



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

STATE OF CALIFORNIA

12-05-11
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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
RULE 1.1 CLAIM RELATED TO PERALTA DOCUMENTS
(REDACTED PUBLIC VERSION)

(ORAL ARGUMENT REQUESTED)

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December 5, 2011

I. INTRODUCTION

Southern California Edison Company (“SCE”) brings this motion for summary adjudication of the Consumer Protection and Safety Division’s (“CPSD’s”) claim that SCE violated Rule 1.1 in connection with its production of privileged documents pursuant to a February 10, 2011 stipulation. CPSD claims that SCE misled it by initially producing *copies* of documents created by SCE employee Arthur Peralta and not the *original* documents in Mr. Peralta’s possession which, unknown to SCE’s Law Department, included additional information related to replacement pole 608. CPSD cannot establish that SCE misled CPSD or the Commission with respect to the documents. *First*, it was not until CPSD requested Mr. Peralta’s original documents that SCE’s Law Department had any reason to believe that Mr. Peralta had added information to the original documents in his possession after he provided copies to the Law Department. SCE immediately made the original documents available to CPSD for inspection, and this occurred only five weeks after the initial production. *Second*, contrary to CPSD’s claim that it identified an alleged violation related to a pole 608 based only on information in the original documents, CPSD acknowledges that it reached the same conclusion based on information in the first set of documents.¹ Accordingly, CPSD was not prejudiced by the later production, and its Rule 1.1 claim and penalty request of \$720,000 should be dismissed.

II. FACTUAL BACKGROUND

Soon after the Malibu Canyon fire, SCE employee and wood products specialist Arthur Peralta was instructed by counsel to conduct a forensic or after-the-fact examination of the poles that failed in the fire. Declaration of Arthur Peralta (Feb. 18, 2011) (“Peralta Decl.”) at ¶ 2-3, Ex. 1.² At the incident site, Mr. Peralta took notes about both the failed poles and replacement poles

¹ In its testimony, SCE disputes CPSD’s allegation that pole 608 was overloaded by either of these amounts, or at all. However, that issue need not be resolved in order to grant this motion.

² 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

(“Field Worksheet Copies”). *Id.* at ¶ 4; Field Worksheet Copies (SCE 007340, 007342-007343, SCE 007345), Ex. 2 (under seal). Shortly afterward, Mr. Peralta sent copies to SCE’s Law Department. Peralta Decl. at ¶ 7; Declaration of Frederick McCollum (Apr. 5, 2010) (“McCollum 4/5/10 Decl.”) at ¶ 5, Ex. 3; Declaration of Frederick McCollum (Feb. 18, 2011) (“McCollum 2/18/11 Decl”) at ¶ 5, Ex. 4.

When CPSD learned that Mr. Peralta had prepared documents related to the failed poles, it moved to compel those documents. *See* CPSD’s Motion to Compel at 2 (Mar. 26, 2010). SCE opposed CPSD’s motion on grounds that documents created by Mr. Peralta and sent to the Law Department are entirely covered by the attorney-client privilege and attorney work product doctrine. *See* SCE Response to CPSD’s Motion to Compel at 2 (April 5, 2010). On February 10, 2011, SCE and CPSD formalized an agreement to resolve certain disputes regarding Mr. Peralta’s documents for the limited purpose of this proceeding. *See* Stipulation of CPSD and SCE Resolving Certain Disputes Regarding Wind Load Information (Feb. 10, 2011) (“Stipulation”), Ex. 5.³ Pursuant to this Stipulation, SCE produced to CPSD the Field Worksheet Copies and other relevant documents that had been in the possession of the Law Department since late 2007 (“Disclosed Peralta Documents”).

Approximately one month after production of these documents, on March 17, 2011, CPSD sent an email to counsel for SCE asking for “an inspection of the original documents produced by Arthur Peralta on or about October 22-23, 2007 regarding the Subject Poles of the Malibu Canyon Fire OII. . .” Email from E. Moldavsky to H. McIntosh, et al. (Mar. 17, 2011), Ex. 6. In response, SCE located the original documents in the possession of Mr. Peralta and made them available to CPSD for inspection the next day. *See* Field Worksheet Originals, Ex. 7

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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.”

