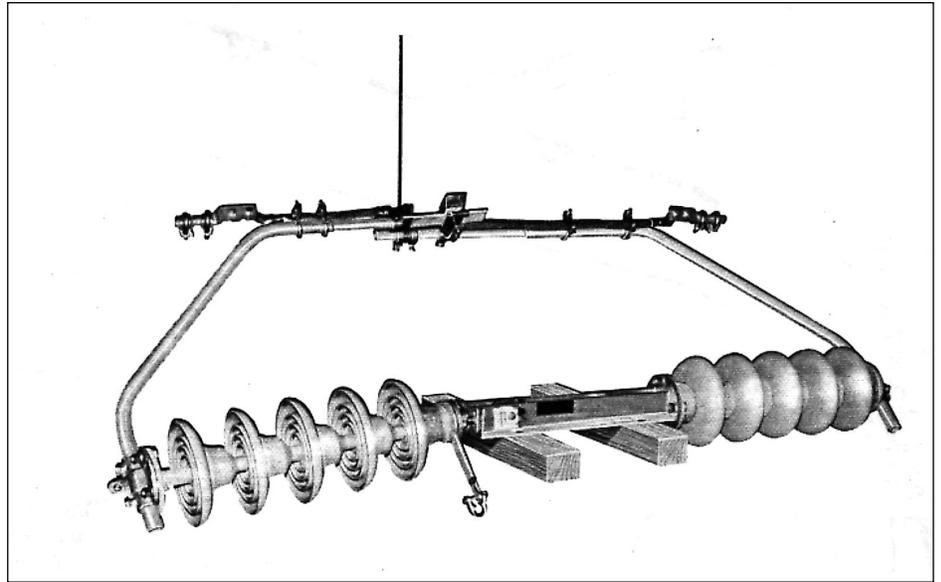


Figure 5.  
Type U Switch.

## FEATURES

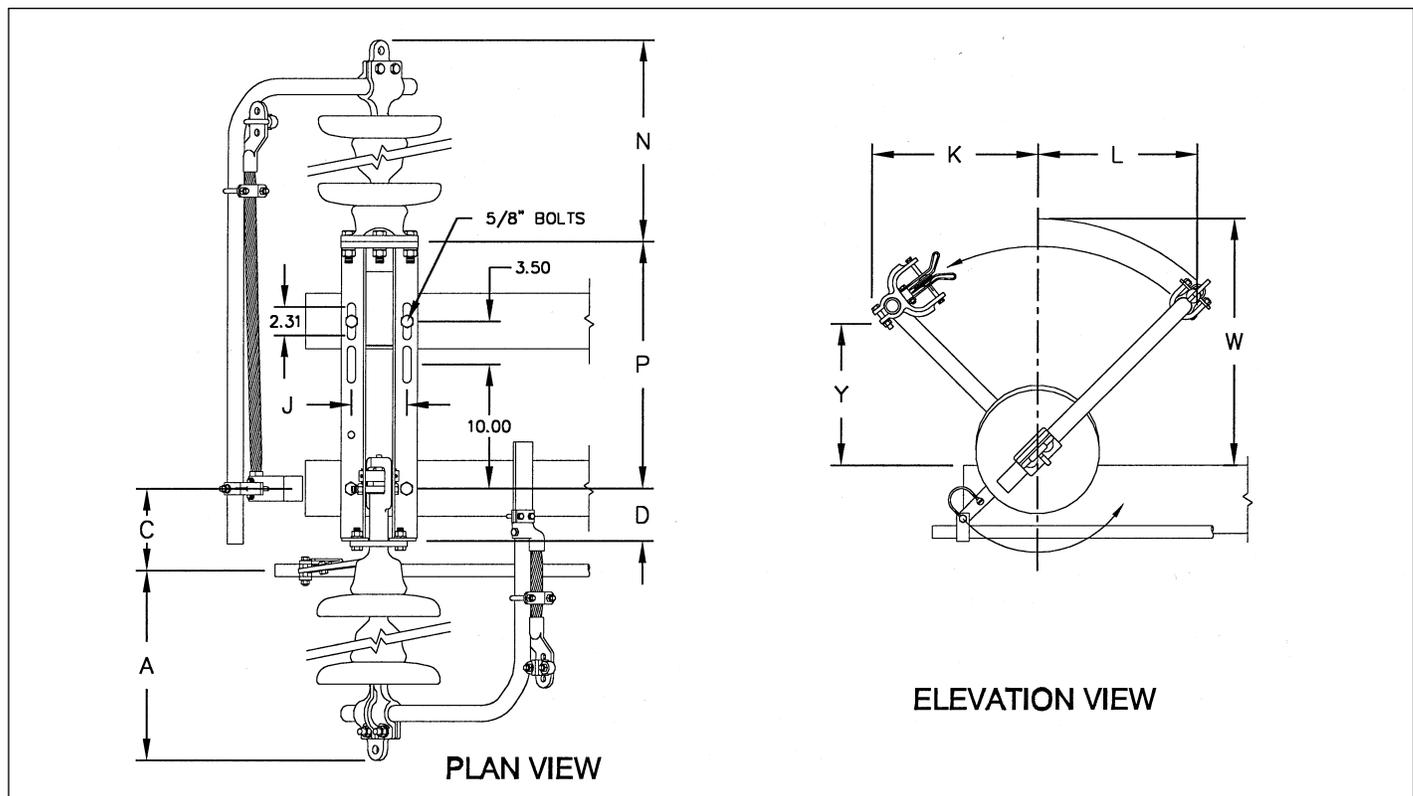
- Rugged, simple construction
- Ideal for end-pole use
- Bolts to double crossarms
- Mounts in several configurations
- Options available

