

October 24, 2018

The Honorable Tani G. Cantil-Sakauye, Chief Justice  
and Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street, Room 1295  
San Francisco, California 94902-4797

Re: *Pac. Gas & Elec. Co. v. Superior Court (Abbott)* (Court of Appeal No. A154847)

**Application to File Letter Brief of *Amici Curiae* Southern California Edison Company and San Diego Gas & Electric Company in Support of Pacific Gas & Electric Company**

Pursuant to Rule 8.500(g) of the California Rules of Court, Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) respectfully request permission to file the accompanying *amici curiae* letter brief in support of Pacific Gas & Electric Company’s (“PG&E’s”) Petition for Review (“Petition”). *Amici* have a unique perspective on the important issues raised in this case.

SCE and SDG&E are two of California’s oldest and largest electricity providers. Together, they deliver power to more than 18 million individuals and businesses across nearly 55,000 square miles in central, coastal, and southern California. Like PG&E, SCE and SDG&E are privately owned utilities whose businesses and the consumers they serve have been significantly affected by California courts’ recent decisions expanding liability for inverse condemnation under the Takings Clause – a cause of action traditionally applied only to government entities. This Court has never ruled that inverse condemnation liability applies to privately owned utilities. This Court’s silence has resulted in lack of clarity for the trial courts in determining when, if at all, inverse condemnation liability can lawfully apply to privately owned utilities, particularly those without the right to socialize inverse condemnation losses. *Amici* request permission to file this letter brief because PG&E’s petition does not fully address the potential effects of this issue on *amici*’s businesses and customers.

*Amici* believe that their views will help the Court resolve this case by illustrating how the trial court’s ruling, if allowed to stand, would have significant and detrimental consequences for privately owned utilities and their customers, and extend inverse condemnation liability beyond what this Court has previously authorized.

**Letter Brief of *Amici Curiae* Southern California Edison Company and San Diego Gas & Electric Company in Support of Pacific Gas & Electric Company**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

For decades, this Court and other California courts have held that the fundamental purpose and underpinning of inverse condemnation actions is to spread the cost of public improvements throughout the benefitted community when that cost would otherwise be unfairly borne by individual property owners. But a series of recent lower court decisions, including the respondent court’s order overruling PG&E’s demurrer, disregard this constitutional rationale and justification of inverse condemnation. Although these lower courts have ruled on somewhat differing bases, they have each expanded inverse condemnation liability to shift losses—resulting from conduct not determined to be tortious—from some private parties to other private parties (not to the public at large). As described in the Petition, the respondent court’s ruling is a misguided expansion of inverse condemnation liability that will have significant negative consequences for privately owned utilities and all Californians. The uncertainty created for privately owned utilities (with courts subjecting them to inverse condemnation liability on the one hand, and the regulator denying the utilities the right to spread their losses on the other) is already harming the utilities, their employees, customers, and investors. *Amici* respectfully submit that this Court, which has never ruled that privately owned utilities are subject to inverse condemnation liability, must intervene and reestablish the constitutional bounds of inverse condemnation.

Privately owned utilities furnish vital services to California’s residents and are a foundation of the state’s economy. Indeed, these companies deliver electricity to 75 percent of Californians, are among the state’s largest employers and tax payers, and are on the front lines of implementing California’s environmental policies to mitigate the risks of climate change. The respondent court’s decision effectively makes privately owned utilities insurers of all property within miles of their equipment, threatening these utilities’ economic viability and ability to fund infrastructure and new services to their customers. These threats impact not only the utilities but also their millions of customers, who ultimately bear the consequences of weakened utilities. Correcting the respondent court’s mistake is especially urgent in light of changing environmental conditions that have contributed to increasingly frequent, intense, and destructive wildfires.

The trial court’s expansion of inverse liability has serious implications for thousands of pending claims arising out of California’s wildfires. The risks to privately owned utilities are not speculative. Standard & Poor’s, citing the “disconnect between the [California Public Utility Commission’s] prudence standard...and the courts[’] strict liability standard,” concluded that

“the recent heightened risk associated with potential wildfire-related liabilities is a growing concern and presents an immediate threat to California’s regulated electric utilities.”<sup>1</sup>

This issue is too important to both the public and courts to wait for eventual resolution on appeal. There are numerous cases pending in trial courts throughout the state arising out of recent wildfires. The courts and the parties are in urgent need of direction from this Court regarding inverse condemnation liability. *Amici* respectfully ask this Court to grant PG&E’s Petition and hold that inverse condemnation is inapplicable to privately owned utilities who cannot socialize losses incurred across the broader community. Alternatively, the Court should grant PG&E’s Petition and transfer this case to the Court of Appeal with instructions to issue an alternative writ and consider the Petition on the merits.

