

Application No 12-01-015

ALJ Bemederfer

Exhibit No.: _____

Witness: Peter K. Ashton

Date:

PREPARED SUPPLEMENTAL REPLY TESTIMONY OF

PETER K. ASHTON

ON BEHALF OF TESORO REFINING & MARKETING COMPANY

February 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of SFPP, L.P. for authority,
pursuant to Public Utilities Code Section 455.3,
to change its rates for pipeline transportation
services within California.

And Related Matters.

Application.12-01-015 et. al.
(Filed January 30, 2012)

Case 12-03-005

Case 12-03-006

Case 12-03-007

Case 12-04-004

Case 12-04-006

Case 12-04-007

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	3
I. INTRODUCTION AND SUMMARY OF CONCLUSIONS.....	5
II. MISSION VALLEY SITE.....	10
A. General Background Information Regarding the Mission Valley Site and SFPP's Remediation Efforts.....	12
1. <i>Description of the Mission Valley Remediation Site</i>	12
2. <i>The Plume of Hydrocarbons that SFPP Has Been Ordered to Remediate</i>	19
3. <i>SFPP's Remediation Efforts</i>	23
4. <i>Causes of the Contamination at the Mission Valley Site</i>	30
5. <i>Assessment of Fines and Penalties Against SFPP</i>	33
B. SFPP's Failure to Prove That the Leaks of Hydrocarbons at the Mission Valley Terminal Occurred on the Jurisdictional Pipeline.....	35
C. SFPP's Contract with Tesoro.....	41
D. Prudence of SFPP's Environmental Activities and Remediation at the Mission Valley Site.....	43

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III. THE 19 REMAINING ENVIRONMENTAL REMEDIATION SITES..... 57

IV. LEGAL COSTS ASSOCIATED WITH SFPP’S ENVIRONMENTAL
REMEDATION PROJECTS SHOULD NOT BE BORNE BY
SHIPPERS..... 70

V. IMPACT OF TREATMENT OF ENVIRONMENTAL REMEDIATION
COSTS ON THE COST OF SERVICE..... 73

DECLARATION..... 75

1 **I. INTRODUCTION AND SUMMARY OF CONCLUSIONS**

2 Q1. Please state your name, address and position.

3 A1. My name is Peter K. Ashton and I am the President of Innovation & Information
4 Consultants, Inc. (IIC, Inc.), an economics and management consulting firm
5 located at 72 Junction Square Drive in Concord, Massachusetts.

6 Q2. Did you previously provide Direct Testimony and Reply Testimony in this case?

7 A2. Yes. I submitted Direct Testimony on November 5, 2012, on behalf of Tesoro
8 Refining and Marketing Company (Tesoro). I subsequently revised that Direct
9 Testimony on November 19, 2012. I submitted Reply Testimony on February 5,
10 2013.

11 Q3. What is the purpose of this Supplemental Reply Testimony?

12 A3. In this Supplemental Reply Testimony, I will respond to the testimony of SFPP
13 witnesses Peter M. Dito, Michael A. Hanak, and Erik G. Wetmore. These SFPP
14 witnesses claim that \$9,627,620 in environmental remediation costs should be
15 included in the cost of service in this proceeding.

16 Q4. How much of that \$9,627,620 do you think should be included in the cost of
17 service that shippers are required to pay?

18 A4. My analysis shows that shippers should reimburse SFPP for only about \$1.1
19 million of the \$9.6 million of its environmental remediation expenses. I also
20 think that none of SFPP's directly assigned environmental legal costs associated
21 with the Mission Valley Terminal should be charged to shippers. In this respect, I

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1 agree with the position taken by Shipper Witness Dr. Daniel S. Arthur in his
2 Reply Testimony.¹

3 Q5. I know that you will explain the basis or your position in detail. But at this point
4 would you please briefly summarize why you do not believe that shippers should
5 pay any part of SFPP's remediation costs.

6 A5. I would like to divide my answer into two parts. I would first like to discuss the
7 SFPP remediation site at Mission Valley, near San Diego. This site accounts for
8 \$6,459,356 or 67% of the total remediation costs that SFPP is asking its shippers
9 to pay. Then I will comment on the remaining 19 SFPP remediation sites.

10 Q6. O.K. Let's begin with Mission Valley.

11 A6. The SFPP facility at Mission Valley is a very large pipeline receipt point and tank
12 farm that is used to supply a significant portion of the motor gasoline, diesel fuel
13 and jet fuel that is consumed in the San Diego area. It presently consists of 66
14 acres with 24 refined petroleum products tanks, and total storage capacity of
15 680,382 barrels.² The only part of the facility that SFPP treats as falling within
16 the Commission's jurisdiction is the pipeline that passes through the site. None of
17 the terminals or storage tanks and none of the pipelines connecting the main SFPP
18 line to those terminals are regarded by SFPP as part of the jurisdictional pipeline.
19 These terminals and pipeline spurs are considered private pieces of property that
20 SFPP and other companies that own them make available to shippers through
21 private contractual arrangements. It is my understanding that in order to pass any
22 of its environmental remediation costs on to shippers of the SFPP mainline

¹ See Prepared Reply Testimony of Daniel S. Arthur, A15-A20.

² See http://www.kindermorgan.com/business/products_pipelines/mission_valley.cfm.

1 pipeline, SFPP must prove that the leaks of hydrocarbons that resulted in the
2 pollution that SFPP is being required to clean up occurred on the jurisdictional
3 pipeline and not on the terminals or network of spur lines between the terminals
4 and the SFPP main line.

5 Q7. Has SFPP done so?

6 A7. No. None of the testimony or evidence that SFPP submitted in this proceeding
7 establishes that the leaks occurred on the jurisdictional pipeline.

8 Q8. Is that your only reason for believing that shippers on the jurisdictional pipeline
9 do not have any responsibility to reimburse SFPP for cleaning up the pollution at
10 the Mission Valley site?

11 A8. No. There are other reasons as well. It is my understanding that SFPP has the
12 responsibility of establishing that it has been operating its facilities in a
13 responsible and prudent manner and that the leaks occurred in spite of its
14 diligence. Nowhere in the testimony and evidence that SFPP submitted does it
15 satisfy this requirement. SFPP says very little about the diligence of its operations
16 at the Mission Valley site from 1989, which is the approximate date of the first
17 evidence of pollution.

18 Q9. Are there other reasons why you do not believe that shippers should reimburse
19 SFPP to remediate the Mission Valley site?

20 A9. Yes. Although SFPP has not provided any evidence that it acted responsibly and
21 prudently at the Mission Valley site, there is abundant evidence that indicates that
22 SFPP acted irresponsibly and imprudently. [REDACTED]

23 [REDACTED]

1 [REDACTED]

2 [REDACTED]³ [CONFIDENTIAL

3 MATERIAL REDACTED] [REDACTED]

4 [REDACTED]⁴

5 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]. [CONFIDENTIAL

8 MATERIAL REDACTED]

9 Q10. I know that you will expand on each of these points in greater detail later in your

10 testimony. But just briefly, is there other evidence of SFPP's irresponsibility and

11 lack of prudence at the Mission Valley site?

12 A10. Yes. The City of San Diego has charged that SFPP violated the requirements of

13 the California Regional Water Quality Control Board San Diego Region

14 (Regional Board) by submitting a Corrective Action Plan (CAP) that required

15 three pumping wells to remove contamination and prevent it from spreading.⁵

³ See SFPP12 006186-006226, Confidential, Tesoro 91, [REDACTED]
[REDACTED] [CONFIDENTIAL MATERIAL REDACTED] at page 7.
A copy of this material is attached to my testimony as Exhibit A (TES12-000036, Confidential).

⁴ See Exhibit A (TES12-000036, Confidential) at pages 7-8.

⁵ See First Amended Complaint filed April 1, 2008 in Case No. 07-CV-1883 before the United States District Court, Southern District of California at page 11. I am attaching a copy of this Complaint to my testimony as Exhibit B (TES12-000037). The City of San Diego's report of SFPP's activities were made in a Complaint that it filed against SFPP and Kinder Morgan. Summary judgment was recently granted in favor of SFPP in that lawsuit. However, as the judge stated it was not because the City's claims were erroneous and "not because doubt exists that Kinder Morgan has contaminated the Property in the past two or three decades, but because the City has not complied with applicable statutes of limitation nor gathered the evidence necessary to meet its burden of proof at trial." See Omnibus Order on Motions for Summary Judgment and to Exclude

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1 SFPP apparently waited two years before it installed any of the wells.⁶ Then, it
2 failed to operate the wells in accordance with the Board's directives and failed to
3 prevent the off-site migration of petroleum plumes.⁷ The Regional Board has also
4 issued Complaints against SFPP for its conduct at the Mission Valley site and
5 proposed fines and penalties.⁸

6 Q11. Let's turn to the remaining 19 remediation sites. Why do you believe that
7 shippers should not reimburse SFPP for the environmental remediation expenses
8 it is incurring at most of those sites?

9 A11. SFPP has introduced very little evidence that shows where leaks occurred at any
10 of these facilities that caused the pollution SFPP is remediating. It is, of course,
11 those releases that led to environmental remediation costs. I understand that
12 SFPP has the burden of proof for each of these issues. Simple common sense tells
13 us that leaks and spills of petroleum do not happen spontaneously and without
14 reason. SFPP has failed to introduce any evidence showing that it operated its 19
15 sites prudently and that leaks and spills occurred despite its diligence. With
16 respect to its terminals, SFPP has therefore failed to sustain its burden of proof by
17 showing either that the releases occurred on the jurisdictional pipeline or that
18 SFPP's operations at these terminals were reasonable and prudent. With respect
19 to its non-terminal operations, SFPP has failed to provide any information

Expert Evidence in Case No. 07-CV-1883 before the United States District Court
Southern District of California, dated January 25, 2013, at page 52.

⁶ See Exhibit B (TES12-000037) at page 11.

⁷ See Exhibit B (TES12-000037) at pages 11-12.

⁸ See California Regional Water Quality Control Board (RWQCB) San Diego Region
Order No. R9-2002-0385, dated December 11, 2002; Order No. R9-2004-0101, dated
May 12, 2004; and Order No. R9-2008-0134, dated December 10, 2008.

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1 regarding remediation issues. However, in order to simplify the issues that need to
2 be litigated in this case, I am including all of the non-terminal remediation costs,
3 other than for remediation costs at the Oakland Airport, in the cost of service that
4 I recommend be adopted.

5 Q12. Before going into a more detailed explanation of your position, I would like to ask
6 you a preliminary question. Why do you believe that you are qualified to offer an
7 opinion on these environmental remediation issues – after all, you are not an
8 engineer or geologist?

9 A12. The issue before the Commission is whether the environmental remediation
10 expenses that SFPP is claiming should be included in its cost of service. The
11 matter is therefore one of cost causation – i.e., whether the record shows that the
12 costs that SFPP is asking shippers to pay were reasonably incurred in the
13 operation of jurisdictional pipeline assets that benefit ratepayers. As an economist
14 and financial analyst, I believe that I am qualified to testify about that type of cost
15 causation issue.

16 **II. MISSION VALLEY SITE**

17 Q13. You previously stated that Mission Valley was the most significant remediation
18 site.

19 A13. Yes. SFPP is requesting \$6,459,356 from shippers for remediation efforts at that
20 site.⁹ The Mission Valley remediation cost is 67% of total remediation costs. In
21 addition, SFPP is requesting that shippers reimburse it for the legal costs it is
22 incurring in defending its remediation actions at the Mission Valley site. As I

⁹ See Schedule 10 of Attachment C to the Direct Testimony of Erik G. Wetmore.

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1 discuss later in my testimony, I do not believe shippers should pay for the legal
2 costs associated with defending these actions. Schedule 12 of SFPP witness
3 Wetmore's Attachment C shows that legal expenses in defending the lawsuit that
4 the City of San Diego brought over the reasonableness of the remediation
5 response at Mission Valley, amount to about \$6 million or about 65% of the total
6 legal and litigation-related costs that SFPP is requesting from its shippers.¹⁰

7 Q14. In view of the magnitude of the Mission Valley remediation and legal expenses, it
8 would appear to be worthwhile to devote careful attention to the nature of the
9 costs that SFPP is claiming. How is your testimony with respect to Mission
10 Valley site organized?

11 A14. The first part of my testimony regarding Mission Valley is historical and
12 descriptive. I would first like to describe the site and the history of releases of
13 hydrocarbons at the site. I would then like to summarize the remediation orders
14 that have been issued by the Regional Board to SFPP and the available
15 information regarding the cause of the leaks at the Mission Valley Terminal.

16 Q15. What is the next part of your testimony regarding Mission Valley?

17 A15. Following this historical and descriptive information, I will then discuss the basis
18 of SFPP's claim that shippers should be responsible for paying for SFPP's
19 remediation efforts. This testimony will first discuss the source of the leaks that
20 have necessitated environmental remediation, and then address SFPP's prudence
21 in conducting remediation operations. I will also discuss the private contractual

¹⁰ See Schedule 12 of Attachment C to the Direct Testimony of Erik G. Wetmore. I would note that in his reply testimony, Dr. Arthur also indicates that the 100% assignment of these legal costs to SFPP's jurisdictional service is "inaccurate and unreasonable." See Prepared Reply Testimony of Daniel S. Arthur, A19.

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1 agreements that SFPP has concluded with Tesoro that relieve Tesoro from paying
2 for any remediation at the Mission Valley site. Finally, I will discuss the \$6
3 million in legal costs that SFPP directly assigned as part of its overhead cost
4 allocation in its cost of service.

5 **A. General Background Information Regarding the Mission Valley Site and**
6 **SFPP's Remediation Efforts**

7 **1. Description of the Mission Valley Remediation Site**

8 Q16. Where is the Mission Valley Terminal situated?

9 A16. The Mission Valley Terminal is located at 9950 Mission San Diego Road, San
10 Diego, California. It is adjacent to and located to the northeast of Qualcomm
11 Stadium. The stadium is owned by the City of San Diego and is the home of the
12 San Diego Chargers football team.