**TABLE 3**  
**Model Specifications For Type U Switch 15 - 46 kV**

Model Designation			
Type	U-2	U-3	U-4
<b>Voltage Rating</b>	15-23 kV	34.5 kV	46 kV
<b>Insulation Leakage Distance</b>	23	34 1/2	46
<b>Dimension (inches)</b>			
A	15 1/4	20 1/2	26
C	6 1/4	6 1/4	6 1/4
D	4 1/4	4 1/4	4 1/4
J	4 1/2	4 1/2	4 1/2
K	11	13 1/2	16 1/4
L	10	12 1/2	14 1/2
N	16 3/4	22	27 1/4
P	20	20	20
W	18	21 1/2	25
Y	10	12	15

Notes:  
 The last number of the model designation (for example "4" of "U-4") equals the number of insulators per stack.  
 Dimensions are given for reference only.

Model Designation				
Type	U-2		U-3	U-4
<b>Voltage Rating</b>	15 kV	23 kV	34.5 kV	46 kV
<b>Minimum Phase Spacing</b>	33	36	44	51.75



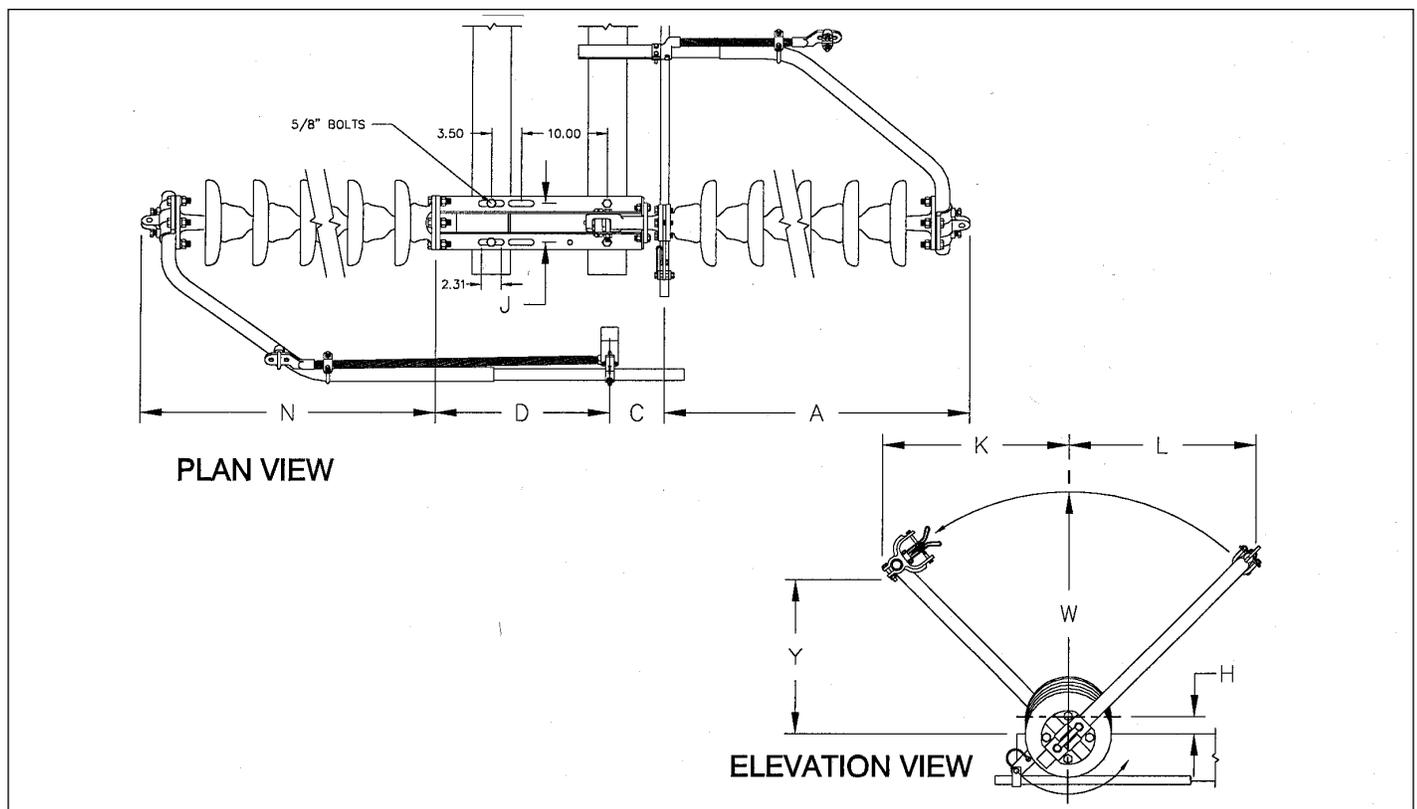
**Figure 6.**  
**Type U Switch, 15 - 46 kV dimensions.**

**TABLE 4**  
**Model Specifications For Type U Switch 60 - 115 kV**

Model Designation				
Type	U-5	U-6	U-7	U-8
<b>Voltage Rating</b>	60/69	69	88	115
<b>Insulation Leakage Distance</b>	57 1/2	69	80 1/2	92
