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Jury Clears Edison In \$32M Exxon Refinery Outage Trial

By **Bonnie Eslinger**

Law360, Los Angeles (February 29, 2016, 4:07 PM ET) -- A California federal jury on Monday cleared an Edison unit of allegations it negligently caused power outages at an ExxonMobil refinery that purportedly led to nearly \$32 million in lost profits and other damages.

U.S. Magistrate Judge Michael R. Wilner summed up the 10-page unanimous jury verdict, which came after less than a day's worth of deliberation: "It's a straight defense verdict."

On Thursday, the parties wrapped up the nearly one-month trial with **closing arguments**. Southern California Edison's attorney, Justin M. Goldstein of Carlsmith Ball LLP, told jurors that the power outages were caused by matters outside the control of the utility.

ExxonMobil's suit focused on power failures at its Torrance refinery it claims were caused by Southern California Edison, including one on Nov. 24, 2010 — when a raccoon triggered an outage — and subsequent outages on three dates in 2012.

ExxonMobil told jurors that Edison failed to follow its own maintenance and repair protocols to prevent outages, which resulted in \$30 million in profit loss and more than \$1.6 million in equipment damage.

State law governing Southern California's electrical services contract with ExxonMobil dictates that the company will "exercise reasonable diligence" provide electricity and avoid any shortages or interruption, according to ExxonMobil.

Attorneys for Southern California Edison, who hugged and shook hands after the jurors were discharged, referred a request to comment to a utility spokesperson.

Southern California Edison later released a brief statement saying they were "pleased with the verdict" and the jury's unanimous decision.

ExxonMobil's attorney Jack S. Yeh of Sidley Austin LLP said he was "very disappointed" in the verdict.

"We'll evaluate all of our legal options, including an appeal," he told Law360.

During Thursday's closing arguments, Goldstein told the eight jurors that outages were just a "fact of life," but that ExxonMobil bore some responsibility for the power failures.

With regard to the raccoon incident, there's no proof that the furry mammal got in under an Edison fence, as alleged by ExxonMobil, when it was equally likely that it climbed over,

he said, adding that gaps at the bottom of the chain-link barrier were caused by a water ditch nearby on the refinery's property.

The refinery employees were also to blame for the abundant wildlife within the 700-acre facility area because they fed the feral cats that attracted the raccoons and other critters, Goldstein said.

And a Jan. 9 outage was caused by a balloon that floated into the electrical wires, Goldstein said.

"If Edison didn't control the cause of the event, there's no liability," he said.

Goldstein said the oil company tried to "cast Edison as the villain" to blame for the power outages and sidestepped the fact that if it invested more money to upgrade its system, it wouldn't have these outages.

During Thursday's closings, Yeh told jurors that ExxonMobil felt it had no other option than to sue Southern California Edison for breach of contract and negligence.

"Edison is a monopoly, it has no competition, the refinery cannot get its power from anywhere else," Yeh said. "This is why Edison is indifferent to the refinery's needs."

Damage from a power outage at the refinery on Jan. 9 was exacerbated because Edison had days earlier disabled a primary protection relay, a device that shuts down contacts when it senses an abnormal electrical circuit condition.

ExxonMobil's suit also alleged that refinery operations were stalled for days in October 2012, after an electrical explosion called a flashover occurred at Edison's substation, caused by dirt buildup on equipment as a result of the utility's inadequate washing of its circuits. The utility said the equipment was tested and had no buildup, but ExxonMobil said evidence showed the circuits had been washed immediately after the outage.

After the jurors were discharged, Judge Wilner took a moment to talk with them outside of the courtroom. The judge later told the parties the jurors asked to take "selfie" photographs with him and let him know they had given nicknames to the lawyers and court officials.

"Mine was Robert Downey Jr. with an Owen Wilson voice," he said with a smile.

ExxonMobil Oil Corp. is represented by Jack S. Yeh, Ronald C. Cohen, Alexis Miller Buese, Erin C. Witkow and Melissa O. Evidente of Sidley Austin LLP and John W. McGuinness, Brandon P. Reilly and Tara Church of Manatt Phelps & Phillips LLP.

Southern California Edison is represented by James M. Polish, Justin M. Goldstein and Mary R. Conklin of Carlsmith Ball LLP and Patricia A. Cirucci and Brian A. Cardoza of Southern California Edison.

The case is ExxonMobil Oil Corp. v. Southern California Edison Co., case number 2:12-cv-10001, in the U.S. District Court for the Central District of California.

--Editing by Patricia K. Cole.

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