### **I. Statement of Interest of *Amici Curiae* Southern California Edison Company and San Diego Gas & Electric Company**

*Amici* are two of California’s oldest and largest electricity providers. Both SCE and SDG&E are privately owned utilities that are directly regulated by the California Public Utilities Commission (“PUC”) as to their retail rates. Although they provide a public service, privately owned utilities are not government entities or other state actors.

Privately owned utilities differ in important ways from government entities. Government entities are largely shielded from liability and unpredictable litigation costs by sovereign immunity, while privately owned utilities enjoy no such protection. Government entities can recover cost increases through taxes, fees, unilateral rate increases, and the power to issue tax-exempt debt, while privately owned utilities cannot do any of these things. Instead, privately owned utilities must ask permission from the PUC to raise their rates. The PUC has discretion to permit or deny rate increases as it sees fit. This important distinction was brought into sharp relief in 2017 when the PUC denied SDG&E’s request for a rate increase to recover almost \$400 million in uninsured losses—including inverse condemnation losses—arising out of 2007 wildfires.

SCE and SDG&E have a particular interest in this case because application of inverse condemnation to privately owned utilities has a substantial impact on both utilities and their customers. As described more fully below, the constitutional prerequisite to inverse condemnation liability is the ability to socialize losses as a matter of right—i.e., to accomplish the fundamental policy of inverse condemnation: shifting the costs of a public improvement from an unfairly burdened private party to the public at large. Currently, certain appellate courts have applied inverse condemnation to privately owned utilities, but beginning with the PUC’s recent decision on SDG&E’s application for rate recovery with respect to the 2007 wildfires, the state

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<sup>1</sup> S&P Global Ratings, *Will Wildfires Scorch California’s Utilities?*, dated June 18, 2018 at 1, 3; *id.* at 3 (“The state’s susceptibility to wildfires combined with its regulatory risks are inconsistent with any other regulatory jurisdiction in North America[.]”).

(acting through the PUC) is not allowing those utilities to socialize the costs of such liability. The courts' application of this doctrine to private companies that lack the power to spread inverse condemnation losses as a matter of right is therefore unconstitutional and illogical.

## II. Why Review Should Be Granted

*Amici* SCE and SDG&E respectfully submit that the Supreme Court should grant review because: (1) the respondent court erred by rejecting the well-settled constitutional principle that socialization of inverse condemnation losses is the *sine qua non* of inverse condemnation liability; (2) the application of inverse condemnation to privately owned utilities without regard to the ability to socialize inverse losses is having a significant, widespread, and damaging effect on utilities, their ability to serve their customers effectively, and their capacity to assist the state in meeting its challenging environmental goals; (3) the issue in the North Bay Fire cases is currently presented in numerous other wildfire-related cases throughout California but this Court has never before spoken on the application of inverse condemnation to privately owned utilities; and (4) the issue presented in this writ should be resolved with haste because climate change and the devastating wildfires it contributes to have become the “new normal” in California.<sup>2</sup>

## III. The Respondent Court Expanded Inverse Condemnation in an Unprecedented Way

Inverse condemnation is a constitutional cause of action for property owners to seek just compensation when the government takes or damages property to further the public interest.<sup>3</sup> The court below held that a privately owned utility can be held liable in an inverse condemnation action even if the utility cannot socialize inverse condemnation losses to the community at large. No California appellate court has authorized such an extension of inverse condemnation liability, and counsel has not located any other state highest court decisions applying inverse condemnation to privately owned utilities in similar circumstances.