<b>Dimension (inches)</b>				
A	34 1/4	40 3/4	45	50 1/2
C	7 3/4	7 3/4	7 3/4	7 3/4
D	19	19	19	19
H	2	2	2	2
J	4 1/2	4 1/2	4 1/2	4 1/2
K	18	20	22 1/2	25 1/2
L	18	20	22	25
N	32 1/2	39	45 1/2	52
W	24 3/4	27 1/2	30 1/2	35
Y	18	20	22 1/2	26

Notes:  
 The last number of the model designation (for example, "6" of "U-6") equals the number of insulators per stack.  
 Dimensions are given for reference only.

Model Designation				
Type	U-5	U-6	U-7	U-8
<b>Voltage Rating</b>	60/69	69	88	115
<b>Minimum Phase Spacing</b>	67	71	97.5	103.5



**Figure 7.**  
 Type U Switch, 60 - 115 kV dimensions.

## ORDERING INFORMATION

Specify voltage, amperage, Quick-break attachment if desired, type and length of controls, size and type of conductor being used, phase spacing and configuration. See page 25 for catalog number configurator.

APPROXIMATE SHIPPING WEIGHTS	
U-2	450 lbs.
U-3	555 lbs.
U-4	640 lbs.
U-5	975 lbs.
U-6	1060 lbs.
U-7	1375 lbs.
U-8	1400 lbs.

Note: Weights can vary due to configuration of switches.