13 Q17. Please describe the Mission Valley Terminal site.

14 A17. The Mission Valley Terminal site consists of petroleum product tank farms and
15 the pipeline spurs that are used to deliver petroleum products from the manifold
16 of the SFPP mainline pipeline to the storage tanks. The Mission Valley site also
17 includes loading racks and blending facilities that are used to distribute petroleum
18 products, primarily gasoline, diesel fuel, and jet fuel to consumers in the San
19 Diego area.

20 Kinder Morgan's website describes the Mission Valley Terminal as presently
21 comprising 66 acres situated near four major highways: I-5, I-805, I-15 and
22 Friars Road.¹¹ The entire Terminal facility contains 24 refined petroleum

¹¹ See http://www.kindermorgan.com/business/products_pipelines/mission_valley.cfm.

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1 products tanks, with the total storage capacity of the terminal reported to be
2 680,382 barrels. The inbound receipt mode is reported as the Kinder Morgan
3 Energy Partners, L.P. (KMEP) Watson to Miramar Jct. 16" pipeline.¹² This is the
4 main SFPP pipeline that is subject to the jurisdiction of the CPUC.

5 According to the Kinder Morgan website, an outbound delivery mode from the
6 Mission Valley Terminal is a KMEP 10 inch pipeline to San Diego Harbor.¹³
7 Five loading racks (2 lanes each) and various loading rack services and systems
8 are offered at the Mission Valley Terminal, including: midgrade blending; ethanol
9 (sequential) blending; CARB detergent additive systems; diesel red dye injection
10 services; diesel lubricity additive injection system; and ethanol truck offloading.¹⁴

11 Q18. What part of the facilities that you just described does SFPP regard as subject to
12 the jurisdiction of the CPUC?

13 A18. Only the 16-inch mainline SFPP pipeline that originates at Watson Station in Los
14 Angeles and passes through the Mission Valley Terminal on its way to
15 destinations in Arizona. All the other facilities at the Mission Valley site,
16 including the pipeline connections from the SFPP mainline to the 24 terminals, as
17 well as the terminals themselves are privately operated by SFPP or other
18 companies and are not part of the jurisdictional pipeline system.

19 Q19. Which companies have operated facilities at the Mission Valley site?

20 A19. The Regional Board issued an Order on January 3, 1992, [Cleanup and Abatement
21 Order No. 92-01 (CAO)], which reported that it was Santa Fe Pacific Pipeline

¹² See http://www.kindermorgan.com/business/products_pipelines/mission_valley.cfm.

¹³ See http://www.kindermorgan.com/business/products_pipelines/mission_valley.cfm.

¹⁴ See http://www.kindermorgan.com/business/products_pipelines/mission_valley.cfm.

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1 Partners, L.P. (Santa Fe Pacific) that first began operations at the Mission Valley
2 Terminal in 1963.¹⁵ SFPP is, incidentally, the successor-in-interest to Santa Fe
3 Pacific. I am including the CAO as Exhibit C (TES12-000038) to my testimony.
4 The CAO noted that the oldest tanks on site were approximately 30 years old in
5 1992 when the CAO was issued, and that Santa Fe Pacific owned and operated a
6 number of aboveground petroleum storage tanks, but also leased facilities at the
7 Mission Valley site to the following companies: Shell Oil Company (Shell),
8 Mobil Oil Corporation (Mobil), and Powerine Oil Company (Powerine).¹⁶

9 Q20. What does the CAO say about the activities of these other companies at the
10 Mission Valley site?

11 A20. According to the CAO, these companies owned and operated aboveground
12 petroleum storage tanks at the Mission Valley Terminal. The CAO reported the
13 approximate aboveground petroleum storage capacity for tanks that all the
14 companies owned and operated as approximately: 18,690,000 gallons for Santa Fe
15 Pacific; approximately 4,550,000 gallons for Shell; approximately 1,130,000
16 gallons for Mobil; and approximately 1,680,000 gallons for Powerine.¹⁷
17 However, the three aboveground storage tanks that Powerine owned were at the
18 time leased to Buck Petroleum Company (Buck).¹⁸ In 1992, the Regional Board
19 listed Santa Fe Pacific, Shell, Mobil, and Powerine as the “dischargers,” who

¹⁵ See California Regional Water Control Board San Diego Region Cleanup and Abatement Order No. 92-01 (CAO) at page 2. The CAO is attached to my testimony as Exhibit C (TES12-000038).

¹⁶ Exhibit C (TES12-000038) at pages 1-2.

¹⁷ Exhibit C (TES12-000038) at page 2.

¹⁸ Exhibit C (TES12-000038) at page 2.

1 were responsible for conducting the investigations and cleanup of petroleum
2 releases required by the CAO.

3 Q21. Has tank ownership at the Mission Valley Terminal changed since the CAO was
4 issued in 1992?

5 A21. Yes. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED].¹⁹ [CONFIDENTIAL
9 MATERIAL REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED].²⁰ [CONFIDENTIAL
12 MATERIAL REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED].²¹
15 [CONFIDENTIAL MATERIAL REDACTED]

16 Q22. Are you aware of any other changes in ownership of the facilities at the Mission
17 Valley site subsequent to the issuance of the CAO?

18 A22. On August 27, 1999 the Regional Board issued Addendum No. 2 to its 1992
19 CAO.²² I am attaching a copy of that Addendum to my testimony as Exhibit D
20 (TES12-000039). In that Addendum, the Regional Board stated that Santa Fe

¹⁹ See Exhibit A (TES12-000036, Confidential) at page 2.

²⁰ Exhibit A (TES12-000036, Confidential) at page 2.

²¹ Exhibit A (TES12-000036, Confidential) at page 2.

²² See California Regional Water Quality Control Board San Diego Region Addendum No. 2 to Cleanup and Abatement Order No. 92-01. This Addendum is attached to my testimony as Exhibit D (TES12-000039).

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1 Pacific notified the Regional Board of the relinquishment of nearly all interests of
2 Santa Fe Pacific to KMEP and its affiliates.²³ Addendum No. 2 also stated that
3 the Texaco Oil Company-San Diego Mission Valley Terminal (Texaco) operated
4 an aboveground petroleum storage tank facility located at 9966 San Diego
5 Mission Road.²⁴ In Addendum No. 3 to the 1992 CAO, which was issued
6 February 19, 2002, it was reported that the Texaco and Shell facilities at the
7 Mission Valley Terminal had merged and were renamed Equilon Enterprises LLC
8 (Equilon).²⁵ I am attaching a copy of that Addendum to my testimony as Exhibit
9 E (TES12-000040). Addendum No. 3 to the CAO also reported that Mobil had
10 merged with Exxon to form ExxonMobil Oil Corporation (ExxonMobil) in
11 November 1999.²⁶ ExxonMobil therefore became the owner of the tanks that
12 Mobil had owned at the Mission Valley Terminal, and the CAO stated that KMEP
13 was still operating these tanks.²⁷ Addendum No. 5 to the CAO, dated April 13,
14 2005, removed Texaco, Equilon and Shell from the list of dischargers responsible
15 for cleanup activity, finding that their facilities did not contribute to the
16 contamination plume which the CAO required SFPP to remediate.²⁸ I have
17 attached this Addendum to my testimony as Exhibit F (TES12-000041).

²³ Exhibit D (TES12-000039) at page 1.

²⁴ Exhibit D (TES12-000039) at page 1.

²⁵ See California Regional Water Quality Control Board San Diego Region Addendum No. 3 to Cleanup and Abatement Order No. 92-01 at page 1. This Addendum is attached to my testimony as Exhibit E (TES12-000040).

²⁶ Exhibit E (TES12-000040) at page 1.

²⁷ Exhibit E (TES12-000040) at page 1.

²⁸ See California Regional Water Quality Control Board San Diego Region Addendum No. 5 to Cleanup and Abatement Order No. 92-01 at pages 1-2. A copy of this Addendum is attached to my testimony as Exhibit F (TES12-000041).

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1 Q23. Do you have any further information regarding the ownership of the facilities at
2 the Mission Valley site and the products that were stored in the tank farm?

3 A23. Yes. A Site Characterization Report submitted to the Regional Board by Simon
4 Hydro-Search on August 21, 1992 – Attachment B to the Direct Testimony of
5 SFPP Witness Michael A. Hanak – states that the petroleum products that were
6 historically stored at the Mission Valley Terminal consisted of leaded gasoline,
7 unleaded gasoline, gasoline additives, jet fuel, diesel fuel, ethanol, and transmix.²⁹
8 The report goes on to list the active and inactive storage tanks at the Mission
9 Valley Terminal.³⁰ According to Table 2 of the report, 34 tanks were active in
10 1992 when the report was issued, and of those 34 tanks, 15 were owned by SFPP;
11 8 were owned by Shell; 5 were owned by Mobil; 4 were owned by Powerine; 1
12 was owned by Buck; and 1 was owned by Unocal.³¹ The report also claims that
13 there were no operating underground storage tank systems at the Mission Valley
14 Terminal, even though Shell had utilized three underground tanks in the past.³²
15 Although these underground storage tank systems had apparently been
16 decommissioned and removed, the report did not state the specific removal dates
17 for two of the three tanks.³³ Additionally, the exact location of one of the
18 underground storage tank systems was unknown at the time the report was
19 issued.³⁴ The Site Characterization Report also states that Neptune Oil, a

²⁹ See Attachment B to the Direct Testimony of Michael A. Hanak at page 21.

³⁰ See Attachment B to the Direct Testimony of Michael A. Hanak at pages 55-57.

³¹ See Attachment B to the Direct Testimony of Michael A. Hanak at pages 55-57.

³² See Attachment B to the Direct Testimony of Michael A. Hanak at page 21.

³³ See Table 2 of Attachment B to the Direct Testimony of Michael A. Hanak at pages 55-57.

³⁴ See Attachment B to the Direct Testimony of Michael A. Hanak at page 21.

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1 sublessor to Shell, had been operating a loading rack at the north side of the
2 terminal but decommissioned and removed it at some unknown date.³⁵

3 Q24. Are you aware of any further information regarding the companies that had been
4 operating facilities at the Mission Valley site?

5 A24. Yes. A Site Investigation Report prepared by Aqui-Ver, Inc. and GeoSyntec
6 Consultants dated July 31, 2001, and attached to Mr. Hanak's Direct Testimony
7 as Attachment C, states that terminals at the Mission Valley site are owned by
8 KMEP, through its operating partner SFPP.³⁶ This report also notes that Powerine
9 no longer had active operations at the Mission Valley site.³⁷ The report explains
10 the process through which petroleum products enter and leave the terminal.
11 According to this report, the main KMEP pipeline, which is situated to the west
12 along Friars Road, turns north into the centrally located KMEP manifold.³⁸ The
13 products reaching the KMEP manifold are distributed through the manifold to the
14 above ground storage tanks of the companies that operate tanks at the site. The
15 report states that each terminal operator manages its own delivery from the SFPP
16 mainline to its storage tanks through delivery pipelines that originate at the KMEP
17 manifold.³⁹ The above ground storage tank at each operating facility then
18 dispenses the stored petroleum products to tanker trucks through onsite loading

³⁵ See Attachment B to the Direct Testimony of Michael A. Hanak at page 21.

³⁶ See Attachment C to the Direct Testimony of Michael A. Hanak at page 9.

³⁷ See Attachment C to the Direct Testimony of Michael A. Hanak at page 9.

³⁸ See Attachment C to the Direct Testimony of Michael A. Hanak at page 9.

³⁹ See Attachment C to the Direct Testimony of Michael A. Hanak at page 9.

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1 racks located within each separate facility. Incoming product can also be
2 transported through an outbound product line to the San Diego Harbor.⁴⁰

3 **2. The Plume of Hydrocarbons that SFPP Has Been Ordered to Remediate.**

4 Q25. Please describe the plume of hydrocarbons that the Regional Board has ordered
5 SFPP to remediate.

6 A25. As I understand it, the plume of hydrocarbons that the Regional Board has
7 required SFPP to remediate is a continuous deposit of hydrocarbons that stretches
8 from the Mission Valley Terminal south across Friars Road into the Qualcomm
9 Stadium parking lot. I am attaching as Exhibits G (TES12-000042), H (TES12-
10 000043) and I (TES12-000044) to my testimony three maps of the property site.
11 Exhibit G depicts the facility operators at the time the Site Characterization
12 Report was prepared in 1992 and labels a section of the property as the manifold.
13 Exhibit H depicts the facility with the TVH concentrations detected in the soil and
14 gas survey reported on in the 1992 Site Characterization Report. Exhibit I depicts
15 the Mission Valley terminal in relation to Qualcomm Stadium and shows the
16 incoming line from Miramar entering the manifold area. I have noted on the
17 maps the location of the SFPP mainline pipeline, the approximate area of the
18 manifold, and the direction of Qualcomm Stadium.

19 Q26. Please continue with your description of the hydrocarbon plume at the Mission
20 Valley Site.

21 A26. The Regional Board states in the 1992 CAO that on February 6 and July 10, 1991
22 it received information from Shell that indicated that a number of groundwater
23 monitoring wells at the Mission Valley Terminal which had been installed at least

⁴⁰ See Attachment C to the Direct Testimony of Michael A. Hanak at page 9.