The respondent court cited two Court of Appeal decisions—*Barham v. Southern California Edison Company*<sup>4</sup> and *Pacific Bell Telephone Company v. Southern California Edison Company*<sup>5</sup>—in support of its ruling. But the respondent court's decision on inverse condemnation actually extended rather than applied those cases, which both presumed cost-

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<sup>2</sup> Vives et al., *Southern California's Fire Devastation Is “the New Normal,” Gov. Brown Says*, L.A. Times (Dec. 10, 2017), <http://www.latimes.com/local/lanow/la-me-socal-fires-20171210-story.html>.

<sup>3</sup> *Holtz v. Superior Court*, 3 Cal. 3d 296, 304 (1970) (limiting application of inverse condemnation liability to “physical injuries of real property that were proximately caused by the improvement as deliberately constructed and planned”).

<sup>4</sup> 74 Cal. App. 4th 744 (1999).

<sup>5</sup> 208 Cal. App. 4th 1400 (2012).

spreading as a matter of right. The respondent court’s ruling conflicts with settled law that inverse condemnation claims are founded upon socialization of losses.<sup>6</sup>

The respondent court’s decision warrants immediate review and correction, and its error illustrates why trial courts need guidance on when (and whether) to treat damage as a “taking,” triggering a constitutional inverse condemnation claim, as opposed to a tort, triggering a negligence, trespass, or nuisance claim.<sup>7</sup>

The more removed a case is from a paradigmatic “taking”—in which the government deliberately exercises its eminent domain power for the public benefit by initiating a condemnation proceeding<sup>8</sup>—the more important it is for this Court to provide guidance. Cases like this one are particularly remote from the traditional takings context: Plaintiffs assert claims against *private* rather than government defendants, and their claims ultimately allege ordinary negligence rather than deliberate property damage or seizure in furtherance of a legitimate public purpose. This case is therefore an appropriate vehicle for the Supreme Court to clarify the bounds of inverse condemnation for the many superior court judges handling wildfire cases throughout California.

As applied by the respondent court, inverse condemnation functions as an end run around sovereign immunity and a shortcut to recovery from private entities engaged in the provision of public services, eliminating long-established elements of fault while ignoring critical prerequisites of a constitutional claim sounding in the Takings Clause.

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<sup>6</sup> See, e.g., *Holtz*, 3 Cal. 3d at 303 (explaining that “the underlying purpose” of inverse condemnation is to “distribute throughout the community the loss inflicted upon the individual by the context of public improvements: to socialize the burden . . . that should be assumed by society”); *Albers v. Cty. of Los Angeles*, 62 Cal. 2d 250, 263 (1965) (“[T]he policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of public improvements.”); *Belair v. Riverside Cty. Flood Control Dist.*, 47 Cal. 3d 550, 558–59 (1988) (“[T]he underlying purpose of our constitutional provision in inverse—as well as ordinary—condemnation is to distribute throughout the community the loss inflicted upon the individual . . . . Balanced against this cost-spreading objective is the reality that boundless liability will thwart the development of beneficial public improvements.”).

<sup>7</sup> See, *Sheffet v. Cty. of Los Angeles*, 3 Cal. App. 3d 720, 733–34 (1970) (“[I]nverse condemnation does not involve ordinary acts of carelessness in the carrying out of the public entity’s program,” and property is “only deemed taken or damaged for a public use if the injury is a necessary consequence of the public project.”).

<sup>8</sup> See, e.g., *United States v. Clarke*, 445 U.S. 253 (1980) (“The phrase ‘inverse condemnation,’ as a common understanding of that phrase would suggest, simply describes an action that is the “inverse” or “reverse” of a condemnation proceeding.”); *Breidert v. S. Pac. Co.*, 61 Cal. 2d 659, 663 (1964) (“An inverse condemnation action is an eminent domain proceeding initiated by the property owner rather than the condemner. The principles which affect the parties’ rights in an inverse condemnation suit are the same as those in an eminent domain action.”); *Customer Co. v. City of Sacramento*, 10 Cal. 4th 368, 376–77 (1995) (“The ‘just compensation’ clause is concerned, most directly, with the state’s exercise of its traditional eminent domain power, guaranteeing that when the state proposes to take private property for public use, the owner of the property promptly will receive just compensation.”).

#### **IV. Judicial Expansion of Inverse Condemnation to Privately Owned Utilities Regardless of Their Ability to Socialize Costs Harms Utilities and Many Other Interests**

Urgent review is necessary because recent judicial action unbinding inverse condemnation from its traditional moorings has had significant consequences for privately owned utilities. And given the critical role that privately owned utilities play as citizens and engines of economic growth, the state's economy, environment, and communities are suffering reverberating repercussions.