**Figure 8.**  
Specially mounted type U-5's are shown in a 69 kV substation.

# EXHIBIT 10

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

3  
4   INVESTIGATION OF THE COMMISSION'S OWN  
5   MOTION INTO THE OPERATIONS AND PRACTICES  
6   OF SOUTHERN CALIFORNIA EDISON COMPANY;  
7   (U388-E); CELLCO PARTNERSHIP LLC, D/B/A  
8   VERIZON NETWORKS OF CALIFORNIA, INC.;       I.09-01-018  
9   AND PACIFIC BELL TELEPHONE COMPANY,       Filed  
10   D/B/A AT&T MOBILITY LLC, REGARDING THE       1/9/2009  
11   UTLITY FACILITIES AND THE CANYON FIRE  
12   IN MALIBU OF OCTOBER 2207.

13  
14  
15           \*\*CONFIDENTIAL PURSUANT TO PUC 583/GO66C\*\*

16                           \*\*REDACTED\*\*

17  
18           VIDEOTAPED DEPOSITION OF PEJMAN MOSHFEGH

19                           FRIDAY, JUNE 10, 2011

20                           San Francisco, CA

21  
22  
23   REPORTED BY:

24   JANIS JENNINGS, CSR 3942, CLR, CCRR

25   Job # 39552

1 technical information.

2 Why -- why is it you don't review  
3 technical drafts prepared by the Commission before  
4 they go out?

5 A. Well, to the extent CPSD's engineer  
6 produces something that requires calculations or  
7 engineering work that I can't provide any value to,  
8 there's -- there's really no purpose in me  
9 necessarily reviewing it. I may review it. It  
10 doesn't mean that I -- I, in all cases, haven't  
11 reviewed it, but...

12 Q. Okay. But your input -- when it comes to  
13 technical information that's being provided to -- in  
14 response to a data request, is it a fair statement  
15 that your input is not required in order to -- to  
16 verify whether the technical information is correct  
17 and accurate?

18 A. Well, to the extent that it's -- to the  
19 extent that it requires a calculation or some sort  
20 of technical or engineering calculation that I -- it  
21 would just be beyond my expertise.

22 Q. Okay. So would it be fair to say that you  
23 lack the expertise to judge the -- the truth and  
24 accuracy of technical specifications and  
25 calculations provided by the Commission in response

1 to data requests?

2 MR. MORRIS: Objection. Vague. You're  
3 too vague about all of the technical specifications.

4 THE WITNESS: Well, technical -- yeah.  
5 Technical specifications -- to a certain extent, I  
6 mean, anyone can understand certain technical  
7 specifications, but a calculation may be beyond my  
8 level of expertise.

9 BY MR. CARDOZA:

10 Q. Okay. Let's talk about -- just focus --  
11 because I take your counsel's comment at heart  
12 because it's a good one.

13 With regards to pole loading, do you  
14 consider yourself a person who has any degree of  
15 expertise to -- sufficient to critique responses by  
16 your own internal experts with regards to pole  
17 loading equations?

18 A. Equations?

19 Q. Yes.

20 A. I probably wouldn't have the requisite  
21 expertise.

22 Q. Okay. And with regards to what your own  
23 internal experts consider to be important in terms  
24 of the ability to perform a pole loading  
25 calculation, is that something that you would defer

1 question.

2 A. I do not have the expertise to -- to  
3 determine what inputs may go into an equation.

4 Q. Okay. And you also have no expertise to  
5 determine the specific value of any of those inputs.  
6 Is that a fair statement?

7 A. The value?

8 Q. That's right.

9 A. What do you mean?

10 Q. Well, for example, there's a wide range of  
11 inputs that go into a pole loading calculation;  
12 correct? You understand that?

13 A. Yes.

14 Q. And some of those inputs may be more  
15 important than others. Do you agree with that?

16 A. I can't speak to the importance of one  
17 input --

18 Q. Okay.

19 A. -- versus the other.

20 Q. So -- so I think that answers my -- my  
21 question.

22 So you lack the expertise to be able to  
23 determine what input may have more value than  
24 another. Is that fair?