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1 since 1988 indicated that as much as half a foot of free petroleum hydrocarbon
2 product was measured on the groundwater surface in January 1989.⁴¹ According
3 to the Regional Board, groundwater samples collected from wells without free
4 product indicated as much as 400 ug/L benzene, 60 ug/L toluene, 280 ug/L
5 ethylbenzene, and 540 ug/L xylenes.⁴² Reports submitted on behalf of Santa Fe
6 Pacific indicated that more than one foot of free product was observed in a
7 groundwater monitoring well in May, June, and September, 1991, while benzene
8 was reported in 3.8 ug/L, 4.2 ug/L, and 4.9 ug/L for May, June and September,
9 1991, respectively, at another monitoring well.⁴³ According to page 31 of
10 Attachment B of Mr. Hanak's testimony, the soil gas results in January and
11 February 1992 revealed a narrow strip of total volatile hydrocarbon (TVH)
12 concentrations in soil vapor ranging from 80,000 to 110,000 parts per million
13 volume (ppmv) that appeared to emanate from the manifold area and followed the
14 approximate location of a buried stream channel extending south to San Diego
15 Mission Road.⁴⁴ High TVH concentrations were also found in the southern tank
16 farm area, north of the manifold.⁴⁵
17 In terms of physical size, Addendum No. 5 to the CAO dated April 13, 2005
18 states that the Mission Valley Terminal plume extends approximately 4,900 feet

⁴¹ Exhibit C (TES12-000038) at page 2.

⁴² Exhibit C (TES12-000038) at page 2.

⁴³ Exhibit C (TES12-000038) at pages 2-3.

⁴⁴ See Attachment B to the Direct Testimony of Michael A. Hanak at page 31.

⁴⁵ See Figure 11 to Attachment B to the Direct Testimony of Michael A. Hanak at page 83.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 beyond the Mission Valley Terminal to the southwest across the parking lot at
2 Qualcomm Stadium.⁴⁶

3 Q27. Do you have any further sources of information about the nature of the
4 hydrocarbon plume?

5 A27. As I mentioned previously, on August 14, 2007 the City of San Diego (the City)
6 filed a Complaint against SFPP and other Kinder Morgan companies in the
7 Superior Court of the State of California for the County of San Diego, Central
8 District. The case was later removed to the United States District Court, Southern
9 District of California on September 26, 2007 as Case No. 07-CV-1883. I have
10 attached a copy of the original Complaint to my testimony as Exhibit J (TES12-
11 000045). The City filed its First Amended Complaint on April 1, 2008, in which
12 the City alleges that at one time, as much as 300,000 gallons of liquid petroleum
13 products and related constituents were located beneath Qualcomm Stadium and
14 the adjacent property.⁴⁷ The City suggested that more than 100,000 gallons of
15 petroleum hydrocarbons remained beneath the property at the time the First
16 Amended Complaint was filed. However, the City also noted that other estimates
17 suggested that approximately 50,000 gallons of petroleum contamination under
18 the property had yet to be remediated.⁴⁸ Although, as I previously noted, the
19 judge hearing the case recently granted summary judgment in favor of SFPP, it is
20 my understanding that judgment was awarded because the City failed to provide a
21 reliable expert witness or satisfy statute of limitations requirements. However,

⁴⁶ Exhibit F (TES12-000041) at page 1.

⁴⁷ Exhibit B (TES12-000037) at page 11.

⁴⁸ Exhibit B (TES12-000037) at page 11.

1 the underlying factual material reported by the City in its Complaint is still
2 relevant here because it is one of the few sources of information regarding the
3 nature of the contamination at the Mission Valley site and the remediation efforts
4 that SFPP took in the 1990's.

5 Q28. Are you aware of any other information regarding the composition or location of
6 the plume?

7 A28. There were at least two occasions when it was discovered that the plume existed
8 in areas outside of the sites that SFPP had recognized or previously documented.
9 The City stated that on December 7, 2005 a tanker trailer attached to a truck at the
10 entrance of Qualcomm Stadium overturned and 4,000 gallons of gasoline spilled
11 and caught fire.⁴⁹ Some of the gasoline escaped into storm drains and into the San
12 Diego River. The City discovered while studying the effects of the spill a
13 previously unknown section of the plume that was emanating from the Mission
14 Valley terminal. The City concluded that the contamination was not attributable
15 to the tanker truck spill, but to SFPP's Mission Valley Terminal operations.⁵⁰
16 Another previously unknown portion of plume was discovered in 2009. The
17 Regional Board's Executive Officer in a Report dated February 9, 2011—attached
18 to my testimony as Exhibit K (TES12-000046)—stated that the contamination
19 plume was discovered to be outside of the western limits of the previously known
20 light non-aqueous phase petroleum liquid (LNAPL) zone.⁵¹ Local media also

⁴⁹ Exhibit B (TES12-000037) at page 13.

⁵⁰ Exhibit B (TES12-000037) at page 13.

⁵¹ Exhibit K (TES12-000046) at page 6.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 reported on the incident, and one news article stated that the newly discovered
2 contamination extended the plume by an additional acre.⁵²

3 **3. SFPP's Remediation Efforts.**

4 Q29. Please describe SFPP's remediation efforts at the Mission Valley Terminal.

5 A29. On 1992, the Regional Board issued CAO 92-01, which named Santa Fe Pacific,
6 Shell, Mobil, and Powerine as "dischargers." The dischargers were ordered to
7 comply with the following directives: (1) provide no later than July 1, 1992 a
8 technical report with the results of a complete and comprehensive site assessment
9 for the Mission Valley Terminal. The CAO stated that the technical report which
10 had to address any contamination that had migrated off-site as well as include
11 information as to the location of all aboveground and underground storage tanks,
12 the types of products stored in these tanks, and analyses of soil and groundwater
13 samples taken from the site; (2) immediately immobilize and recover all free
14 product from the affected groundwater zone and immobilize the dissolved product
15 in the soil and groundwater to prevent off-site migration of either free or
16 dissolved product; (3) submit to the Regional Board no later than September 1,
17 1992 a corrective action plan for the cleanup of the affected subsurface soils and
18 the groundwater underlying the Mission Valley Terminal; (4) implement the
19 corrective action plan no later than November 1, 1992 or within 30 days of
20 approval by the Executive Officer of the Regional Board, whichever came first;
21 (5) submit quarterly progress reports in addition to the site assessment and

⁵² See "Larger Plume of Contamination Discovered Under Qualcomm Stadium."
<http://www.kpbs.org/news/2009/oct/20/larger-plume-contamination-discovered-under-qualco/>.

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1 corrective action plan until the site has been adequately mitigated and the CAO is
2 rescinded; (6) dispose of any contaminated groundwater and soil in accordance
3 with all applicable local, state and federal regulations; (7) obtain all necessary
4 permits for assessment and remedial activities associated with the cleanup at the
5 site; (8) submit a copy of all reports to the Hazardous Management Division of
6 the San Diego County Department Health as well as to the Regional Board office;
7 (9) have an appropriately registered or certified professional perform and prepare
8 all work or reports requiring geologic or engineering evaluations; and (10)
9 demonstrate no later than January 1, 1996 that the final cleanup levels determined
10 in the approved corrective action plan have been achieved in the soil and
11 groundwater contamination zones. In addition, SFPP was required to continue to
12 monitor and if necessary immediately resume remedial cleanup actions at any
13 time during the post-cleanup monitoring phase.⁵³

14 Q30. Did SFPP comply with the Regional Board's Cleanup and Abatement Order 92-
15 01?

16 A30. According to the City of San Diego, it did not. The First Amended Complaint
17 states that SFPP did not begin remediating the Mission Valley site until 1994, two
18 years after the Regional Board's Order had been issued.⁵⁴

19 Q31. What kind of remediation did SFPP undertake in 1994?

20 A31. According to the City of San Diego, SFPP's remediation process consisted of
21 pumping and treating groundwater and then discharging the treated water into

⁵³ See Exhibit C (TES12-000038) at pages 5-9.

⁵⁴ Exhibit B (TES12-000037) at page 11.

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1 Murphy Canyon Creek, a tributary of the San Diego River.⁵⁵ According to the
2 City of San Diego, these efforts did not properly carry out the corrective action
3 plan approved by the Regional Board. The City of San Diego states that the
4 Regional Board required SFPP to maintain and operate three pumping wells to
5 prevent the Mission Valley Contamination from spreading off-site.⁵⁶ The City
6 states that SFPP failed to operate the three pumping wells in accordance with the
7 Regional Board's directive and failed to prevent off-site migration of
8 contaminants, including MTBE, to the soil and groundwater under the City's
9 property.⁵⁷

10 Q32. Did the City of San Diego comment further on SFPP's remediation efforts?

11 A32. Yes. The City noted that the Regional Board ordered SFPP to stop pumping in
12 December 1994 when it was discovered that SFPP had been releasing petroleum
13 into Murphy Canyon Creek.⁵⁸ According to the City, in December 1996 the
14 Regional Board further restricted SFPP's groundwater pumping when it was
15 discovered that the water being discharged into Murphy Canyon Creek contained
16 excessive levels of arsenic.⁵⁹ The City also alleged that for at least one period of
17 time during the 1990's, SFPP failed completely to operate its remediation system
18 and even turned it off for a "significant period of time."⁶⁰

19 Q33. Did the Regional Board take any action in response to SFPP's apparent failure to
20 implement its remediation orders?

⁵⁵ Exhibit B (TES12-000037) at page 11.

⁵⁶ Exhibit B (TES12-000037) at page 11.

⁵⁷ Exhibit B (TES12-000037) at page 11.

⁵⁸ Exhibit B (TES12-000037) at page 11-12.

⁵⁹ Exhibit B (TES12-000037) at page 12.

⁶⁰ Exhibit B (TES12-000037) at page 12.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 A33. SFPP's failure to remediate the contamination plume according to the
2 requirements of the CAO led the Regional Board to issue Time Schedule Order
3 No. R9-2002-0042 (Time Schedule Order) on March 13, 2002, a copy of which is
4 attached to my testimony as Exhibit L (TES12-000047). The Time Schedule
5 Order states that the dischargers had failed to achieve full immobilization of
6 dissolved phase petroleum as required by the CAO and that this failure constituted
7 a continuing violation of the CAO.⁶¹ Order No. R9-2002-0042 set a time
8 schedule for the submission of various work plans throughout 2002 and 2003,
9 which would culminate in the submission of a Summary Report before February
10 1, 2004.⁶² The Time Schedule Order set civil penalties of \$10,000 per day for the
11 failure by the dischargers to submit these work plans and the Summary Report on
12 time.⁶³

13 Q34. Who were these "dischargers?"

14 A34. SFPP as well as Kinder-Morgan Energy Partners, LP (KMEP), Powerine, Santa
15 Fe Pacific, Shell, Texaco, Equilon, and ExxonMobil were labeled as the
16 dischargers at the time the Time Schedule Order was issued. However,
17 Addendum No. 5 to the CAO removed Texaco, Equilon and Shell from the list of
18 responsible parties.⁶⁴

19 Q35. What further developments ensued?

20 A35. Through Addendum No. 5, dated April 12, 2005, the Regional Board amended the
21 CAO to require SFPP to remove residual light non-aqueous phase petroleum

⁶¹ Exhibit L (TES12-000047) at page 1.

⁶² Exhibit L (TES12-000047) at page 4.

⁶³ Exhibit L at page 1.

⁶⁴ Exhibit F (TES12-000041) at page 2.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 liquid (LNAPL) from subsurface soil and ground water beyond the Mission
2 Valley Terminal to the extent technically practicable no later than December 31,
3 2010.⁶⁵ The Regional Board also ordered SFPP to reduce the concentrations of
4 dissolved phase petroleum hydrocarbon waste constituents in the off-property
5 pollution area to attain “background” water quality conditions (i.e., the same
6 conditions as water or soil that has not been affected by waste constituents or
7 pollutants) no later than December 31, 2013.⁶⁶

8 Q36. How did SFPP react to this latest order?

9 A36. In order to comply with these deadlines, Kinder Morgan issued a corrective action
10 plan. A letter dated July 29, 2009 from Sean McClain and Craig L. Carlisle to
11 Regional Board Executive Officer John H. Robertus discusses Kinder Morgan’s
12 remediation system and progress during the first quarter of 2009 and is attached
13 as Exhibit M (TES12-000048) to my testimony. The letter states that Kinder
14 Morgan’s active remediation and monitoring system as of the first quarter of 2009
15 consisted of: three groundwater extraction wells located on the terminal property
16 and 16 groundwater extraction wells situated off the terminal property; a total of
17 172 soil vapor extraction (SVE) wells for removing hydrocarbons from the
18 subsurface; a total of 79 groundwater-monitoring wells on the terminal property
19 and 141 ground-monitoring wells off the terminal property.⁶⁷ The purpose of
20 these wells was to evaluate the effectiveness of Kinder Morgan’s remediation
21 efforts. Kinder Morgan had also reported that it removed 661,098 pounds of

⁶⁵ Exhibit F (TES12-000041) at page 2.

⁶⁶ Exhibit F (TES12-000041) at page 3.

⁶⁷ Exhibit M (TES12-000048) at page 2.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 hydrocarbon from the subsurface in the off terminal area as of the first quarter of
2 2009.⁶⁸

3 Q37. Has Kinder Morgan augmented its remediation efforts since 2009?

4 A37. According to the Regional Board's Executive Officer's Report dated February 8,
5 2012, Kinder Morgan's remedial strategy at that time included the use of 192
6 SVE wells and 19 groundwater extraction wells operating in the primary off-
7 terminal LNAPL zone to remove gasoline constituents from the soil and
8 groundwater.⁶⁹ Additionally, a hydraulic containment barrier was placed at the
9 property boundary to prevent petroleum hydrocarbons in the groundwater from
10 migrating beyond the terminal property.⁷⁰ Kinder Morgan performed
11 confirmatory soil sampling and a soil vapor rebound study during April through
12 June 2010.⁷¹ This evaluation was intended to discover where light non-aqueous
13 phase petroleum liquid (LNAPL) had been removed from the primary off-
14 Terminal LNAPL zone to the extent technically practicable.