##### **A. Privately Owned Utilities Make Substantial Contributions to California**

The goods and services provided by privately owned utilities are of fundamental importance to California residents. *Amici* deliver power to millions of Californians, and maintain vast electrical systems containing hundreds of thousands of miles of transmission and distribution lines, hundreds of thousands of transformers and other pieces of equipment, and millions of electric poles. *Amici* and other privately owned utilities invest heavily in their systems to protect against a variety of natural threats, including wildfires. Approximately 9 million acres of SCE's service territory consist of high fire risk areas. For SDG&E, approximately 1.6 million acres are in high fire risk areas. PG&E and *amici* together employ more than 40,000 Californians. In 2017, SCE spent approximately \$3.8 billion on contracts with more than 3,200 suppliers, including \$1.8 billion spent on diverse suppliers. Last year, SCE paid almost \$480 million in taxes and franchise fees, making it Los Angeles County's largest taxpayer. Similarly, in 2017, SDG&E spent more than \$1.5 billion with suppliers, with more than \$703 million spent on diverse suppliers. Further, in 2017, SDG&E paid over \$275 million in local taxes and franchise fees.

Privately owned utilities make other substantial investments in California, ranging from developing new technology and improved infrastructure, to investing in community programs for the public good. Privately owned utilities are leading implementers of California's environmental policies. As was recently explained in a letter from renewable energy industry leaders to the Governor and Legislative leaders, the "continued viability" of the state's utilities "is fundamental to achieving many of California's future objectives, including both clean energy advancements and reduced wildfire danger."<sup>9</sup> Indeed, SCE delivers more solar power nationally than any other utility, and more than 28 percent of its energy comes from renewable sources. Approximately 45 percent of SDG&E's energy delivered to customers is renewable.

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<sup>9</sup> May 7, 2018 Letter to Governor Brown, Senator Atkins, Speaker Rendon, and others from Bradford, Cavanagh, et al. available at <https://www.nrdc.org/experts/ralph-cavanagh/avoiding-another-type-electricity-crisis>.

B. Privately Owned Utilities Serve the Public Good, But Lack Protections and Powers Necessary to Shoulder Inverse Condemnation Liability

Privately owned utilities occupy a space somewhere between a private company and a municipal utility, shouldering many of the burdens of each type of entity but lacking concomitant privileges and powers. As mentioned previously, privately owned utilities lack sovereign immunity and other legal protections afforded to public entities. Unlike municipal utilities, privately owned utilities cannot rely on public funding or tax-free bonds to raise capital and must rely instead on private markets.<sup>10</sup> Privately owned utilities also have fiduciary duties to their shareholders, many of whom are individual California residents and retirement and pension funds. Similarly, unlike a private company, utilities cannot choose to avoid high-risk or fire-prone areas or choose which customers they will serve—the PUC requires utilities to provide service to all customers, including those in high-risk areas.

Most important for PG&E’s appeal, privately owned utilities lack unilateral rate-setting authority to spread their costs or losses. Rather, privately owned utilities must obtain approval from the PUC before raising rates to recover their costs. But the PUC has recently made clear that it does not consider inverse condemnation relevant to its ratemaking determinations; indeed, PUC Commissioners have urged the courts to revisit their application of inverse condemnation liability to privately owned utilities, noting the significant disconnect between the courts’ assumption that loss-spreading is available to these utilities and the PUC’s policy of not considering inverse condemnation losses when exercising its exclusive rate-making authority.<sup>11</sup> The possibility that a privately owned utility *may* be able to recoup inverse condemnation losses in the event that it satisfies the PUC’s prudent manager standard at some future time does not cure the constitutional problem the respondent court has created.<sup>12</sup> To be sure, if a privately

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<sup>10</sup> See Cal. Energy Comm’n, *Differences Between Publicly and Investor-Owned Utilities*, CA.gov, [http://www.energy.ca.gov/pou\\_reporting/background/difference\\_pou\\_iou.html](http://www.energy.ca.gov/pou_reporting/background/difference_pou_iou.html).