25 A. Well, I can -- I mean, from a general -- I

1 have a -- I have a general idea of -- of just  
2 principles of adding load to the pole. But as far  
3 as a conductor or a KPF switch or what -- and its  
4 specific position on a pole, I couldn't necessarily  
5 say which one has more value than the other.

6 Q. Okay. Would you agree that those  
7 determinations, to the extent they need to be made,  
8 would best be left to the experts who have knowledge  
9 with regards to pole loading?

10 A. I -- yeah. I think that's fair.

11 Q. Okay. All right.

12 Now, with regards to Mr. Fugere -- and I'm  
13 kind of jumping around because I'm going to come  
14 back to the line of questioning I had a moment ago.

15 But while I'm on the subject, do you have  
16 any reason to dispute or doubt the -- Mr. Fugere's  
17 expertise in the area of pole loading?

18 A. Do I have any reason to doubt it?

19 Q. Yes.

20 A. I have no reason to doubt it.

21 Q. Okay. And do you think that Mr. Fugere's  
22 opinions, whatever they may be, with regards to pole  
23 loading would be superior to your own?

24 A. I would have to say yes.

25 Q. Okay. And you'd defer to him on that

1 subject; correct?

2 A. Pole loading?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. Getting back to things you would  
6 have or may have reviewed since August of 2010, is  
7 there anything else that you did -- other than  
8 prepare the testimony that was filed in April and  
9 review the materials that we've already discussed,  
10 is there anything else you did in connection with  
11 your work on this case --

12 MR. MORRIS: Objection. Vague.

13 BY MR. CARDOZA:

14 Q. -- and perhaps -- and perhaps in preparing  
15 for the deposition?

16 MR. MORRIS: And I'll also instruct the  
17 witness not to answer any questions that would  
18 invade the attorney-client privilege or deliberate  
19 process privilege.

20 THE WITNESS: Can you -- can you ask your  
21 question one -- one more time as to the date you're  
22 referring to?

23 BY MR. CARDOZA:

24 Q. Okay. Since August --

25 A. Okay.

1 MR. SELBY: Excuse me, Mr. Cardoza, if you  
2 could allow me to interrupt --

3 MR. CARDOZA: Yes, please.

4 MR. SELBY: I have a couple of minor  
5 follow-up of questions.

6 You testified, Mr. Moshfegh, that you  
7 believed you looked up the term at one point and you  
8 used the words at one point. Do you recall that?

9 THE WITNESS: Yes.

10 MR. SELBY: What point in time was that?

11 THE WITNESS: Prior to -- sometime prior  
12 to offering this testimony.

13 MR. SELBY: And did you make any notes  
14 whatsoever with respect to your research?

15 THE WITNESS: No.

16 MR. SELBY: Did you print out a case?

17 THE WITNESS: I have read a case that  
18 refers to spoliation of evidence which is  
19 Cedars-Sinai.

20 MR. SELBY: Okay. Did you -- did you  
21 answer my question? Did you print that case out or  
22 any other case?

23 THE WITNESS: I did print that case out.

24 MR. SELBY: And was that produced as part  
25 of your notes in this case?

1 THE WITNESS: And I did.

2 MR. SELBY: Okay. And was not part of  
3 your work papers.

4 MR. CARDOZA: All right.

5 BY MR. CARDOZA:

6 Q. Okay. Mr. Moshfegh, do you understand  
7 that the principle of spoliation of evidence is  
8 based on -- in California it's based on authority  
9 other than the Cedars-Sinai case?

10 A. I don't -- I don't have knowledge one way  
11 or the other.

12 Q. Okay. Would you agree -- or did you enter  
13 into your evaluation of whether Edison or anyone  
14 else spoliated evidence in this case as to whether  
15 the evidence that was lost, destroyed or unavailable  
16 was reasonably certain to cause substantial  
17 impairment or significant prejudice to the inability  
18 to prove or disprove an element of the CPSD's  
19 claims?

20 A. I'm sorry. Can you repeat that?

21 Q. Yes. In connection with your  
22 determination of "spoliation of evidence," did you  
23 attempt to analyze whether the missing evidence was  
24 reasonably certain to cause substantial impairment  
25 or significant prejudice to the ability of the CPSD

1 to prove or disprove its claims?