15 Q38. Did these efforts succeed?

16 A38. Large portions of the primary off terminal LNAPL zone had apparently been
17 remediated to the extent technically possible.⁷² However, there were at least four
18 areas that would likely not have complied with the December 31, 2010 cleanup
19 deadline at the time.⁷³ Additionally, a new area of LNAPL-affected soil,

⁶⁸ Exhibit M (TES12-000048) at page 2.

⁶⁹ Exhibit K (TES12-000046) at page 5.

⁷⁰ Exhibit K (TES12-000046) at page 5.

⁷¹ Exhibit K (TES12-000046) at page 6.

⁷² Exhibit K (TES12-000046) at page 6.

⁷³ Exhibit K (TES12-000046) at page 6.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 discovered in 2009 adjacent to the northwestern off-terminal LNAPL area, did not
2 comply with the December 31, 2010 deadline.⁷⁴

3 Q39. Were any further studies conducted subsequent to 2009 when SFPP received the
4 letter from the Regional Board that you discussed above?

5 A39. Another soil vapor rebound study was conducted in February through April 2011
6 to evaluate whether significant hydrocarbons remained in the soil.⁷⁵ The results
7 indicated that by the December 31, 2010 deadline, the LNAPL-affected soil in the
8 primary off-Terminal zone had reached a condition where continued remedial
9 efforts were providing a small incremental benefit.⁷⁶ In order to comply with the
10 December 31, 2013 CAO cleanup deadline, Kinder Morgan planned to continue
11 operating the primary SVE system in a bioventing mode until the December 31,
12 2013 groundwater cleanup directive is met.⁷⁷ The groundwater extraction system
13 also continues to operate to maintain the hydraulic barrier at the Mission Valley
14 Terminal property boundary and to remove concentrations of dissolved-phase
15 petroleum hydrocarbons in off-Terminal groundwater to comply with the
16 December 31, 2013 cleanup deadline.⁷⁸

17 Q40. When is the remediation expected to be complete?

18 A40. The Regional Board has given SFPP until December 31, 2013 to remove residual
19 LNAPL from the subsurface and groundwater of the area remaining and to reduce
20 concentrations of dissolved phase petroleum hydrocarbon waste constituents in

⁷⁴ Exhibit K (TES12-000046) at page 6.

⁷⁵ Exhibit K (TES12-000046) at page 6.

⁷⁶ Exhibit K (TES12-000046) at page 6.

⁷⁷ Exhibit K (TES12-000046) at page 6-7.

⁷⁸ Exhibit K (TES12-000046) at page 7.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 the off-property pollution area to attain background water quality conditions. It is
2 clear, however, that SFPP will still be conducting remediation past this date.

3 **4. Causes of the Contamination at the Mission Valley Site.**

4 Q41. I would now like to ask you to address what the various documents to which you
5 have previously referred say about the causes of the releases that created the
6 hydrocarbon plume that the Regional Board first ordered SFPP to remediate in
7 1992.

8 A41. The documents I previously discussed do not definitively establish the exact
9 source of the release of the contamination plume that stretches from the Mission
10 Valley Terminal to the Qualcomm Stadium. However, they do strongly suggest
11 that the contamination originated at the tank farm that SFPP operated as a non-
12 jurisdictional facility or at the tanks and pipes that were owned, leased or operated
13 by other companies.

14 Q42. Has the Regional Board pinpointed the sources of the leaks?

15 A42. No. The CAO and subsequent amendments to the CAO Report do not pinpoint a
16 specific cause of the releases. However, the City of San Diego has identified at
17 least 24 releases that occurred at the Mission Valley Terminal between 2004 and
18 2009 and has obtained the Hazardous Materials Spill Reports issued by the
19 California Emergency Management Agency (CEMA) from that period.⁷⁹ These
20 reports indicated that a number of releases were caused by spills of various sizes
21 from on-site trucks, broken tubing on pump fixtures on pipelines, sprays from

⁷⁹ Copies of these reports were attached as Attachment J to the “Declaration of Paul Foust in Support of Plaintiffs’ Opposition to Defendants’ Motion for Partial Summary Judgment,” dated January 24, 2011 in Case No. 07-CV-01883-MMA-WVG before the United States District Court, Southern District of California.

1 pipelines, and in one instance, on July 23, 2009, a broken section of tubing on a
2 conveyance line that released an unknown amount of water into a storm drain. In
3 this instance, CEMA followed up with the reporting party because it was later
4 notified by the National Response Center (NRC) that the discharge included
5 hydrocarbons. In a Hazardous Material Spill Update report dated July 23, 2009,
6 CEMA stated that this conveyance line was part of the “groundwater remediation
7 process due to the storage tanks on site leaking petroleum products into the
8 groundwater supply.”⁸⁰

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED].⁸¹ [CONFIDENTIAL MATERIAL REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED].⁸²

18 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED].⁸³ [CONFIDENTIAL MATERIAL

⁸⁰ See: Document 123-11 in case 3:07-cv-01883-MMA-WVG, filed 1/10/2011 at page 14.

⁸¹ Exhibit A (TES12-000036, Confidential) at page 3.

⁸² Exhibit A (TES12-000036, Confidential) at page 4-5.

⁸³ Exhibit A (TES12-000036, Confidential) at page 6.

1 REDACTED] [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [CONFIDENTIAL MATERIAL REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED].⁸⁴ [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]
8 [REDACTED]
9 [REDACTED].⁸⁵ [CONFIDENTIAL MATERIAL
10 REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED].⁸⁶ [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED].⁸⁷ [CONFIDENTIAL MATERIAL REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

⁸⁴ Exhibit A (TES12-000036, Confidential) at page 6.

⁸⁵ Exhibit A (TES12-000036, Confidential) at page 6.

⁸⁶ Exhibit A (TES12-000036, Confidential) at page 6.

⁸⁷ Exhibit A (TES12-000036, Confidential) at page 16.

1 [REDACTED].⁸⁸ [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]
 2 [REDACTED]
 3 [REDACTED].⁸⁹ [CONFIDENTIAL MATERIAL
 4 REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED].⁹⁰
 8 [CONFIDENTIAL MATERIAL REDACTED]

9 **5. Assessment of Fines and Penalties Against SFPP**

10
 11 Q43. Has SFPP been assessed fines and penalties for its violation of California
 12 environmental requirements?

13 A43. Yes. [REDACTED]
 14 [REDACTED]
 15 [REDACTED].⁹¹ [CONFIDENTIAL MATERIAL REDACTED]

16 Q44. What penalties were assessed against SFPP for the [REDACTED]
 17 [REDACTED]? [CONFIDENTIAL MATERIAL REDACTED]

18 A44. [REDACTED].⁹² [CONFIDENTIAL MATERIAL
 19 REDACTED]

20 Q45. Have there been any other penalties assessed against SFPP for its violation of
 21 California environmental regulations?

⁸⁸ Exhibit A (TES12-000036, Confidential) at pages 16-17.

⁸⁹ Exhibit A (TES12-000036, Confidential) at page 3.

⁹⁰ Exhibit A (TES12-000036, Confidential) at page 36.

⁹¹ See SFPP12 103682-103845, Confidential at page 8. A copy of this material is attached to my testimony as Exhibit N (TES12-000049, Confidential).

⁹² See Exhibit N (TES12-000049, Confidential) at page 8.

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- 1 A45. Yes. In April 2007, SFPP and Kinder Morgan entered into a Consent Decree,
 2 with various federal and state agencies to resolve environmental violations
 3 associated with three California pollution incidents: (i) an April 27, 2004 release
 4 from a pipeline into the Suisun Marsh near Suisun City in Solano County (near
 5 the Concord terminal); (ii) a February 7, 2005 release from the Brisbane
 6 Terminal-Oakland pipeline; and (iii) an April 1, 2005 discharge from a pipeline
 7 into Summit Creek and other waters near Truckee, in Placer County (labeled the
 8 Donner Discharge).⁹³ Under the Consent Decree, filed on May 27, 2007, SFPP
 9 and Kinder Morgan was required to pay the following fees and penalties:
- 10 • \$3,795,135 in civil penalties (at least \$500,000 of which was attributable to
 11 the Oakland discharge);⁹⁴
 - 12 • \$118,616 in California Department of Fish and Game (CDFG) response costs,
 13 attributable to the Oakland discharge;⁹⁵
 - 14 • \$51,400 for future remediation monitoring costs of CDFG associated with the
 15 Donner Discharge;⁹⁶
 - 16 • \$1,151,099 related to the Suisun discharge for natural resource damages;⁹⁷
 - 17 • \$20,000 to the National Fish and Wildlife Foundation to fund projects to
 18 restore resources damaged by the Donner Discharge;⁹⁸

⁹³ See Consent Decree in Case 2:07-at-00443 in the United States District Court for Eastern District of California, pages 4-5. A copy of this Consent Decree is attached to my testimony as Exhibit O (TES12-000050).

⁹⁴ Exhibit O (TES12-000050) at page 5.

⁹⁵ Exhibit O (TES12-000050) at pages 5-6.

⁹⁶ Exhibit O (TES12-000050) at page 6.

⁹⁷ Exhibit O (TES12-000050) at page 6.

⁹⁸ Exhibit O (TES12-000050) at page 6.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

- 1 • \$16,099 to the National Oceanic and Atmospheric Administration for
- 2 reimbursement of its Natural Resource Damage Assessment costs associated
- 3 with the Suisun discharge;⁹⁹ and
- 4 • \$140,484 to the CDFG for unreimbursed Natural Resource Damage
- 5 Assessment costs incurred in connection with the Suisun discharge and other
- 6 reasonable unreimbursed Natural Resource Damage Assessment costs
- 7 incurred by the United States Department of the Interior.¹⁰⁰

8 Q46. Have any fines or penalties been assessed against SFPP in connection with

9 Mission Valley in particular?

10 A46. Yes. The Regional Board assessed approximately \$246,000 in penalties against

11 SFPP at various times for violations involving chronic toxicity conditions, acute

12 toxicity conditions and exceeding selenium and other effluent limitations.¹⁰¹

13 **B. SFPP's Failure to Prove That the Leaks of Hydrocarbons at the Mission**

14 **Valley Terminal Occurred on the Jurisdictional Pipeline.**

15 Q47. Is it important that SFPP establish that the leaks of hydrocarbons at the Mission

16 Valley Terminal occurred on the jurisdictional pipeline?

17 A47. Yes. As I have discussed previously in my testimony, the Mission Valley

18 Terminal is a very large site that includes dozens of tanks and pipes in addition to

19 the SFPP mainline that traverses the site. The only part of the site that SFPP

⁹⁹ Exhibit O (TES12-000050) at page 6.

¹⁰⁰ Exhibit O (TES12-000050) at pages 5-6.

¹⁰¹ Order No. R9-2002-0385, dated December 11, 2002, assessed civil liability in the amount of \$21,000; Order No. R9-2004-0101, dated May 12, 2004, assessed civil liability in the amount of \$3,000; and Order No. R9-2008-0134, dated December 10, 2008, imposed on SFPP a total of \$222,000 in penalties for various effluent limitations violations.

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1 regards as subject to the jurisdiction of the CPUC is the mainline itself. The
2 terminals, connecting pipes, loading racks and related equipment are not included
3 in the tariff that SFPP filed with the CPUC. Therefore, at the very outset, in order
4 to include any environmental remediation costs in the cost of service for its main
5 pipeline tariff, SFPP must prove that the leaks for which it is incurring
6 remediation costs at Mission Valley occurred on the main line pipeline.

7 Q48. Has SFPP done so? Has SFPP submitted proof in this proceeding that the leak for
8 which it is incurring remediation costs at Mission Valley occurred on the main
9 line pipeline?

10 A48. I don't find any support in the evidence that SFPP has submitted that the leak
11 occurred on the mainline.

12 Q49. What testimony or evidence has SFPP provided with respect to this issue?

13 A49. In his testimony Mr. Hanak briefly discusses how he decided to allocate 100% of
14 the responsibility for the leak that led to remediation at the Mission Valley site to
15 the jurisdictional pipeline. According to Mr. Hanak, the spill history for this site,
16 "was incomplete as this history, contrary to known facts, contains no documented
17 releases prior to 1993."¹⁰² In order to allocate costs between carrier and non-
18 carrier assets, Mr. Hanak states that he reviewed two reports, which are attached
19 to his testimony as Attachment B and C.¹⁰³ I previously discussed these
20 documents in reviewing the background of the Mission Valley Site. Attachment
21 B is a Site Characterization Report dated August 21, 1992. Attachment C is a Site

¹⁰² See Direct Testimony of Michael A. Hanak at page 19.

¹⁰³ See Direct Testimony of Michael A. Hanak at pages 19-20.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 Investigation Report prepared by Aqui-Ver, Inc. and GeoSyntec Consultants,
2 dated July 31, 2001.

3 Q50. What conclusions does Mr. Hanak draw from these two documents?

4 A50. Mr. Hanak claims that the investigations in Attachment B “conclude that
5 substantial contamination at SFPP was ‘emanating from the manifold area and
6 extending south to San Diego Mission Road.’”¹⁰⁴ He then claims that Attachment
7 B identifies the asset associated with the release, and that this information was
8 instrumental in identifying whether and to what extent the environmental
9 remediation expenses should be allocated to the jurisdictional pipeline as opposed
10 to non-carrier assets.¹⁰⁵ Mr. Hanak also states that both reports include figures
11 depicting the plume as originating from the manifold area.¹⁰⁶ On the basis of this
12 information Mr. Hanak states that he allocated 100% of the costs of
13 environmental remediation at the Mission Valley site to the jurisdictional
14 pipeline, since his understanding from Mr. Dito was that the SFPP manifold is a
15 carrier asset.¹⁰⁷

16 Q51. Do you agree Mr. Hanak’s conclusion?

17 A51. No, not at all. First, the 1992 Site Characterization Report does not state that the
18 cause of release of contaminants at the Mission Valley Terminal was any crack,
19 leak or other malfunction from the manifold itself. The portion of the report that
20 refers to the contamination plume discusses a soil gas survey conducted in

¹⁰⁴ See Direct Testimony of Michael A. Hanak at page 19.