<sup>11</sup> Decision, Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA) (Cal. P.U.C. Dec. 6, 2017); see also Concurrence of President and Commissioner Michael Picker and Commissioner Martha Guzman Aceves, Decision, Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA) (Cal. P.U.C. Dec. 26, 2017) (“We also respectfully urge the California Courts of Appeal to carefully consider the rationale for applying inverse condemnation in these types of cases.”); 2 App. 329 at 21:29–22:15 (“[I]t is worth noting that the doctrine of inverse condemnation as it’s been developed by the courts and applied to public utilities may be worth re-examining in a sense that the courts applying the cases to public utilities have done so without really grappling with the salient difference between public and privately owned utilities, which is that there’s no guaranty that . . . privately owned utilities can recover the cost from their rate payers. So this is an issue that the legislature and the courts may wish to examine and may be called on to examine in the future.”).

<sup>12</sup> Under the respondent court’s approach, Plaintiffs need not establish that a private utility was at fault. But to recover its inverse condemnation losses through a PUC-approved rate increase, a private utility would bear the

owned utility somehow fails to satisfy the prudent manager standard, it has no means of reclaiming the inverse condemnation damages sustained in a prior court proceeding.

This situation is untenable: On the one hand, certain California courts, including the respondent court, have dramatically expanded privately owned utilities' exposure to claims of property loss and damage. On the other hand, privately owned utilities have no independent ability to socialize inverse condemnation losses through rate increases. And, most troubling, the respondent court has now held that inverse condemnation losses need not be socialized at all so long as they are not borne by the plaintiffs. This framework is unconstitutional and poses a serious danger to privately owned utilities.

C. Inverse Condemnation Liability Threatens the Economic Health of Privately Owned Utilities, Which Impacts Millions of California Consumers

Even before the respondent court held that privately owned utilities need not be able to spread the costs incurred by inverse condemnation in order to be subject to inverse liability, participants in capital markets had become keenly aware that California's unique inverse condemnation doctrine exposes privately owned utilities to billions of dollars in unrecoverable losses regardless of fault.<sup>13</sup> For example, until October 6, 2017, the Friday before the Wine Country fires began, PG&E's stock was trading at approximately \$70 per share. But from October 9, 2017 through December 29, 2017, PG&E's stock price tumbled to approximately \$45. This 36 percent drop represented billions of dollars in contraction in PG&E's market capitalization. The stock price for SCE's parent company, Edison International ("Edison"), followed suit once the Southern California fires broke out in December of last year. Whereas Edison's stock had previously been trading at about \$80 on December 4, 2017, the day the Thomas Fire broke out, news of the fires caused its stock price to fall by more than 14 percent two days later, representing billions in reduction in its market capitalization.

These dramatic reductions in PG&E's and Edison's stock prices impact their ability to raise capital in the equity markets, which is needed to fund electrical infrastructure. Likewise, citing the uncertainty and risk created by inverse condemnation liability as applied to privately

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burden to affirmatively satisfy the PUC that it had acted prudently, which is largely a hindsight, search for perfection review that requires no causal nexus to the damage suffered.

<sup>13</sup> See J.P. Morgan, *North America Equity Research: Edison International*, dated January 11, 2018 at 1 (noting that California's inverse condemnation law significantly increases the risk of operating a utility in the state); Evercore ISI, *CPUC Rejects Recovery of SDG&E Wildfire Costs; PCG's Financial Risk Related to Inverse Condemnation Remains*, dated December 1, 2017 at 2 (identifying California's inverse condemnation law as a factor in PG&E's stock price fluctuations); Deutsche Bank, *Market Research: Earnings No Match for Wildfire Talk*, dated November 13, 2017, at 1 ("The call included plenty of discussion of the question of California's inverse condemnation doctrine for utilities which has been a subject of intense scrutiny of late among utility investors.").

owned utilities, the ratings agencies have downgraded *amici* and related entities.<sup>14</sup> Citing the “disconnect between the [PUC]’s prudence standard . . . and the courts[’] strict liability standard,” Standard and Poor’s indicated that continued exposure to unrecoverable inverse condemnation damages, “could result in a deterioration of credit quality and lower credit ratings for all of the California regulated electric utilities.”<sup>15</sup> Such credit downgrades have a serious impact on access to capital. The market’s response reflects concern that, even if privately owned utilities were not at fault for causing the fires, they could still be liable for unrecoverable inverse condemnation losses. Customers suffer if California’s privately owned utilities are disfavored in the financial markets, including because the utilities are unable to undertake the electrical infrastructure, renewable energy, and other improvements that better serve California and its needs.