³ The remaining issues related to CPSD’s motion to compel were resolved by the Administrative Law Judge. *See* ALJ’s Ruling Denying Motion to Compel (March 24, 2011).

(under seal). In the process, SCE's Law Department learned for the first time that *after* Mr. Peralta had submitted the Field Worksheet Copies to the Law Department, he had returned to Malibu Canyon and taken additional notes regarding the replacement poles on the Field Worksheet Originals in his possession. SCE Surrebuttal Testimony (Ramos) at 10:26–11:5 (June 29, 2011); Deposition of Arthur Peralta (Mar. 29, 2011) (“Peralta 03/29/11 Dep.”) at 292:14-293:6, Ex. 8 (under seal).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CPSD brings a Rule 1.1 claim and seeks imposition of a \$720,000 penalty against SCE, alleging that the documents in Mr. Peralta's possession "contained certain field observations that were not included in the Disclosed Peralta Documents" and that "field observations included only in the Original Arthur Peralta documents have been used by CPSD to identify a violation." Prehearing Conference Statement of CPSD at 6 (Oct. 21, 2011) (emphasis in original). However,



III. ARGUMENT

A. Summary Judgment 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. *Cox 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, cited in *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.

B. Rule 1.1

Rule 1.1 of the Commission’s Rules of Practice and Procedure provides, in relevant part:

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

To establish a Rule 1.1 violation, CPSD must first show that a party used an “artifice” or made a “false statement of law or fact.” Rule 1.1. The Commission generally requires that a party alleging a Rule 1.1 violation must show that there was “purposeful intent, recklessness, or gross negligence” to mislead the Commission. *Order Instituting Investigation (OII) Into S. Cal. Edison Co.’s Elec. Line Constr., Operation, and Maint. Practices*, D.04-04-065, 2004 Cal. PUC LEXIS 207 at *53;⁴ *Application of Pac. Fiber Link, L.L.C. for Modification of its Certificate of Pub. Convenience and Necessity*, D.02-08-063, 2002 Cal. PUC LEXIS 533 at *29 (record failed to show that company violated Rule 1 in submitting registration form because “Rule 1 violations require purposeful intent, recklessness, or gross negligence in regard to communications with the Commission.”); *Investigation on the Commission’s Own Motion into the Operations, Practices and Conduct of Starving Students, Inc.*, D.03-11-023, 2002 Cal. PUC LEXIS 1046 at *42 (CPSD failed to establish that Starving Students knowingly and willfully filed false quarterly reports that understated revenue).

Although the Commission has stated that Rule 1.1 violations may be “inadvertent,” a party still must act recklessly or with gross negligence to be liable for a Rule 1.1 violation.⁵ The

⁴ In the *SCE Electric Line* case, CPSD alleged two separate Rule 1 violations. With respect to one, the Commission found “confusion” in SCE’s communication practices, but found no “intentional, reckless, or grossly negligent failure” of SCE to investigate how different SCE districts defined “new business order.” In the other, the Commission found “miscommunication occurred” regarding the work of a subcontractor, “but not the type of conduct to constitute a Rule 1 violation.” Rule 1 was renumbered as Rule 1.1 by the Commission’s 2006 revision of its Rules of Practice and Procedure. *Rulemaking to Update, Clarify and Recodify Rules of Practice and Procedure*, D.06-07-006, 2006 Cal. PUC LEXIS 288.

⁵ In D.09-04-009, for example, the Commission stated that the party was subject to a penalty for its violation of Rule 1.1 “even if the violation was inadvertent.” *In the Matter of the Application of Bigredwire.com, Inc.*, D.09-04-009, 2009 Cal. PUC LEXIS 197 at *21. This was cited in *OII Into the Billing Practices and Conduct of Legacy Long Distance Int’l, Inc.*, I.10-06-013, 2010 Cal. PUC LEXIS 240 at *47. This statement is consistent