¹⁰⁵ See Direct Testimony of Michael A. Hanak at page 19.

¹⁰⁶ Mr. Hanak references Figures 16 and 17 of Attachment B and Figure 5-1 from Attachment C as illustrating the plume originating from the manifold area. See Direct Testimony of Michael A. Hanak at pages 19-20.

¹⁰⁷ See Direct Testimony of Michael A. Hanak at page 20.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 January and February 1992 in the area between the southern tank farm and San
2 Diego Mission Road. According to the Report, the soil gas survey revealed “a
3 narrow strip of TVH concentrations ranging from 80,000 to 110,000 ppmv
4 appearing to emanate from the pipeline manifold area and follow the approximate
5 location of the buried stream channel to San Diego Mission Road.”¹⁰⁸ Figure 11
6 of this report, however, indicates that high TVH concentrations ranging from
7 55,000 to 60,000 ppmv were located underneath the tank farm. Neither the Site
8 Characterization Report nor the Site Investigation Report states the point in the
9 “manifold area” where any leak occurred or even which assets were considered
10 within the “pipeline manifold area.” In fact, since there were numerous
11 connecting lines from the manifold itself to the various tanks, those connecting
12 lines, which were situated “in the manifold area” but are not part of the CPUC
13 jurisdictional pipeline, could well have been the source of the leak. Furthermore,
14 [REDACTED]
15 [REDACTED]
16 [REDACTED].¹⁰⁹ [CONFIDENTIAL
17 MATERIAL REDACTED]

18 Q52. Are there other reasons why you disagree with Mr. Hanak’s conclusion that the
19 evidence he provided shows that a leak in the mainline pipeline caused the plume
20 of hydrocarbons that SFPP is being required to remediate?

21 A52. Yes. The Site Characterization Report and the Site Investigation Report that Mr.
22 Hanak reviewed are dated August 21, 1992 and July 31, 2001 respectively. Leaks

¹⁰⁸ See Attachment B to the Direct Testimony of Michael A. Hanak at page 31.

¹⁰⁹ Exhibit A (TES12-000036, Confidential) at page 6.

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1 have certainly occurred since that date. Yet Mr. Hanak never even indicates
2 whether he reviewed any materials regarding releases occurring at the Mission
3 Valley Terminal after 1993. In fact, the only evidence that we have received
4 indicates that he has not done so.

5 Q53. What evidence is that?

6 A53. In his testimony, Mr. Hanak states that in order to determine the source of leaks
7 for sites such as Mission Valley which he calls “Mixed Asset Sites,” he “reviewed
8 the documented release history, which typically identifies the site, the release
9 date(s), the product released, the volume released, the volume recovered, and the
10 indicated cause of the release.”¹¹⁰

11 Q54. What does the “documented release” that Mr. Hanak reviewed for the Mission
12 Valley Site indicate?

13 A54. Mr. Hanak never included that documented release history in his testimony. I
14 therefore asked counsel to obtain it from SFPP through data requests.

15 Q55. Did counsel do so?

16 A55. Yes. Tesoro Data Request No. 86 states as follows:

17 Please provide the “documented release history,” as that term is used in Mr.

18 Hanak’s testimony, for the Mission Valley Project.

19 Q56. How did SFPP respond to the Data Request?

20 A56. SFPP posed a whole list of objections. But, I understand that as a result of
21 discussions with counsel SFPP said that it would provide some response.

22 Q57. What was SFPP’s response?

¹¹⁰ See Direct Testimony of Michael A. Hanak at page 18.

1 A57. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]: [CONFIDENTIAL MATERIAL REDACTED]

[REDACTED]

6 [CONFIDENTIAL MATERIAL REDACTED]

7 [REDACTED]

8 [REDACTED]. [CONFIDENTIAL MATERIAL

9 REDACTED]

10 Q58. How does this information support SFPP's conclusion that it was the mainline
11 pipeline at the Mission Valley Site that was the cause of leaks that created the
12 hydrocarbon plume?

13 A58. [REDACTED]

14 [REDACTED]. [CONFIDENTIAL MATERIAL REDACTED]

15 Q59. What in summary is your conclusion as to whether SFPP has proven that the
16 source of the leak that caused the Mission Valley hydrocarbon plume is the
17 mainline jurisdictional pipeline?

18 A59. I do not think that SFPP has provided any credible evidence that the source of the
19 leak that caused the Mission Valley hydrocarbon plume is the mainline

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1 jurisdictional pipeline. [REDACTED]

2 [REDACTED]

3 [REDACTED].¹¹¹ [CONFIDENTIAL MATERIAL REDACTED]

4 Q60. [REDACTED]

5 [REDACTED] [CONFIDENTIAL MATERIAL REDACTED]

6 A60. [REDACTED]

7 [REDACTED].¹¹² [CONFIDENTIAL MATERIAL REDACTED]

8 **C. SFPP's Contract with Tesoro**

9 Q61. Suppose, contrary to your previous conclusion that the plume of hydrocarbons at
10 the Mission Valley Terminal was entirely caused by a release from the mainline
11 SFPP jurisdictional pipeline, would you then agree that SFPP should be able to
12 recover environmental remediation costs from Tesoro?

13 A61. No. Under its private contractual agreements with Tesoro, SFPP would still be
14 responsible for all clean-up costs associated with spills or releases caused by the
15 operation or failure of any of its equipment.

16 Q62. Which contractual obligations are you referring to?

17 A62. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]. [CONFIDENTIAL MATERIAL

21 REDACTED] However, I am attaching as Exhibit P (TES12-000051,

¹¹¹ See Exhibit A (TES12-000036, Confidential) at pages 6.

¹¹² See Exhibit A (TES12-000036, Confidential) at pages 16-17.

1 Confidential) to my testimony a redacted copy of the agreement that includes the
2 relevant provisions for the purpose of this testimony.

3 Q63. Please describe what this agreement states concerning expenses associated with
4 environmental remediation.

5 A63. [REDACTED]: [CONFIDENTIAL MATERIAL REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

14 Q64. [REDACTED]
15 [REDACTED]? [CONFIDENTIAL MATERIAL
16 REDACTED]

17 A64. [REDACTED]. [CONFIDENTIAL MATERIAL REDACTED]

18 Q65. The SFPP/Tesoro contract is a private arrangement between the two companies.
19 How does it affect SFPP's ability to request rate increases at the CPUC?

20 A65. The question you pose is perhaps a legal issue, which should be briefed by the
21 attorneys. But it seems to me that SFPP cannot use the CPUC's processes to
22 indirectly impose on Tesoro the obligation to pay for remediation through rate
23 increases when SFPP has waived any right to seek reimbursement directly for
24 environmental remediation.

¹¹³ Exhibit P (TES12-000051, Confidential) at [REDACTED]. [CONFIDENTIAL MATERIAL REDACTED]

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1 **D. Prudence of SFPP's Environmental Activities and Remediation at the**
2 **Mission Valley Site.**

3 Q66. Please assume— contrary to the fact — that SFPP has proven that the entire cause of
4 the hydrocarbon plume that it has been required to remediate was the mainline
5 jurisdictional pipeline. Please also assume — again contrary to the fact — that the
6 SFPP/Tesoro contract does not relieve Tesoro from any obligation to reimburse
7 SFPP for any environmental remediation expenses. Making those two
8 assumptions, would shippers in this case be responsible for paying SFPP's
9 environmental remediation costs at the Mission Valley Terminal?

10 A66. No.

11 Q67. Why not?

12 A67. Because having experienced environmental pollution at property that it owns and
13 operates, SFPP has not provided any evidence that the releases of hydrocarbons
14 occurred despite its prudent management. Moreover, there is considerable
15 evidence in the record that SFPP's operation of the Mission Valley site and its
16 reaction to the discovery of a hydrocarbon plume has been unreasonable and
17 imprudent.

18 Q68. Does SFPP have an obligation under the CPUC rules to prove that its operations
19 at Mission Valley have been responsible and prudent?

20 A68. I believe it does. It is my understanding that the Commission has stated that while
21 a utility can seek to recover costs related to accidents, spills or other disasters, the

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1 utility must meet a high burden of proof in establishing the reasonableness of its
2 operations.¹¹⁴

3 Q69. What has the Commission said about recovery from ratepayers for accidents or
4 releases?

5 A69. I am aware of several instances in which the Commission has stated that a utility
6 must establish that it has operated its facilities in a reasonable manner when it is
7 seeking to increase rates. For example, I have read portions of the *Re Pacific Bell*
8 case in which the Commission said that:

9 The inescapable fact is that the ultimate burden of proof of reasonableness,
10 whether it be in the context of test-year estimates, prudence reviews
11 outside a particular test year, or the like, never shifts from the utility which
12 is seeking to pass its costs of operations onto ratepayers on the basis of the
13 reasonableness of those costs. Whenever the utility comes before this
14 Commission seeking affirmative rate relief, it fully exposes its operations
15 to our scrutiny and review.¹¹⁵

16
17 I am also aware of the fact that the Commission stated in *Re Southern California*
18 *Edison Company* that, “the fundamental principle involving public utilities and
19 their regulation by governmental authority is that the burden rests heavily upon a
20 utility to prove it is entitled to rate relief and not upon the Commission, its staff or
21 any interested party...to prove the contrary.”¹¹⁶ Unless the utility, “meets the
22 burden of proving, with clear and convincing evidence, the reasonableness of all
23 the expenses it seeks to have reflected in rate adjustments, those costs will be
24 disallowed.”¹¹⁷

¹¹⁴ *Re Southern California Edison Company*, 11 CPUC 2d 474 (CPUC 1983) at 475.

¹¹⁵ *Re Pacific Bell*, 27 CPUC 2d 1 (CPUC 1987) at 21 (Internal footnotes removed).

¹¹⁶ *Re Southern California Edison Company*, 11 CPUC 2d 474 (CPUC 1983) at 475.

¹¹⁷ *Id.*

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1 In addition, I am familiar with the Commission's discussion of the recovery of
2 costs of environmental remediation costs in *Re San Diego Gas and Electric*
3 *Company*:

4 We want to encourage the utility to remain fully responsive to clean-up
5 needs. At the same time, the utility must establish the reasonableness of
6 any clean-up expenses it wishes to pass through to its customers by
7 showing not only that it incurred reasonable costs in its clean-up efforts,
8 but that it was reasonable in its activities that led to the original
9 contamination.¹¹⁸

10

11 Q70. How has the Commission implemented these policies?

12

13 A70. I have not of course conducted legal research into this issue. But I do know that
14 the Commission has disallowed rates increases that utilities have sought to
15 recover costs related to accidents. For example, the Commission disallowed costs
16 associated with an explosion that occurred at the Mohave Generating Plant
17 (Mohave), which was owned and operated by Southern California Edison
18 Company (SCE).¹¹⁹ In that situation, a weld in a high-pressure steam pipe had
19 ruptured on June 9, 1985 and killed six people. The Commission undertook a
20 formal investigation into the causes of the accident and whether any of the costs
21 of repairs could be recovered. The Commission stated that because SCE, "bears
22 the burden of proving the reasonableness of the expenses it seeks to pass through
23 in rates, SCE must prove that it operated and maintained the plant in a reasonable
24 manner prior to the accident."¹²⁰ The Commission found SCE to have been less
25 than diligent in its operating practices by continually operating the steam pipe at

¹¹⁸ *Re San Diego Gas and Electric Company*, 46 CPUC 2d 538 (CPUC 1992) at 609.

¹¹⁹ *Re Southern California Edison Company*, 53 CPUC 2d 452 (1994).

¹²⁰ *Id.*, at 464.

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1 temperatures well above the design level, lacking extensive records of the steam
2 pipe's operation for significant periods of time, and failing to formulate a better
3 safety program at the plant, especially after SCE became aware of a similar weld
4 rupture at another utility generating plant.¹²¹

5 In *Joanne Carey v. Pacific Gas and Electric Company*,¹²² the Commission
6 discussed the evidence it had considered in finding that Pacific Gas & Electric
7 (PG&E) had acted unreasonably in response to an apartment complex fire on
8 January 26, 1996. The Commission restated the facts from Decision 98-12-076
9 that had found that PG&E had acted unreasonably in its response to the 1996
10 apartment complex fire since PG&E had failed to investigate compliance with and
11 modify its policy of allowing fumigators to disconnect gas service.¹²³ The
12 Commission found that PG&E had been aware of fumigator concerns, before and
13 after a first fire in 1994, regarding the adequacy of training provided.¹²⁴ Despite
14 that fact, PG&E never reviewed the adequacy of the instructions it provided to
15 fumigators, and failed to evaluate whether mandatory training should be required
16 for fumigators. Based on those findings, the Commission had found that it “was
17 unreasonable to allow conditions to remain unchanged after the 1994 accident put
18 the utility on notice that untrained, unlicensed fumigation employees were

¹²¹ *Id.*, at 452.

¹²² *Joanne Carey v. California Gas and Electric Company*, 85 CPUC 2d 682 (1999).

¹²³ *Id.*, at 1-2.

¹²⁴ *Id.*, at 4.

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1 performing gas terminations in violation of the PG&E/PCOC Agreement'.¹²⁵

2 The Commission fined the utility \$976,800.¹²⁶

3 Q71. Let's return to the SFPP Mission Valley situation. Based on the information that
4 you just discussed, do you believe SFPP has met its burden of proof in
5 establishing that its preventive efforts at the Mission Valley site and its
6 subsequent remediation efforts were reasonable and prudent?

7 A71. No. SFPP's response at the Mission Valley Terminal has been anything but
8 reasonable. As a result, SFPP's response at the Mission Valley Terminal has been
9 the subject of governmental action and litigation accusing SFPP of negligence and
10 inefficiency. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED].¹²⁷ [CONFIDENTIAL MATERIAL
14 REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED].¹²⁸ [CONFIDENTIAL MATERIAL REDACTED]

18 [REDACTED]

19 [REDACTED].¹²⁹

20 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

¹²⁵ *Id.*, at 2 citing D.98-12-076.