As the PUC has noted, “[r]easonable financial health is necessary so that each utility may serve reliable, safe and adequate electricity at just and reasonable rates.”<sup>16</sup> After all, adequate capital is essential for utilities to operate, modernize, and expand their electrical transmission and distribution facilities. Such efforts are in the public interest.<sup>17</sup>

Relatedly, judicial expansion of inverse condemnation has impacted insurance costs for some utilities. As the PUC recently explained, privately owned utilities in California are beginning to have difficulty “obtain[ing] insurance to . . . cover the risk of fire both to their infrastructure and from their infrastructure.”<sup>18</sup> This is because carriers are increasingly reluctant to underwrite wildfire risk given climate change, expansion of developments in the wildland-urban interface, and the increased destructiveness of California wildfires. These issues are compounded by judicial action exposing privately owned utilities to potentially enormous and

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<sup>14</sup> Moody’s Investors Service, *Rating Action: Moody’s Changes Edison International and Southern California Edison’s Rating Outlooks to Negative* (Apr. 11, 2018), [https://m.moody.com/Research.html?docid=PR\\_380780](https://m.moody.com/Research.html?docid=PR_380780) (“SCE’s credit profile is weighed down by the potentially large contingent exposure created by the application of [a] strict liability standard in California in the case of wildfires where utility equipment was determined to be the source of the fire.”); see also Moody’s Investors Service, *Rating Action: Moody’s Changes San Diego Gas & Electric’s Rating Outlook to Negative from Stable* (Apr. 11, 2018), [https://www.moody.com/research/Moodys-Changes-San-Diego-Gas-Electrics-Rating-Outlook-to-Negative--PR\\_380749](https://www.moody.com/research/Moodys-Changes-San-Diego-Gas-Electrics-Rating-Outlook-to-Negative--PR_380749) (“The increasing inverse condemnation risk exposure has caused us to reassess our view of the credit supportiveness of the regulatory environment in California.”).

<sup>15</sup> S&P Global Ratings, *Will Wildfires Scorch California’s Utilities?*, dated June 18, 2018 at 3, 4.

<sup>16</sup> Interim Opinion Modifying Decision 01-03-082 to Change Restriction on Use of Surcharge Revenues, D.02-11-026 at § 3.

<sup>17</sup> The PUC has also acknowledged that a key factor in the financial health of public utilities is creditworthiness, since a lack of access to credit significantly impedes the utilities’ ability to procure and supply electricity at reasonable cost. *Id.* at § 3.1.1.

<sup>18</sup> Wednesday, Feb., 7, 2018 Commissioner Informational Webinar on Impacts of Climate Change and Resulting Resiliency, at 48:25-40, <http://www.adminmonitor.com/ca/cpuc/other/20180207/>.

unrecoverable losses under inverse condemnation principles. In this environment, wildfire liability insurance coverage has become more expensive and may, in the future, become unavailable for certain utilities.

## V. Frequent and Intense Wildfires Are the “New Normal” in California, Compounding the Negative Effects of Unbounded Inverse Condemnation Liability

Wildfires have always been a part of California’s landscape due to the state’s geography, ecology, and weather patterns. Recent experience, however, suggests that intense, devastating wildfires are here to stay. The past year saw five of the most destructive wildfires in California history.<sup>19</sup> Climate change and human land use and management practices have combined to increase the environmental, physical, and economic threats posed by wildfires.<sup>20</sup> Hotter summers and persistent droughts are projected to continue: by mid-century, average temperatures in the Los Angeles region could rise by 4.3°F,<sup>21</sup> and 4.9°F in the San Diego region.<sup>22</sup> An abundance of dying trees and dry vegetation—born after winter rains but dried to kindling by scorching summer heat—provides fuel for these fires.<sup>23</sup> Efforts to contain these fires by managing forests and fires have been historically ineffective—or worse, counterproductive.<sup>24</sup> Moreover, new residences in high-risk areas increase the probability that fire will cause injury and damage.<sup>25</sup>

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<sup>19</sup> Cal. Dep’t of Forestry & Fire Prot., *Top 20 Most Destructive California Wildfires*, CA.gov (Jan. 12, 2018), [http://www.fire.ca.gov/communications/downloads/fact\\_sheets/Top20\\_Destruction.pdf](http://www.fire.ca.gov/communications/downloads/fact_sheets/Top20_Destruction.pdf).