Commission also has said that whether a party acted with “direct intent” to deceive the Commission “goes to the question of how much weight to assign to any penalty that may be assessed.” *Order Instituting Rulemaking (OIR) on the Commission’s Own Motion into Competition for Local Exch. Serv.*, D.01-08-019, 2001 Cal. PUC LEXIS 653 at *14. But this does not mean that a party *automatically* violates Rule 1.1 anytime it makes an incorrect statement; instead, in the absence of direct intent, a party must act recklessly or with gross negligence to trigger Rule 1.1. The Commission recognized this point when it explained in the very next sentence that “[t]he lack of direct intent to deceive does not *necessarily* ... avoid a Rule 1 violation.” *Id.* (emphasis added). This sentence is consistent with well-settled Commission precedent that a party can violate Rule 1.1 if it makes a misleading statement through recklessness or gross negligence instead of directly intending to mislead the Commission.⁶

Further, CPSD must show that it acted on the claimed misstatement before it can be said to have been *misled* within the ordinary definition of that term.⁷ *See, e.g., Investigation on the Commission’s Own Motion into the Practices of the S. Cal. Edison Co.*, D.08-09-038, 2008 Cal. PUC LEXIS 401 at *1 (data underlying Rule 1.1 violation was used by Commission to determine

(continued...)

with precedent that a Rule 1.1 violation does not require a party to *purposefully* mislead the Commission, but that a party must act recklessly or with gross negligence.

⁶ Dictum in a footnote in a recent OII does not change the important requirements for a Rule 1.1 violation. *See OII Into the Operations, Practices, and Conduct of Telseven, et al.*, I.10-12-010, 2010 Cal. PUC LEXIS 462 at *83, n.146 (applicants’ failure to provide their “full legal name,” amidst many charged violations, may subject applicants to “strict liability” under Rule 1.1). While the footnote states that Rule 1.1 is “a strict liability rule” comparable to “public welfare or police power laws,” the four consumer protection decisions cited to support this proposition do not address Rule 1.1, and that footnote does not purport to change the well-settled Commission precedent on the requirements for a Rule 1.1 violation. One cannot reasonably assert that Rule 1.1 is a “public welfare or police power” offense under California law when it is advanced as the basis for hundreds of thousands of dollars in proposed fines. *See People v. Simon*, 9 Cal. 4th 493, 519 (1995) (one element of a “regulatory” or “public welfare” offense is that “the penalty for those offenses is usually small, and the conviction does not do ‘grave damage to an offender’s reputation.’”).

⁷ The plain language of Rule 1.1 requires that a “person . . . mislead the Commission or its staff.” Merriam Webster Unabridged Third New International Dictionary defines “mislead” as: “to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit.”

Performance Based Ratemaking customer rewards); *OIR on the Commission's Own Motion into Competition for Local Exch. Serv.*, D.01-08-019, 2001 Cal. PUC LEXIS 653 at *13 (finding Rule 1.1 violation where “the results of [the party’s] actions did have the effect of misleading the staff”).

Finally, the Commission has recognized that “honest mistakes” can and do occur and that an “honest mistake” does not warrant a finding that Rule 1.1 has been violated. *See In the Matter of the Application of Skynet Commc’ns, Inc.*, D.09-01-017, 2009 Cal. PUC LEXIS 41 at *9 (“Notwithstanding that Skynet initially provided CPSD with incorrect information, we decline to adopt CPSD’s recommendation that a fine be imposed on Skynet for an alleged Rule 1.1 violation. We believe that Skynet made an honest mistake and promptly amended its pleadings as soon as it became aware that intrastate revenue was, in fact, involved in this matter...”).

C. CPSD Cannot Establish A Rule 1.1 Violation Related To SCE’s February 10, 2011 Data Request Responses

CPSD cannot establish a Rule 1.1 violation based on SCE’s production of Mr. Peralta’s documents to CPSD, because (1) SCE’s Law Department produced the documents in its possession and did not know that Mr. Peralta had added information to the Field Worksheet Originals after he had submitted copies to the Law Department; and (2) receiving the Field Worksheet Originals approximately one month after the initial production caused no prejudice to CPSD.

1. SCE’s Law Department Produced The Documents Pursuant To The Stipulation In Its Possession And Had No Reason To Know That Mr. Peralta Had Added Information To The Originals.