2 A. I did consider that.

3 Q. Okay. So is it your under- -- is it  
4 your belief that the missing material that you  
5 described was reasonably certain to cause  
6 substantial impairment or significant prejudice  
7 to the CPSD?

8 A. I believe so.

9 Q. Okay. And what is that belief based on?

10 A. Well, we don't have the specific --  
11 we don't have all the specific equipment or the  
12 exact identical specific evidence that was either  
13 discarded or cannibalized that was attached to  
14 the subject poles to on our own -- on our own  
15 volition analyze and verify the parameters of and  
16 the specifications of.

17 Q. Okay. Okay. We're going to go into this  
18 in a little more detail later, but give me the --  
19 what is the missing evidence that you believe was  
20 "spoliated," in your terms?

21 A. Well, for example, the Edison Carrier  
22 Solutions cable that was -- that was rolled up  
23 and discarded, the KPF switch was -- which we've  
24 received various different values for its weight,  
25 was cannibalized and used elsewhere in Edison

1 to the extent that I conferred with him --

2 MR. CARDOZA: Well, I will move to strike.

3 BY MR. CARDOZA:

4 Q. The question is: Yes, he's in the better  
5 position.

6 MR. MORRIS: How about letting him answer  
7 the question? Let him answer the question.

8 BY MR. CARDOZA:

9 Q. I understand your testimony --  
10 well, I'll move it to strike.

11 I'm asking who has a superior position.  
12 You can take him on recross and ask him, you know,  
13 why he took the position he did.

14 But as far as -- you're not an expert in  
15 mechanical engineering, you're not an expert in  
16 structural engineering. So for purposes of  
17 determining what impact a missing object has on a  
18 calculation, you would defer to the experts in that  
19 field presumably; correct?

20 A. I would defer to Mr. Fugere to the extent  
21 that the KPF switch impacts his calculation.

22 Q. Okay. Right. And would the same be  
23 true with regards to any other specific piece of  
24 equipment, whether or not -- not having the original  
25 substantially impaired or caused significant

1 Q. Yes.

2 MR. MORRIS: Let me object as vague.

3 THE WITNESS: Well, what do you mean by  
4 "efforts"?

5 BY MR. CARDOZA:

6 Q. Well, have you ever stopped to consider  
7 when responding to a fire site where a pole is  
8 down, that it's typically chaotic? Have you ever  
9 considered that?

10 A. Well, I would imagine that it could be  
11 chaotic depending on at what point in time the  
12 utility is attempting to collect the evidence and  
13 remove it.

14 Q. Okay. In this particular case do you  
15 know that Edison was on the scene of the event  
16 almost immediately after the fire? Do you  
17 understand that?

18 A. Yes.

19 Q. Do you understand or have any appreciation  
20 for the type of road conditions that were present  
21 when Edison responded to the fire?

22 A. I believe it was moderately windy.

23 Q. No. I mean, the road conditions; that  
24 is, traffic getting in and out of Malibu Canyon at  
25 the -- at and around the time of the fire when

1 Q. Okay. And what was your feeling? That  
2 Edison under those circumstances should be charged  
3 with a Rule 1 violation because it didn't scoop up  
4 every piece of evidence? That's your position?

5 MR. MORRIS: Objection. To the extent  
6 you're trying to talk about spoliation or Rule 1 --

7 MR. CARDOZA: Spoliation.

8 MR. MORRIS: Just spoliation?

9 MR. CARDOZA: Yeah.

10 MR. MORRIS: And you're talking about the  
11 issue of Edison or all respondents?

12 MR. CARDOZA: Edison.

13 MR. MORRIS: Does that include Edison Care  
14 Solutions?

15 MR. CARDOZA: Yes.

16 THE WITNESS: And what was your question  
17 again?

18 BY MR. CARDOZA

19 Q. My question was: Given all those --  
20 all the logistics, all the difficulties that Edison  
21 would have encountered in trying to gather up all  
22 this material and place it in its warehouse for  
23 future evaluation, is it your belief that because  
24 Edison didn't maintain a KPF switch, scoop up some  
25 of its Carrier Solution cable, that that supports a

1 finding of spoliation of evidence?