¹²⁶ *Id.*

¹²⁷ Exhibit A (TES12-000036, Confidential) at page 6.

¹²⁸ Exhibit A (TES12-000036, Confidential) at page 5.

¹²⁹ Exhibit A (TES12-000036, Confidential) at page 7.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

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[REDACTED].¹³⁰ [CONFIDENTIAL MATERIAL REDACTED]

Q72. How do the actions of the Regional Board bear on SFPP's proving that it has been acting in a reasonable and prudent manner with respect to environmental remediation?

A72. As I also discussed previously, SFPP has a long history of violations of governmental requirements at the Mission Valley Terminal and throughout California. Various Regional Water Quality Control Boards throughout the state of California have fined SFPP for violations of effluent limitations in its groundwater discharge.¹³¹ The proceedings before the San Diego Regional Board related to the Mission Valley site, specifically Administrative Civil Liability Complaint No. R9-2008-0046, suggest that SFPP has been slow and uncooperative during the clean-up process and has financially benefited from its

¹³⁰ Exhibit A (TES12-000036, Confidential) at pages 7-8.

¹³¹ I am aware of at least three orders assessing penalties for the Mission Valley site: RWCQB, San Diego Order R9-2002-0385 dated December 11, 2001; RWQCB, San Diego Order R9-2004-0101, dated May 12, 2004; and RWQCB, San Diego R9-2008-0134, dated December 10, 2008. The California State Water Resources Control Board's Complaint No. OE-2011-0005, dated July 26, 2011, assessed \$111,000 against Kinder Morgan and SFPP for violating waster discharge requirements at its Norwalk Pump Station. The RWQCB, Central Valley Region assessed \$39,000 for violations of effluent limitations in Administrative Civil Liability Complaint No. R5-2008-0592 for SFPP's Holt Petroleum Release Site, San Joaquin County. In relation to the Fox Road Petroleum Release site, Solano County, the RWQCB, Central Valley Region issued Administrative Civil Liability Complaint No. R5-2008-0591, dated November 10, 2008 and Administrative Civil Liability Complaint No. R5-2009-0543, dated May 27, 2009. I am also aware of Administrative Civil Liability Complaint No. R5-2008-0590, dated November 10, 2008, that assessed \$30,000 to Kinder Morgan for ten violations of effluent limitations at the Elmira Petroleum Release Site, Solano County.

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1 delay.¹³² In addition, these types of proceedings before the various California
2 Regional Boards indicate that SFPP's remediation efforts have not been properly
3 implemented or effective, and SFPP should have to explain why shippers are
4 culpable for costs associated with remediation processes that do not pass or
5 violate California requirements.

6 Q73. Just a few more questions regarding Mission Valley in particular. Do you know
7 whether SFPP ever investigated the source of the original releases that resulted in
8 the hydrocarbon plume?

9 A73. The material to which Mr. Hanak refers to in his testimony does not indicate that
10 SFPP ever took any steps to actually find the source of the contamination plume.
11 Although Mr. Hanak states that SFPP believed that the release emanated from the
12 "manifold area," none of the material to which Mr. Hanak referred in his
13 testimony specifies which particular part of the manifold, itself, or the manifold
14 area was the source of any release.¹³³ Moreover, [REDACTED]

15 [REDACTED]

16 [REDACTED].¹³⁴ [CONFIDENTIAL MATERIAL REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

¹³² See Complaint No. R9-2008-0046 for Administrative Civil Liability with Mandatory Minimum Penalties, dated June 6, 2008. I am attaching a copy of this complaint to my testimony as Exhibit Q (TES12-000052). See November 18, 2008 letter from Marsi A. Steirer to Jeremy Haas titled "Administrative Civil Liability (ACL) Complaint No. R9-2008-0046 Mission Valley Terminal." I am attaching a copy of this letter to my testimony as Exhibit R (TES12-000053).

¹³³ See Direct Testimony of Michael A. Hanak at pages 19-20.

¹³⁴ Exhibit A (TES12-000036, Confidential) at page 4.

1 [REDACTED].¹³⁵ [CONFIDENTIAL

2 MATERIAL REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED].¹³⁶ [CONFIDENTIAL MATERIAL REDACTED]

6 Q74. [REDACTED]

7 [REDACTED]? [CONFIDENTIAL MATERIAL

8 REDACTED]

9 A74. It is difficult to say with any degree of certainty. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]. [CONFIDENTIAL MATERIAL

13 REDACTED]

14 Q75. [REDACTED]

15 [REDACTED]

16 [REDACTED]? [CONFIDENTIAL MATERIAL REDACTED]

17 A75. [REDACTED]

18 [REDACTED]

19 [REDACTED].¹³⁷

20 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

¹³⁵ Exhibit A (TES12-000036, Confidential) at pages 4-6.

¹³⁶ Exhibit A (TES12-000036, Confidential) at pages 5-6. [REDACTED]

[REDACTED]. [CONFIDENTIAL MATERIAL REDACTED] See

Exhibit A (TES12-000036, Confidential) at page 6.

¹³⁷ Exhibit A (TES12-000036, Confidential) at pages 5, 36.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

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Exhibit A (TES12-000036, Confidential) at page 36.

¹³⁹ Exhibit A (TES12-000036, Confidential) at page 7.

1 [REDACTED].¹⁴⁰ [CONFIDENTIAL MATERIAL REDACTED]

2 [REDACTED]

3 [REDACTED].¹⁴¹ [CONFIDENTIAL

4 MATERIAL REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED].¹⁴²

8 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED].¹⁴³ [CONFIDENTIAL

14 MATERIAL REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED].¹⁴⁴

18 [CONFIDENTIAL MATERIAL REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

¹⁴⁰ Exhibit A (TES12-000036, Confidential) at pages 7-8.

¹⁴¹ Exhibit A (TES12-000036, Confidential) at page 7.

¹⁴² Exhibit A (TES12-000036, Confidential) at pages 7-8.

¹⁴³ Exhibit A (TES12-000036, Confidential) at pages 7-8.

¹⁴⁴ Exhibit A (TES12-000036, Confidential) at page 8.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 [REDACTED]¹⁴⁵ [CONFIDENTIAL MATERIAL REDACTED]

2 [REDACTED]

3 [CONFIDENTIAL MATERIAL REDACTED]

4 Q78. You have also discussed the lawsuit between the City of San Diego and SFPP.

5 Could you summarize some of the factual information presented by the City that

6 bears on the reasonableness or prudence of SFPP's course of conduct at the

7 Mission Valley Terminal.

8 A78. I have already referred to the lawsuit that the City filed against SFPP. In

9 discussing the factual background of SFPP's activities at the Mission Valley site,

10 the City points out that SFPP filed a Corrective Action Plan with the Regional

11 Board in 1992 that proposed three pumping wells be operated in the stadium's

12 parking lot.¹⁴⁶ However, the City claims that SFPP did not take action until 1994,

13 two years later.¹⁴⁷ By the time the cleanup process began, the final cleanup date

14 had already been extended to January 1, 1999.¹⁴⁸ The City also claims that SFPP

15 failed to follow subsequent Regional Board orders. For example, it did not

16 operate the three pumping wells pursuant to the Board's directive and failed to

17 prevent off-site migration of contaminants, including MTBE to the soil and

18 groundwater under the stadium and adjacent property.¹⁴⁹ The City further states

19 that for at least one span of time during the 1990's, SFPP failed to operate its

¹⁴⁵ Exhibit A (TES12-000036, Confidential) at page 8.

¹⁴⁶ Exhibit B (TES12-000037) at page 11.

¹⁴⁷ Exhibit B (TES12-000037) at pages 11-12.

¹⁴⁸ Exhibit B (TES12-000037) at page 11.

¹⁴⁹ Exhibit B (TES12-000037) at page 11.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

- 1 remediation system and even turned it off for a “significant period of time.”¹⁵⁰
- 2 Furthermore it appears from documents the City submitted that new extensions of
- 3 the contamination plume were discovered in 2005 and 2009, more than a decade
- 4 after SFPP began its remediation efforts in 1994.¹⁵¹
- 5 Q79. What is the relevance of these facts, particularly in view of the fact that summary
- 6 judgment was entered against the City?
- 7 A79. The summary judgment decision was not based on the underlying validity of the
- 8 factual information that the City presented, but on statute of limitations problems
- 9 and the absence of reliable expert testimony. Regardless of the ultimate outcome
- 10 of the City’s Complaint, I believe that the underlying facts reported by the City do
- 11 raise serious questions regarding the efficacy and efficiency of SFPP’s
- 12 remediation process at Mission Valley. At the very least, they require an
- 13 explanation from SFPP as to how and whether it has been performing its
- 14 remediation efforts in a responsible and prudent manner when after more than 20
- 15 years the hydrocarbon plume still exists, the deadlines for removal effort have
- 16 been constantly extended and new hydrocarbon contamination is still being
- 17 uncovered. No such explanation appears in SFPP’s submission to the
- 18 Commission in which it requests that shippers bear 100% of the cost of SFPP’s
- 19 remediation efforts and its legal expenses defending SFPP’s conduct.
- 20 Q80. You mentioned extensions of deadlines for compliance with SFPP’s remediation
- 21 efforts. What does the record indicate regarding SFPP’s compliance with the

¹⁵⁰ Exhibit B (TES12-000037) at page 12.

¹⁵¹ See Exhibit B (TES12-000037) at page 13 and Exhibit K (TES12-000046) at page 6.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 deadlines that the Regional Board set for remediation efforts at the Mission
2 Valley site?

3 A80. SFPP has requested extensions of the deadlines that the Regional Board set for its
4 remediation efforts.¹⁵² SFPP's most recent extension is reflected in Addendum
5 No. 5 to the CAO. Addendum No. 5 to the CAO established a new deadline of
6 December 31, 2010 for the removal of residual light non-aqueous phase
7 petroleum liquid from the subsurface soil and groundwater beyond the Mission
8 Valley Terminal and December 31st, 2013 for the reduction of concentrations of
9 dissolved phase petroleum hydrocarbon waste constituents in the off-property
10 pollution area in order to attain background water quality conditions.¹⁵³ While
11 SFPP did successfully remediate most of the light non-aqueous phase petroleum
12 liquid from the subsurface soil and groundwater in the offsite area, it did not reach
13 this deadline for the area of contamination discovered in 2009 in the northwestern
14 off-Terminal zone.¹⁵⁴ According to a letter sent by Craig L. Carlisle, Senior
15 Engineering Geologist of the Central Cleanup Unit, to Scott Martin of KMEP, this
16 constituted, "a violation of Addendum No. 5 to CAO No. 92-01 and subjects
17 Kinder Morgan to possible further enforcement action by the San Diego Water
18 Board."¹⁵⁵ Mr. Carlisle stated that the Regional Board encouraged Kinder

¹⁵² The CAO set a final cleanup date of January 1, 1996. *See* Exhibit C (TES12-000038). I am aware of extensions granted through Addendum No. 1 to the CAO, dated May 9, 1994, and Addendum No. 5 to the CAO, and that SFPP also apparently submitted a proposal with a cleanup deadline of 2034. *See* Exhibit B (TES12-000037) at pages 11-13.

¹⁵³ Exhibit F (TES12-000041) at pages 2-3.

¹⁵⁴ Exhibit K (TES12-000046) at page 6-7.

¹⁵⁵ *See* October 17, 2011 letter sent by Craig L. Carlisle to Scott Martin with the subject "Post 2010 Remedial Compliance Evaluation Off-Terminal LNAPL Zone, Mission

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1 Morgan to complete its remediation efforts in the northwestern off-Terminal area
 2 as “expeditiously as possible.”¹⁵⁶ The Regional Board Executive Officer’s Report,
 3 dated February 8, 2012, stated that Kinder Morgan expected the northwestern off-
 4 Terminal zone to be complete prior to December 31, 2013.¹⁵⁷

5 Q81. Has SFPP been the subject of any other proceedings based on its conduct at the
 6 Mission Valley Terminal?

7 A81. Yes. The Regional Board issued Complaint No. R9-2008-0046 (Regional Board’s
 8 Complaint) for Administrative Civil Liability with Mandatory Minimum Penalties
 9 on June 6, 2008 against SFPP for polluting waterways.

10 Q82. Please describe these alleged violations.

11 A82. The violations stem from SFPP’s groundwater remediation system at the Mission
 12 Valley Terminal. Wastewater from the system is discharged into Murphy Canyon
 13 Creek.¹⁵⁸ This discharge is subject to a number of effluent limitations.¹⁵⁹ The
 14 Regional Board’s Complaint stated that it was seeking mandatory minimum
 15 penalties for 35 violations of effluent limitations for constituents including
 16 dissolved oxygen, fluoride, lead, manganese, pH, phosphorous, total nitrogen,
 17 total residual chlorine, and chronic toxicity to fathead minnows and green
 18 algae.¹⁶⁰

19 Q83. How much did the Regional Board assess in penalties for these violations?

Valley Terminal, San Diego, California,” at page 3. I am attaching a copy of this letter to my testimony as Exhibit S (TES12-000054).

¹⁵⁶ Exhibit S (TES12-000054) at page 3.

¹⁵⁷ Exhibit K (TES12-000046) at page 6.

¹⁵⁸ Exhibit Q (TES12-000052) at page 2.

¹⁵⁹ Exhibit Q (TES12-000052) at page 2.