The Disclosed Peralta Documents were prepared by Mr. Peralta on or around October 22 or 23, 2007; additional information about the replacement poles was added to the Field Worksheet Originals later and after Mr. Peralta sent his Field Worksheet Copies to the Law Department. Peralta Decl. ¶ 3, Ex. 1; McCollum 2/18/11 Decl. ¶¶ 3-4, Ex. 4; Peralta 03/25/11 Dep. at 316:13-28, Ex. 9 (under seal). Until CPSD requested the “originals” of Mr. Peralta’s documents, the Law Department did not know that Mr. Peralta had added this additional

information. See SCE's Responsive Testimony (Ramos) at 10-11. The Law Department produced to CPSD in February 2011 the documents that had been in its possession for over three years and had no reason to know that Mr. Peralta had added information to the Field Worksheet Originals after he had submitted the Field Worksheet Copies to it. See SCE's Responsive Testimony (Ramos) at 10-11. Accordingly, SCE's failure to produce the documents with additional information about the replacement poles was not deliberate, reckless, or grossly negligent as required to support a Rule 1.1 violation.

2. CPSD Was Not Misled By SCE's Later Production Of The Original Documents In Mr. Peralta's Possession.

CPSD attempts to show that it was misled or prejudiced by SCE's initial failure to produce the original documents by claiming that the "field observations included *only* in the Original Arthur Peralta documents have been used by CPSD to identify a violation." Prehearing Conference Statement of CPSD at 6 (emphasis changed). However, there is no dispute that the information in the copies of the documents initially produced also could be used to compute the same alleged violation. See Field Worksheet Copies, Ex. 2; Field Worksheet Originals, Ex. 7; CPSD Rebuttal Testimony (Fugere) at 72:5-11 (redacted).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] CPSD was not misled, because both sets of numbers led it to the same allegation, *i.e.*, that replacement pole 608 allegedly violated Rule 44.1. There is no evidence that the later production of documents prejudiced CPSD. CPSD's Rule 1.1 allegation should not survive this motion for summary adjudication, because CPSD was not misled.

IV. CONCLUSION

SCE did not mislead the Commission or CPSD with respect to the production of Mr. Peralta's documents. Based on the undisputed facts set forth above, SCE respectfully requests that its motion for summary adjudication be granted.

SCE also respectfully requests oral argument on this motion.

Dated: December 5, 2011

Respectfully submitted,

/s/ Charles C. Read

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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
RULE 1.1 CLAIM RELATED TO PERALTA DOCUMENTS
(PUBLIC VERSION)**

EXHIBIT 1

**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 ARTHUR PERALTA

I, Arthur Peralta, hereby declare and state as follows:

1. I make this declaration in support of the Response of Southern California Edison Company ("SCE") to the Supplemental Brief of the Consumer Protection and Safety Division ("CPSD") In Support of Motion to Compel Production of Wind Load Data. If called upon to testify, I could and would do so consistently with the facts stated in this declaration.
2. I am a Wood Products Specialist for SCE and have been employed at SCE for 30 years. Prior to working in my current position, I was an Assistant Timber Products Engineer and a Timber Products Engineer. I am responsible for all wood products at SCE, including new pole purchase, quality control, and standards. One of my functions is to conduct pole loading analyses during investigations. I have conducted training sessions for SCE personnel who regularly perform pole loading functions.
3. Soon after the Malibu Canyon fire, I was instructed by Frederick McCollum, an investigator for the Claims Department (part of SCE's Law Department), to observe the poles that were involved in the fire, *i.e.*, Pole Numbers 1169252E, 1169253E and 2279212E ("subject poles"). I was asked to take notes of my thoughts, observations, impressions and analysis.
4. As instructed, I visited the site of the Malibu Canyon fire and took notes of my observations and impressions. These notes are contained in the Field Worksheets that have been produced in this proceeding.
5. When I returned to my office, I input the information I had obtained at the site of the Malibu Canyon fire into SCE's pole loading software program to make preliminary pole loading calculations. These preliminary calculations are contained in the Detailed Assessment Results documents that have been produced in this proceeding. I advised Mr. McCollum of my preliminary pole loading conclusions for the subject poles.