2 A. Absolutely.

3 Q. And you believe --

4 A. And can I explain?

5 Q. No. That's a yes or a no.

6 MR. MORRIS: No. Let him explain.

7 MR. CARDOZA: No. The question wasn't  
8 explain. It was: Does it -- does that support --  
9 do you believe that supports your finding? You can  
10 ask him on redirect all you want.

11 BY MR. CARDOZA:

12 Q. So the -- is it the position --

13 MR. MORRIS: No, I think he's going to be  
14 able to answer -- interrupt his answer. Let the  
15 witness answer directly right now.

16 BY MR. CARDOZA:

17 Q. Well, let me ask -- let me ask --

18 MR. MORRIS: No, no. Let's let him answer  
19 the question.

20 BY MR. CARDOZA:

21 Q. Okay. Go ahead, answer the question.

22 A. Well, I don't think -- I don't think  
23 Edison should be in a position to pick and choose  
24 what evidence it retains or doesn't retain.

25 Mr. McCollum admitted his fault for not

1 A. Okay.

2 Q. Okay.

3 A. I have no reason to disagree.

4 Q. And assuming that's -- taking that as  
5 true, okay, for the purposes this hypothetical, then  
6 in order to have determined what the size of that  
7 cable is between 252 and 253, we could have easily  
8 gone up the road and taken measurements of that  
9 original cable that had -- that was along the same  
10 line between -- that crossed 252 and 253; isn't that  
11 correct?

12 A. That's one possible way to do it, but CPSD  
13 still has a right to independently verify the  
14 facilities that were otherwise discarded.

15 Q. Okay. You have the right to verify the  
16 facilities -- the size of those facilities that were  
17 discarded.

18 In January of 2011, in the responses that  
19 you just took a look at, AT&T Mobility explained to  
20 you how they went about identifying the size of that  
21 cable, that original cable, that was located between  
22 252 and 253; isn't that right?

23 A. Identifying the cable that was later  
24 discarded?

25 Q. Let me -- let me repeat my question.

1 of, and I'm simply asking you: Do you believe that  
2 SCE's purpose should have been considered by CPSD in  
3 trying to understand whether or not SCE was engaged  
4 in spoliation of evidence?

5 A. And you're presuming that it wasn't  
6 considered?

7 Q. I don't know. Was it considered?

8 A. I --

9 Q. You're the one who -- who wrote this  
10 testimony about spoliation of evidence.

11 Was it considered?

12 A. Well, to the extent to which it was  
13 considered, I -- I don't know.

14 Q. It's not actually mentioned in your  
15 testimony.

16 A. It's not mentioned in my testimony.

17 Q. And CPSD did not actually ask a data  
18 request to the purpose for the dismantling and  
19 re-employing of the KPF switch elsewhere, did it?

20 A. I believe that information was put forth  
21 at some point in deposition -- or, by Mr. McCollum  
22 in deposition, but I can't recall.

23 MR. SELBY: Very well. Hold on,  
24 Mr. Moshfegh.

25 MR. MORRIS: I'm going to be doing some

1 replaced?

2 A. I -- that sounds familiar.

3 Q. Okay. Do you know why CPSD decided not to  
4 take NextG Networks up on that offer?

5 A. Well, CPSD needs to be able to  
6 independently verify the spoliated equipment. And  
7 also, the equipment that is presently there, the two  
8 cables from what I understand were replaced with one  
9 larger cable, if I'm not mistaken.

10 Q. You're correct. Both cables are still in  
11 place today and there's a standing offer by NextG  
12 Networks to allow CPSD to come look at the cables  
13 that still exist at the splice point.

14 A. Okay. I understand.

15 Q. Are you aware of that offer?

16 A. I am now if I wasn't before.

17 Q. Okay. And to answer my question, do you  
18 know why CPSD hasn't accepted that offer?

19 A. Well, I can't say for myself. And I  
20 don't know -- I can't speak for all of CPSD on  
21 that point. But what I did say earlier is that  
22 CPSD needs to be able to verify the exact equipment  
23 that was discarded, verify the specifications and  
24 parameters of the equipment that was discarded.

25 Q. Understood.