¹⁶⁰ Exhibit Q (TES12-000052) at page 7.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 A83. The Regional Board recommended that \$229,000 in civil liability be imposed.¹⁶¹

2 Of this \$229,000, \$109,000 was assessed for the persistent and chronic violations
3 of the total nitrogen instantaneous maximum effluent limitation.¹⁶² In discussing
4 the assessment of such liabilities, the Regional Board stated that an assessment of
5 liability greater than the mandatory minimum penalty was warranted.¹⁶³

6 Q84. What reasons did the Regional Board give in assessing penalties greater than the
7 mandatory minimum penalties?

8 A84. The Regional Board stated that SFPP had a prior history of violating
9 environmental restrictions.¹⁶⁴ The Regional Board also noted that SFPP had
10 realized an economic benefit by discharging polluted effluent to surface waters
11 rather than providing additional treatment or alternative disposal.¹⁶⁵

12 **III. THE 19 REMAINING ENVIRONMENTAL REMEDIATION SITES**

13 Q85. In the previous portion of your testimony you discussed the Mission Valley
14 Terminal site in San Diego. I believe you concluded that SFPP had failed to
15 provide any meaningful evidence to support its claim that the releases that caused
16 the hydrocarbon plume that it is now remediating originated in the portion of the
17 Mission Valley site that is part of the CPUC jurisdictional pipeline. Is that
18 correct?

19 A85. Yes. I also concluded that the information in the Record indicates that SFPP's
20 operations at the Mission Valley site were unreasonable and imprudent. I

¹⁶¹ Exhibit Q (TES12-000052) at page 7.

¹⁶² Exhibit Q (TES12-000052) at page 7.

¹⁶³ Exhibit Q (TES12-000052) at page 8.

¹⁶⁴ Exhibit Q (TES12-000052) at pages 4, 8.

¹⁶⁵ Exhibit Q (TES12-000052) at page 8.

PUBLIC VERSION: CONFIDENTIAL MATERIAL REDACTED

1 therefore recommended that shippers not be held responsible for any part of the
2 remediation costs that SFPP has been incurring.

3 Q86. What issues will you address in this portion of your testimony?

4 A86. In its cost of service presentation, SFPP is also asking shippers to bear the costs of
5 remediation at 19 other locations.¹⁶⁶ These locations include other terminals such
6 as Concord, Colton, and Norwalk as well as other locations which are part of
7 SFPP's property in California. I will refer to these sites as "Other Terminals" and
8 "Other Non-Terminal Sites." All of them have experienced significant
9 hydrocarbon releases and environmental contamination. SFPP has provided
10 limited documentation regarding any of the Other Terminal sites and I have the
11 same concerns with respect to these terminals that I discussed in connection with
12 the Mission Valley Terminal. Since SFPP has not identified the precise location
13 and cause of the contamination at these sites, I do not believe that the shippers in
14 this proceeding should be required to pay the remediation costs. With regard to
15 the Other Non-Terminal Sites, virtually no information is available. One site
16 clearly indicates the presence of non-jurisdictional facilities that could be the
17 source of the contamination, so I have excluded the costs of that site from the cost
18 of service that I recommend be approved for SFPP. Otherwise, since these costs
19 are relatively minor, in order to simplify the issues in contention in this
20 proceeding, I am not disputing remediation costs at these Other Non-Terminal

¹⁶⁶ Mr. Wetmore included 21 remediation sites, other than the Mission Valley site, in his test period calculations. However, he removed the Richmond and Balfour Road sites as part of his test period adjustments. *See* Schedule 10 of Attachment C to the Direct Testimony of Erik G. Wetmore.

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1 Sites and have included the environmental costs for these sites in my cost of
2 service.

3 Q87. Are the majority of SFPP's remediation costs attributable to its terminals?

4 A87. Yes. Approximately \$8.4 million of the \$9.6 million that SFPP claims for
5 environmental remediation costs are attributable to remediation sites located at
6 SFPP terminals.

7 Q88. What specific concerns do you have with the environmental remediation expenses
8 SFPP is claiming at the seven terminal sites, besides Mission Valley?

9 A88. As I mentioned previously, SFPP has failed to provide significant information as
10 to the precise location and cause of the contamination at any of these sites.

11 Furthermore, several of the sites include a combination of both carrier and non-
12 carrier assets, similar to Mission Valley Terminal. This factor further confuses
13 the process of identifying whether the cause and location of the contamination
14 relates to jurisdictional property. The locations where these problems occur
15 include Colton, Brisbane, Chico and Bradshaw.

16 Q89. How were you able to identify these terminal locations as having a combination
17 of carrier and non-carrier assets?

18 A89. I reviewed the underlying SFPP asset database¹⁶⁷ for each of these locations to
19 determine whether there were non-carrier assets in place. [REDACTED]

20 [REDACTED]

21 [REDACTED]

¹⁶⁷ Provided as SFPP12 000118 [CONFIDENTIAL] and also included as the Microsoft Database "DATA Confidential" to Mr. Wetmore's Attachment C Workpapers.

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Q90. What is the significance of the fact that these terminal locations have both carrier and non-carrier assets?

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A90. SFPP has provided little to no evidence that shows where the leaks occurred at any of these terminal facilities that caused the pollution that SFPP is remediating. Since both carrier and non-carrier assets are situated at these sites, it is critical to identify where the leaks occurred, whether the leaks are attributable to carrier or non-carrier property, and the amount, if any, of environmental remediation costs that should be included in the jurisdictional cost of service. Therefore, as was the case with the Mission Valley Terminal, I do not believe that SFPP has carried its burden of proof showing that shippers should be responsible for any of the remediation costs at these terminals.

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Q91. You said “little to no evidence.” What is the evidence that SFPP has introduced that indicates the portion of these terminal facilities that are situated on the jurisdictional pipeline as opposed to being operated privately?

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A91. The little evidence is the following. Mr. Hanak stated in his Direct Testimony that in allocating expenses for a particular site between carrier and noncarrier categories where there was a mixture of carrier and noncarrier assets, “it was

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¹⁶⁸ In addition, see response to Tesoro Data Request No. 101.

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1 necessary for me to determine what percentage of total environmental remediation
 2 expenses should be allocated to the carrier and non-carrier categories.”¹⁶⁹ For
 3 terminals which were not “Mixed Asset” sites Mr. Hanak performed no
 4 analysis.¹⁷⁰

5 Q92. With regard to the Mixed Asset terminals, how did Mr. Hanak determine this
 6 percentage?

7 A92. Mr. Hanak stated that he reviewed a “documented release history,” which
 8 supposedly identified “the site, the release date(s), the products released, the
 9 volume released, the volume recovered, and the indicated cause of the release.”¹⁷¹

10 Q93. What did the documented release history for these remediation sites indicate?

11 A93. Mr. Hanak never included the documented release history in his testimony.

12 Therefore, as with the Mission Valley site, I asked counsel to obtain the
 13 documented release history for certain sites from SFPP through data requests.

14 Q94. Did counsel do so?

15 A94. Yes. Tesoro Data Request No. 85 states as follows:

16 Your attention is directed to Mr. Hanak’s testimony at page 18, lines 13 to
 17 15 in which Mr. Hanak states, “For each Mixed Asset Site, I reviewed the
 18 documented release history, which typically identifies the site, the release
 19 date(s), the product released, the volume released, the volume recovered
 20 and the indicated cause of the leak.” Please provide the “documented
 21 release history” that Mr. Hanak reviewed for the following Mixed Asset
 22 Sites:

- 23 (a) Concord Terminal;
- 24 (b) Norwalk;
- 25 (c) Colton Terminal; and
- 26 (d) Elmira – Fox Road

¹⁶⁹ See Direct Testimony of Michael A. Hanak at page 18.

¹⁷⁰ A terminal that is not a Mixed Asset site is one that according to Mr. Hanak includes either 100% carrier facilities or 100% non-carrier facilities.

¹⁷¹ See Direct Testimony of Michael A. Hanak at page 18.

1

2 Q95. How did SFPP respond to the Data Request?

3 A95. Again, as with Mission Valley, SFPP posed a whole list of objections. But, as a

4 result of discussions with counsel SFPP said that it would provide a response.

5 Q96. What was SFPP's response?

6 A96. SFPP responded by indicating that the Concord and Elmira-Fox Road terminals

7 were not Mixed Asset Sites, and that Mr. Hanak did not review any documented

8 release history for these two sites. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]: [CONFIDENTIAL MATERIAL REDACTED]

13

[CONFIDENTIAL MATERIAL REDACTED]

14 Q97. [REDACTED]? [CONFIDENTIAL MATERIAL

15 REDACTED]

16 A97. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [CONFIDENTIAL MATERIAL REDACTED]

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1 Q98. How does this information support SFPP's claim that the documented release
2 history for SFPP's mixed asset terminal sites identifies the site, the dates of the
3 release, the products releases, the volume recovered, and the indicated cause of
4 the release?

5 A98. I don't believe that it does.

6 Q99. Did you seek any other information to determine the specific assets that caused
7 the releases at the terminal sites that you are now discussing?

8 A99. I did. I attempted to locate the corrective action plans issued for these sites, any
9 reports or orders that may have identified the specific spill or release and
10 documents that indicated the particular assets that caused the releases that SFPP is
11 remediating.

12 Q100. How did you attempt to find these documents?

13 A100. I conducted a search on the California Regional Water Quality Control Board's
14 (RWQCB) website for relevant orders and monitoring reports, and also requested
15 counsel to obtain any relevant documents from SFPP through data requests.
16 During discovery, SFPP did provide a link to a database service called Geotracker
17 that the California RWQCB uses for storing monitoring reports, orders and other
18 documents relating to spills and releases.¹⁷² Using this service, I attempted to
19 locate documents that might identify the assets involved in releases at the
20 remediation sites.

21 Q101. What did you find?

¹⁷² See <http://geotracker.waterboards.ca.gov/>.

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- 1 A101. My search focused principally on the Colton Terminal, and I was able to locate
2 some information regarding the assets involved in releases at the site.
- 3 Q102. What information did you find in relation to the Colton Terminal release history?
- 4 A102. A June 18, 2012 Corrective Action Plan that SFPP provided during discovery
5 makes a vague reference to “historical releases of petroleum hydrocarbons that
6 occurred at the Terminal,”¹⁷³ but does not discuss the releases that necessitated
7 specific remediation efforts. In searching for more information about these
8 historical releases, I discovered a Levine-Fricke report, dated April 25, 1994,
9 entitled “Summary of Previous Investigations and Identification of Potential
10 Petroleum Hydrocarbon release source areas SFPP Colton Terminal” (the
11 Summary).¹⁷⁴ The Summary discusses the [REDACTED]
12 [REDACTED] [CONFIDENTIAL
13 MATERIAL REDACTED] and also lists other incidents that Levine-Fricke
14 found in previous investigation reports or in media sources.¹⁷⁵
- 15 Q103. What does the report say about these releases?
- 16 A103. It discusses the fact that historical releases at the Colton Terminal included one
17 incident that caused the California Regional Water Quality Control Board Santa
18 Ana Region (Santa Ana Regional Board) to issue Cleanup and Abatement Orders
19 No. 87-151 and 88-114 to Southern Pacific Pipe Lines, Inc. and Unocal

¹⁷³ See Bates file SFPP12 005978-006056. I am attaching a copy of the Corrective Action Plan to my testimony as Exhibit T (TES12-000055).

¹⁷⁴ See Summary of Previous Investigations and Identification of Potential Petroleum Hydrocarbon Release Source Areas SFPP Colton Terminal, prepared by Levine-Fricke. I am attaching a copy of this report to my testimony as Exhibit U (TES12-000056).

¹⁷⁵ Exhibit U (TES12-000056) at page 18.

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- 1 Corporation (Unocal).¹⁷⁶ According to Order 88-114, on December 10, 1987,
2 Unocal reported that because of operational errors, 22,000 gallons of unleaded
3 gasoline overflowed from an aboveground tank at its terminal.¹⁷⁷ I am not aware
4 of any No Further Action (NFA) letter being issued for this remediation project,
5 which would suggest that it is still ongoing and a part of any SFPP remediation
6 activity at the Colton Terminal.
- 7 The Summary also briefly describes unresolved facility issues for each operator at
8 the Colton Terminal and states in reference to SFPP that a “gasoline spill of 292
9 barrels on October 13, 1979 occurred in the breakout tank area. An investigation
10 of the breakout tank area was not performed until after a 63,000-gallon spill
11 occurred on December 22, 1992.”¹⁷⁸
- 12 Q104. How does this information relate to the issues that you are considering in this
13 portion of your testimony?
- 14 A104. It has an important bearing. If SFPP was aware of leaks or spills, or potential
15 leaks or spills, in the breakout tank area and failed to conduct proper
16 investigations until after the 63,000-gallon spill occurred, then serious questions
17 would arise regarding the prudence of SFPP’s Colton Terminal remediation
18 efforts and the manner in which it was operating its facilities.
- 19 Q105. Did you find any other information regarding the remediation efforts at the SFPP
20 Colton site?

¹⁷⁶ Exhibit U (TES12-000056) at page 18.

¹⁷⁷ See California Regional Water Quality Control Board Santa Ana Region Cleanup and Abatement Order No. 88-114 at page 3. I am attaching a copy of this Order to my testimony as Exhibit V (TES12-000057).

¹⁷⁸ Exhibit U (TES12-000056) at page 19.

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1 A105. No.

2 Q106. Do I correctly understand from your testimony that [REDACTED]

3 [REDACTED]

4 [REDACTED] **[CONFIDENTIAL MATERIAL REDACTED]**

5 A106. Yes. Yet, as I stated before, it is also clear that the Bradshaw, Brisbane, and

6 Chico Terminals also included a combination of carrier and non-carrier assets.

7 [REDACTED]

8 [REDACTED] **[CONFIDENTIAL MATERIAL**

9 **REDACTED]** Nevertheless, I do not accept the environmental remediation costs

10 associated with Bradshaw, Brisbane, and Chico Terminals. In my opinion SFPP

11 has not provided any evidence that the release for which remediation

12 reimbursement is being requested from shippers occurred on the jurisdictional

13 pipeline for which a tariff has been filed with the CPUC. SFPP also has failed to

14 establish that the releases occurred despite diligent prudent operations at the sites.