6. Sometime after I conducted the pole loading analyses for the subject poles, I created Storm Registers for each subject pole, which included my personal and preliminary opinions regarding possible causes of the pole failures. The Storm Registers are not pole loading analyses.
7. I sent to Mr. McCollum all of my work and communications related to the subject poles: Field Worksheets, Detailed Assessment Results, and Storm Registers.
8. Several years after the Malibu Canyon fire, I had a brief discussion with Jack Van Beyeren in SCE's Transmission Design Department and provided limited information regarding my preliminary pole load analyses for one of the subject poles. I did not discuss with Mr. Van Beyeren the Storm Registers, nor did we share any documents related to the Malibu Canyon fire.
9. I understand that CPSD believes its ability to do a pole loading analysis was compromised because three items related to the subject poles were discarded and that I had a unique opportunity to do an accurate pole loading analysis because I saw the poles and their attachments in the field. That is not correct.
10. I do not recall seeing a KPF switch during my observations of the subject poles. But, even if the KPF switch had been present at the site when I was making observations, I would not have used any of its dimensions or weight in my pole loading calculations, because its dimensions and positioning do not create a sail area large enough to add additional load to the structure. If one wanted to account for minimal loading impact of the KPF switch, one could use the weight and dimensions of any other comparable KPF switch because they are nearly identical, commodity devices.
11. The fact that a small length of conductor was discarded after my visit to Malibu Canyon would have no impact on a subsequent pole loading analysis. My Field Worksheets indicate that those conductors were 336 ACSR. Inputting that information into the pole loading software provides the characteristics of such conductors relevant to pole loading. Should CPSD wish to verify the accuracy of the inputs I used, it can visit the location today and observe the old and new conductor on either side of the splice point. The dimension, weight and other characteristics of the spliced-in conductor must be identical to the original conductor. Height of attachment and span length (in addition to other attachments on the pole) are the only other factors relevant to pole loading, are included on the Field Worksheets, and they are unaffected by the splice.

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12. The fact that fiber optic cable was discarded after my visit to the site also has no impact on accurate pole loading. While I did measure that cable during my site visit, I recorded that information on my Field Worksheets which are now available to CPSD. Those are the values I input in the software program. Should CPSD wish to verify the accuracy of those inputs, it can visit the location where the new cable was spliced with the old after the fire. Any observer will see that the old and new cables are identical in terms of their diameter which is the critical input for pole loading analysis.

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

Dated: 2/18/2011



Arthur Peralta

EXHIBIT 2
(Filed under seal
pursuant to Rule 11.4)

EXHIBIT 3

I, FREDERICK C. MCCOLLUM, declare:

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

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

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

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

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

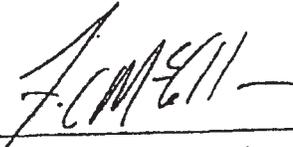
6. On or about April 1, 2008, I gave the investigation file to Friedrich Seitz, Esq., of Murchison & Cumming, LLP. It was my understanding that Mr. Seitz was Edison's outside

counsel.

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

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

Dated: April 5, 2010



A handwritten signature in black ink, appearing to read 'F. C. McCollum', is written over a horizontal line.

Frederick C. McCollum

EXHIBIT 4

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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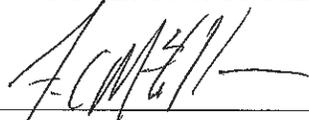
DECLARATION OF FREDERICK C. MCCOLLUM

I, Frederick C. McCollum, hereby declare and state as follows:

1. I make this declaration in support of the Response of Southern California Edison Company ("SCE") to Supplemental Brief of the Consumer Protection and Safety Division In Support of Motion to Compel Production of Wind Load Data. If called upon to testify, I could and would do so consistently with the facts stated in this declaration.
2. I am an Investigations Manager in the SCE Claims Department, which is part of the Law Department for SCE. At the time of the Malibu fire, I was a Senior Investigator in the SCE Claims Department and had held this or similar positions since 2000.
3. On Monday, October 22, 2007, I contacted Art Peralta by phone to tell him that, at the request of SCE's attorneys, he was to observe the poles involved in the Malibu fire (*i.e.*, Pole Numbers 1169252E, 1169253E and 2279212E ("subject poles")) before they were removed from their location. I told Mr. Peralta to take notes of his thoughts, observations, impressions and analysis so I could include them in the investigation file.
4. On Tuesday, October 23, 2007, I reviewed Mr. Peralta's thoughts and observations with him. On this day, I became aware of Mr. Peralta's preliminary wind loading conclusions for the subject poles.
5. Sometime after my submission of SCE's section 315 letter on October 25, 2007, I received a sealed envelope from Mr. Peralta by SCE's internal mail system. The envelope contained all documents related to Mr. Peralta's work on the subject poles.

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

Dated: 2/18/2011



Frederick C. McCollum

EXHIBIT 5

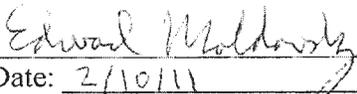
STIPULATION OF CPSD AND SCE RESOLVING CERTAIN DISCOVERY DISPUTES REGARDING PERALTA WIND LOAD INFORMATION

- 1. Production of Field Observations, Data Inputs and Pole Loading Calculations:** SCE shall produce to CPSD all of the material comprising the “Peralta wind-load data”, excluding the “Storm Register” portion, for each pole at issue in this proceeding (Pole Numbers 1169252E, 1169253E and 2279212E, which shall be referred to as the “subject poles”). SCE’s production to CPSD includes all of the field observations and notes of Arthur Peralta, all of the data inputs that Arthur Peralta input into SCE’s wind load program, and all of the resulting pole loading calculations. The specific documents that SCE shall produce includes the un-redacted wind load work sheets (“Field Worksheets”) and notes for each of the subject poles that Arthur Peralta utilized, and the un-redacted “Detailed Assessment Results” and notes for the subject poles. SCE represents that these documents were generated on or around October 22-23, 2007 by Arthur Peralta. SCE continues to assert the work product and attorney-client privileges for the Storm Register sheets which Mr. Peralta prepared for each subject pole. CPSD continues to dispute SCE’s assertions. SCE represents that the Field Worksheets, Detailed Assessment Results and Storm Registers prepared regarding the subject poles are the responsive documents to CPSD’s pending Motion to Compel Production of Wind Load Data Regarding the Three Poles that Failed in Malibu Canyon In Connection with the Malibu Fire, filed on March 26, 2010 (“Motion to Compel”) and occasionally described in this proceeding as the “Peralta wind-load data.” The Field Worksheets and Detailed Assessment Results for the subject poles are hereafter referred to as “the Disclosed Peralta Documents.” SCE represents to CPSD that the Disclosed Peralta Documents reflect all of the unredacted field observations of Arthur Peralta, all of the unredacted data inputs that Arthur Peralta input into SCE’s wind load program, and all of the unredacted resulting pole loading calculations for the subject poles prepared by Mr. Peralta on or around October 22-23, 2007.
- 2. Specific Rule 1.1 Allegation Withdrawal:** CPSD continues to believe that SCE is in violation of Rule 1.1, on several grounds, including what was described in CPSD’s testimony. SCE continues to believe that it is not in violation of Rule 1.1, on any grounds, including what was described in CPSD’s testimony. In order to expeditiously receive the critical Peralta calculations, CPSD shall withdraw its specific allegation (and supporting testimony) that SCE violated Rule 1.1 premised on SCE’s discovery responses to Data Requests #3 and #35 (dated June 4, 2009) that did not disclose the existence of the Peralta wind-load data. CPSD preserves its right to use the facts underlying that specific allegation as part of a waiver argument as applied to the “Storm Registers”, or in any other way that it sees fit. The documents and information that SCE is providing pursuant to this stipulation will not be used as a part of any such waiver argument.