15 Q107. What conclusions did you reach concerning environmental remediation expenses

16 associated with the remainder of the Terminals Group, i.e., the Concord, Norwalk,

17 and Stockton Terminals?

18 A107. My review of the SFPP asset database indicated that these locations were

19 classified as 100 percent carrier. I did not identify any non-carrier assets in place

20 as of 2011, although this does not mean that there could be non-jurisdictional

21 sources of contamination.

22 Q108. Please explain.

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1 A108. With respect to the Concord Terminal, I did find California Regional Water
2 Quality Control Board San Francisco Bay Region Order 92-082, dated July 15,
3 1992, which discussed the site cleanup requirements for Santa Fe Pacific Pipeline
4 Partners, L.P.'s Concord Terminal.¹⁷⁹ Order 92-082 states that between 1985 and
5 1991, releases of petroleum at the Concord Terminal were reported to involve
6 volumes as high as 56,490 gallons.¹⁸⁰ The causes of these events include
7 "pipeline rupture or leak and tank overflow or leak."¹⁸¹ The most recent release
8 prior to Order 92-082 occurred on July 14, 1991, when about 42,420 gallons of
9 diesel fuel spilled from an overfilled tank (CC-13).¹⁸² In addition, a schematic of
10 SFPP's pipeline operations provided in [REDACTED]

11 [REDACTED].
12 **[CONFIDENTIAL MATERIAL REDACTED]** It is, therefore, unclear what
13 the source of the contamination is and where it is situated. I therefore do not
14 believe that SFPP has carried its burden of proof of establishing that shippers on
15 the CPUC jurisdictional pipeline should be held responsible for the payment of
16 environmental remediation costs.

17 Q109. What conclusions did you reach with respect to the Norwalk Terminal?

18 A109. My research indicates that SFPP's Norwalk site also serves as a storage facility
19 for petroleum products that the Department of Defense (DoD) ships on the SFPP
20 pipeline. In this regard, the Defense Fuel Support Point (DFSP) Norwalk includes

¹⁷⁹ See California Regional Water Quality Control Board San Francisco Bay Region Order 92-082. I have attached a copy of this Order to my testimony as Exhibit W (TES12-000058).

¹⁸⁰ Exhibit W (TES12-000058) at page 2.

¹⁸¹ Exhibit W (TES12-000058) at page 2.

¹⁸² Exhibit W (TES12-000058) at page 2.

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1 facilities that at one point contained 12 storage tanks with a capacity of 910,000
2 barrels.¹⁸³ In fact my research indicates that both SFPP and DoD have been
3 involved in remediating the site and the source of at least some of the
4 contamination is the DFSP tank farm.¹⁸⁴ In view of this additional non-
5 jurisdictional source of environmental contamination, I do not believe that SFPP
6 has carried its burden of proof showing that shippers on the jurisdictional pipeline
7 should be responsible for Norwalk Terminal remediation expenses.

8 Q110. What conclusions do you reach with respect to Stockton Terminal?

9 A110. Again, SFPP provided little information on the nature of the leaks. However, the
10 SFPP pipeline operations schematic provided in [REDACTED]

11 [REDACTED]

12 [REDACTED]. [CONFIDENTIAL MATERIAL

13 REDACTED] In addition, there are other storage facilities within one mile of
14 SFPP's Stockton facility, both with multiple storage tanks. In view of the lack of
15 information with respect to environmental remediation activity at this location, I
16 do not believe that SFPP has carried its burden of proving showing that shippers
17 should be responsible for the Stockton Terminal remediation expenses.

18 Q111. Apart from your research, does the Record contain any further information
19 supporting SFPP's claim that it was releases from the CPUC jurisdictional

¹⁸³ U.S. General Accounting Office, Report to the Chairwoman, Subcommittee on Military Installations and Facilities, Committee on Armed Services, House of Representatives, October 1992.

¹⁸⁴

<http://norwalkrab.com/DEOLA/documents/newsletters/Norwalk%20Newsletter%201994.pdf>

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1 pipeline that necessitated remediation efforts at the other terminal sites for which
2 SFPP is requesting reimbursement from shippers?

3 A111. Not that I have been able to find.

4 Q112. Apart from your research, does the Record contain any further information
5 supporting SFPP's claim that it operated the other terminal sites in a prudent and
6 reasonable manner?

7 A112. Not that I have been able to find.

8 Q113. Do you believe there is sufficient evidence in the record supporting SFPP's claim
9 that shippers should pay the remediation costs associated with these other
10 terminal sites?

11 A113. No. Although I do not have information or data on many of the terminal sites, the
12 information I have uncovered casts serious doubt on whether SFPP can actually
13 determine that any releases actually occurred on jurisdictional facilities.
14 Therefore, in my opinion, SFPP has failed to establish with respect to its terminal
15 operations that its shippers should be responsible for the environmental
16 remediation costs that SFPP has incurred. Since it is my understanding that SFPP
17 has the burden of proof on this issue as I discussed previously in connection with
18 the Mission Valley Terminal, I believe that there is no basis in this Record for
19 requiring shippers to bear SFPP's environmental remediation costs. I have also
20 noted with regard to the Mission Valley and Colton terminals that there are
21 serious questions regarding the prudence of SFPP's operations and remediation
22 efforts.

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1 Q114. You indicated that a relatively small portion of SFPP's remediation costs relate to
2 other sites that are unrelated to SFPP's terminals.

3 A114. Yes. SFPP has provided no data with respect to the cause of releases or its course
4 of conduct at these remediation sites. It is therefore difficult for me to assess
5 whether shippers should pay for these costs. For present purposes, however, I am
6 not disputing these environmental costs with one exception, the Oakland Airport
7 Junction. [REDACTED]

8 [REDACTED].

9 **[CONFIDENTIAL MATERIAL REDACTED]** Since SFPP has provided no
10 evidence with respect to the location or cause of this contamination, I believe
11 there is insufficient evidence to justify including these costs in SFPP's
12 jurisdictional cost of service. For all other non-terminal sites, I am including
13 these remediation costs in my cost of service simply to limit the issues that need
14 to be litigated in this case. These costs total approximately \$1.1 million as shown
15 on Exhibit X (TES12-000059, Confidential) to my Supplemental Reply
16 testimony. However, I may amend my testimony with respect to these sites as
17 additional facts become known.

18 **IV. LEGAL COSTS ASSOCIATED WITH SFPP'S ENVIRONMENTAL**
19 **REMEDIATION PROJECTS SHOULD NOT BE BORNE BY SHIPPERS**

20 Q115. You indicated earlier in your testimony that shippers should not pay for the legal
21 expenses associated with defending SFPP's environmental remediation lawsuits.
22 Can you explain why?

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1 A115. Yes. Just as it is clear that shippers should not pay for of the vast majority of
2 SFPP's environmental remediation costs, it is equally clear that shippers should
3 not pay the legal costs that SFPP has been incurring in order to defend its position
4 with respect to these same environmental remediation issues. As I noted earlier,
5 the largest amount of directly assigned legal costs shown on Schedule 12 of
6 Attachment C to Mr. Wetmore's testimony is for SFPP's defense against the
7 Complaint that was brought by City of San Diego. As I discussed previously, in
8 this lawsuit the City claims that SFPP violated environmental regulations and
9 orders, and acted in an unconscionably dilatory and negligent manner in causing
10 and responding to pollution at the Mission Valley site. Since SFPP has failed to
11 show that the releases at the Mission Valley site involved jurisdictional assets,
12 there is no basis, in my opinion, for allocating legal costs to jurisdictional pipeline
13 service and compelling shippers to pay them.

14 Q116. Are there other environmental legal costs which you think should also be
15 excluded from SFPP's cost of service?

16 A116. I do not have sufficient information at this time to fully answer the question.
17 However, it is clear that some of the other legal costs shown on Mr. Wetmore's
18 Schedule 12, Attachment C also appear to relate to environmental issues.

19 Q117. In your Reply Testimony, you presented an analysis of a corporate overhead
20 expense allocation for SFPP based on the assumption that the Commission were
21 to accept the validity of assigning legal expenses directly. Since you now believe
22 that it is not appropriate for most of SFPP's environmental remediation expenses

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1 to be included in its cost of service, what changes would you recommend be made
2 with regard to the allocation of SFPP's legal expenses?

3 A117. As an initial matter, in my Reply Testimony, I indicated that all of SFPP's
4 overhead expenses, including legal expenses should be allocated through the MA
5 formula. I would note however, that to the extent that SFPP or KMEP has been
6 found to be negligent or imprudent, then these costs should more properly be
7 borne by KMEP's shareholders and no allocation be made across the various
8 KMEP entities. For present purposes I include the Mission Valley legal expenses
9 in my use of the MA formula.

10 Q118. Didn't you also offer an alternative overhead cost allocation methodology?

11 A118. Yes. I offered an alternative method in which I accepted the direct assignment of
12 legal expenses. I concluded that a total overhead expense of \$15.0 million should
13 be allocated to the jurisdictional pipeline. That total amount included \$6.8 million
14 in overhead expenses allocated through my use of the Massachusetts formula
15 plus, pending my review of environmental remediation issues, a total of \$8.2
16 million in legal expenses that Mr. Wetmore directly assigned to the CPUC-
17 jurisdictional.¹⁸⁵ However, I now believe that it is inappropriate to assign to the
18 jurisdictional pipeline legal costs related to the Mission Valley environmental
19 remediation case. Those legal costs amount to \$6.0 million out of the \$8.2
20 million of directly assigned legal costs.

21 Q119. What is the impact of the elimination of environmental legal expenses on your
22 alternative overhead analysis?

¹⁸⁵ As listed on Schedule 12 of Mr. Wetmore's Schedule C Workpapers, provided in his November 5, 2012 Prepared Direct Testimony.

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1 A119. In my alternative overhead analysis, I now assign only \$2.2 million of legal costs
2 as a direct expense. As a result, the total amount of overhead that would be
3 allocated to SFPP under this alternative analysis would be \$9.0 million.

4 **V. IMPACT OF TREATMENT OF ENVIRONMENTAL REMEDIATION**
5 **COSTS ON THE COST OF SERVICE**

6 Q120. Have you recomputed the cost of service that you presented in the first part of
7 your Reply Testimony on February 5, 2013, to take into account your treatment of
8 SFPP's environmental remediation costs?

9 A120. Yes. In the Reply Testimony that I filed on February 5, 2013, I had not yet
10 determined the amount of environmental remediation costs that should be
11 included as operating expenses in my cost of service. Therefore, I did not include
12 any costs for environmental remediation at that time. As I indicated above, I have
13 now concluded that \$1.1 million of environmental remediation costs should be
14 included in SFPP's cost of service.

15 Q121. Have you re-calculated the cost of service, achieved return and rates based on this
16 new cost of service?

17 A121. Yes. As you may recall, I computed this information using two alternative
18 assumptions regarding the proper cost of debt. Therefore I again present two cost
19 of service analysis both including the \$1.1 million in environmental remediation
20 costs. These cost of service analyses are included as Exhibits Y (TES12-000060)
21 and Z (TES12-000061) to my Supplemental Reply Testimony. These exhibits
22 indicate that my revised cost of service for jurisdictional service is between \$79.8
23 million and \$82.4 million.

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1 Q122. Does this change in your cost of service change any of the opinions you presented
2 in your Direct and Reply Testimony regarding the fact that SFPP's rates,
3 including its request for a 6.76% rate reduction, were not just and reasonable?

4 A122. No. The change in the cost of service is relatively minimal, representing an
5 increase of less than 1.5%. Based on my revised cost of service, SFPP was over
6 recovering its cost of service by between 45% and 49% relative to the rates it was
7 charging before it applied for a rate decrease and by between 35% and 39% after
8 its rate decrease. This demonstrates that SFPP's rates are not just and reasonable
9 and even after factoring in its rate reduction, its rates are not just and reasonable.
10 Furthermore, SFPP's achieved return remains very high, in the range of 19% to
11 22.1% and its return on equity ranges from 39% to almost 50%, far above a
12 reasonable rate of return.

13 Q123. Did you also recompute rates based on your two cost of service analyses?

14 A123. Yes, I have provided them as part of Exhibits Y (TES12-000060) and Z (TES12-
15 000061). I used the same rate methodology as in my Reply Testimony.

16 Q124. Does that conclude your Supplemental Reply Testimony?

17 A124. Yes. However, I may revise my testimony if new facts develop regarding SFPP's
18 operations.

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Sworn Declaration

I, Peter K. Ashton, hereby declare, under penalty of perjury under the laws of the State of California, that the foregoing testimony is true and correct to the best of my knowledge and belief.

Executed at Concord, Massachusetts, on this 15th day of February, 2013.

A handwritten signature in black ink, appearing to read "Peter K. Ashton", with a stylized flourish at the end.

Peter K. Ashton

PROOF OF SERVICE

I, Aaron Wesley Korenewsky, declare as follows:

I am employed in the City of Washington, D.C. I am over the age of eighteen years and not a party to this action. My business address is Goldstein & Associates, P.C., 1757 P Street NW, Washington D.C. 20036. On February 19, 2013, I served the within:

PREPARED SUPPLEMENTAL REPLY TESTIMONY OF PETER K. ASHTON

on the interested parties in this action addressed as follows:

See Attached Service List



(BY PUC E-MAIL SERVICE) By transmitting such document electronically from Goldstein & Associates, P.C., Washington, D.C. to the electronic mail addresses listed above.



(BY FEDEX OVERNIGHT DELIVERY TO ALJ BEMESDERFER)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 19, 2013, at Washington, D.C.

/s/ Aaron W. Korenewsky

Aaron W. Korenewsky



California Public
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Service Lists

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[TOP OF PAGE](#)

[BACK TO INDEX OF SERVICE LISTS](#)