3. **Preservation of Rule 1.1 and Spoliation Issues in this Proceeding:** CPSD reserves its right to make Rule 1.1 allegations in this proceeding other than the Rule 1.1 allegation referred to in Paragraph 2 above. For example, this stipulation will not affect CPSD's right to pursue its allegation that SCE violated Rule 1.1 based on the information contained in and/or excluded from its October 25, 2007 report to the Commission regarding the cause of the Malibu Canyon fire. Further, this stipulation will not affect CPSD's right to pursue claims of spoliation of evidence, as related to Rule 1.1 or any other statute, order, rule or requirement. CPSD is not waiving its rights to allege Rule 1.1 violations premised on any acts other than SCE's responses to Data Requests 3 and 35.
4. **Preservation of CPSD's Right to Move to Compel Production of the "Storm Register" Documents in this Proceeding:** CPSD explicitly reserves its right to update its March 26, 2010 Motion to Compel on February 11, 2011 (or a later date), to seek the "Storm Register" documents as to which SCE continues to assert work product and attorney-client privilege and that SCE is not producing as part of this stipulation. SCE may file a response to any such update of CPSD's Motion to Compel.
5. **Withdrawal of SCE-5 and Portions of Chapter 6 of CPSD Opening Testimony:** SCE shall withdraw the testimony of Brian Cardoza, designated as SCE-5. The deposition of Brian Cardoza, premised on SCE-5, is cancelled. CPSD shall withdraw the following portions of Chapter 6 of its Opening Testimony: p. 6-1, line 26 through p. 6-2, line 17.
6. **Partial Waiver not Established by this Stipulation:** CPSD agrees that it will not use this stipulation and disclosure as an argument that SCE has waived its rights of attorney-client or work product privilege with regard to the Storm Register documents or any other claim of privilege that SCE has made or may make in the future. All parties agree that this stipulation does not limit any party's right to raise waiver arguments that are not derived from this stipulation.
7. **Section 583 and GO 66-C Confidentiality:** SCE is producing all of the Disclosed Peralta Documents to CPSD under Section 583/GO 66-C. Consistent with statutory requirements, CPSD shall maintain that confidentiality, unless the Commission orders otherwise. If a law enforcement agency requests the Disclosed Peralta Documents, CPSD shall provide the Disclosed Peralta Documents to that agency under a confidentiality agreement, consistent with Resolution No. L-258A.
8. **Depositions to be held in San Francisco:** SCE agrees that CPSD has the right to depose SCE witnesses (including Mr. McCollum, Mr. Van Beyeren and Mr. Peralta) regarding the Disclosed Peralta Documents. Those depositions shall be

held at the CPUC Offices in San Francisco, at CPSD's option. If CPSD believes that an ALJ should preside at any of these depositions, SCE will not object.

9. **Subsequent Discovery and Testimony:** If CPSD elects to utilize the Disclosed Peralta Documents in its upcoming testimony, CPSD and Respondents, consistent with the ALJ Ruling, dated February 2, 2011, shall meet and discuss a schedule for discovery and subsequent testimony by all parties on this subject.
10. **Effective Date:** Upon receipt of the Disclosed Peralta Documents, CPSD shall provide notice to all parties that the deposition of Brian Cardoza is canceled.


Date: 2/10/11
For: Consumer Protection and
Safety Division

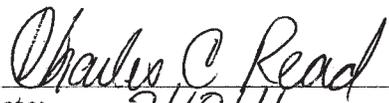

Date: 2/10/11
For: Southern California Edison
Company

EXHIBIT 6

**Subject: Original Disclosed Peralta Documents Inspection**

From: Moldavsky, Ed
To: Haley McIntosh, Charles Read, John J Gehart III, brian.cardoza
Cc: "Morris, Harvey Y."

03/17/2011 02:07 PM

History: This message has been forwarded.

2 attachments



SCE 7340-7346.pdf



SCE 7347 - 7348.pdf

SCE Counsel:

CPSD requests an inspection of the original documents produced by Arthur Peralta on or about October 22-23, 2007 regarding the Subject Poles of the Malibu Canyon Fire Oil [I.09-01-018] ("Original Arthur Peralta Documents"). For reference, please find attached the PDF-formatted photocopies of those documents that SCE had previously sent to CPSD (including corresponding emails). CPSD understands that the Original Arthur Peralta Documents are being stored at Jones Day in Los Angeles. Thus, CPSD shall inspect the original documents at that location on Friday, March 18, 2011. (See Cal. Pub. Util. Code section 314(a).)

If the Original Arthur Peralta Documents are currently being stored at a different location than Jones Day, please advise CPSD of that location by close of business today. Please advise CPSD, by close of business today, what times SCE is available to facilitate CPSD's March 18, 2011 inspection of the Original Arthur Peralta Documents.

Thank you for your assistance,

Ed Moldavsky
Counsel for CPSD

From: Haley McIntosh [mailto:hmmcintosh@jonesday.com]

Sent: Thursday, February 10, 2011 5:09 PM

To: Moldavsky, Ed; Morris, Harvey Y.

Cc: cindy.manheim@att.com; Kristin.L.Jacobson@sprint.com; anna.kapetanacos@att.com; phanschen@mofo.com; tmacbride@goodinmacbride.com; Marmalefsky, Dan; selbytelecom@gmail.com; Joffe, Steve; Hunter, Craig; Rmillar@nextgnetworks.net; Charles Read; brian.cardoza@sce.com; John J Gehart III

Subject: I.09-01-018 Malibu Canyon Fire - CONFIDENTIAL - Section 583/GO 66-C

Harvey and Ed,

Pursuant to the Stipulation of CPSD and SCE Resolving Certain Discovery Disputes Regarding Peralta Wind Load Information, attached are copies of the Wind Loading Worksheets (*i.e.*, Field Worksheets and Detailed Assessment Results) produced by Mr. Peralta for the subject poles on or around October 22-23, 2007. Based on information from Mr. Peralta, he prepared one additional Detailed Assessment Results sheet for one of the subject poles in this time period. We expect to have this for you tomorrow but did not want to delay in sending you the attached.

Please note that pursuant to the stipulation, SCE is producing these documents under the confidentiality

provisions of Section 583/GO 66-C.

Haley McIntosh
JONES DAY
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071
Phone: 213.243.2375
Fax: 213.243.2539
Email: hmmcintosh@jonesday.com

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Message from "Haley McIntosh" <hmmcintosh@jonesday.com> on Thu, 10 Feb 2011 18:09:02 -0700 -----

<Moldavsky, Ed" <ed.moldavsky@cpuc.ca.gov>, "Morris, Harvey Y." <harvey.morris@cpuc.ca.gov" :To
petanakos@att.com>, <phanschen@mofoc.com>, <tmacbride@goodinmacbride.com>, "Marmalefsky"
>, "Joffe, Steve" <steven.joffe@wilsonelser.com>, "Hunter, Craig" <Craig.Hunter@wilsonelser.com :cc
> " <ccread@jonesday.com>, <brian.cardoza@sce.com>, "John J Gehart III" <jjgehart@JonesDay.com>

I.09-01-018 Malibu Canyon Fire - CONFIDENTIAL - Section 583/GO 66-C **Subject**
:

Harvey and Ed,

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----- Message from "Charles Read" <ccread@jonesday.com> on Fri, 11 Feb 2011 15:13:59 -0700 -----

<Moldavsky, Ed" <ed.moldavsky@cpuc.ca.gov" :To
<Morris, Harvey Y." <harvey.morris@cpuc.ca.gov" :cc
Additional Detailed Assessment Results sheet on subject **Subject**
poles :

Ed: here is the additional Detailed Assessment Results sheet prepared by Art Peralta on one of the subject poles.

I trust that you are keeping mind the section 583 and GO 66-C confidentiality provisions applicable to these data as you prepare the brief due today. To avoid any need for filing under seal and other complications, I have written SCE's brief so as not to discuss any actual data or results reflected in the documents provided.

Charlie Read
Jones Day

Attached.

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EXHIBIT 7
(Filed under seal
pursuant to Rule 11.4)

EXHIBIT 8
(Filed under seal
pursuant to Rule 11.4)

EXHIBIT 9
(Filed under seal
pursuant to Rule 11.4)