<sup>20</sup> See, e.g., John T. Abatzoglou & A. Park Williams, *Impact of Anthropogenic Climate Change on Wildfire Across Western US Forests*, 113-42 Proc. Nat’l Acad. Sci. (Oct. 2016) at 11770–75; Robinson Meyer, *Has Climate Change Intensified 2017’s Western Wildfires?*, The Atlantic (Sep. 7, 2017), <https://www.theatlantic.com/science/archive/2017/09/why-is-2017-so-bad-for-wildfires-climate-change/539130/>; Chelsea Harvey, *Here’s What We Know About Wildfires and Climate Change*, Sci. Am. (Oct. 13, 2017), <https://www.scientificamerican.com/article/heres-what-we-know-about-wildfires-and-climate-change/>.

<sup>21</sup> Inst. of the Env’t & Sustainability, Univ. of Cal., Los Angeles, *Research Project: Climate Change in the Los Angeles Region*, <https://www.ioes.ucla.edu/project/climate-change-in-the-los-angeles-region>.

<sup>22</sup> County of San Diego, *Climate Action Plan*, Ch. 4-3 (2018), available at [https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate\\_Action\\_Plan\\_Public\\_Review.html](https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate_Action_Plan_Public_Review.html).

<sup>23</sup> Eleanor Cummins, *How the End of the Drought Likely Exacerbated the Deadly California Wildfires*, Slate (Oct. 10, 2017), [http://www.slate.com/articles/health\\_and\\_science/science/2017/10/how\\_the\\_drought\\_fueled\\_california\\_s\\_wildfires.html](http://www.slate.com/articles/health_and_science/science/2017/10/how_the_drought_fueled_california_s_wildfires.html).

<sup>24</sup> Little Hoover Comm’n, *Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada* (Feb. 2018) at 12–14.

<sup>25</sup> Michael L. Mann et al., *Modeling Residential Development in California from 2000 to 2050: Integrating Wildfire Risk, Wildland and Agricultural Encroachment*, 41 Land Use Pol’y 438 (Nov. 2014) at 438–52.

Wildfires are expected to increase not only in number,<sup>26</sup> but also in duration and intensity. In 2017, wildfires burned more than 505,000 acres in California.<sup>27</sup> Moreover, wildfires, which were traditionally concentrated in the fall months, are increasingly likely to take place year-round.<sup>28</sup> As Governor Brown declared, catastrophic wildfires have become the “new normal” in California.<sup>29</sup> Although the consequences for this “new normal” should be shared by all Californians, inverse condemnation forces privately owned utilities to bear outsized financial exposure that results from California’s changing climate.

Urgent attention is required by this Court to address the very real legal, economic, and environmental problems created by the respondent court’s decision. Wildfires worsen each year and privately owned utilities face an ever-increasing risk of liability, no matter what precautions they take. SCE and SDG&E respectfully urge this Court to decide now that inverse condemnation cannot extend to private entities if they have no right to socialize the losses.

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<sup>26</sup> According to CAL FIRE, California agencies responded to 4,785 fires in 2016 and 7,117 fires in 2017. CAL FIRE, *Incident Information: Number of Fires and Acres*, CA.gov, (Jan. 24, 2018), [http://cdfdata.fire.ca.gov/incidents/incidents\\_stats?year=2017](http://cdfdata.fire.ca.gov/incidents/incidents_stats?year=2017) (including all wildfires responded to by CAL FIRE in both the State and Local Responsibility Areas as well as all large wildfires in the State Responsibility Area protected by CAL FIRE’s contract counties).

<sup>27</sup> *Id.*

<sup>28</sup> Melissa Palmer & Elizabeth Espinosa, “*We Don’t Even Call It Fire Season Anymore . . . It’s Year Round*”: *Cal Fire*, KTLA (Dec. 11, 2017), <http://ktla.com/2017/12/11/we-dont-even-call-it-fire-season-anymore-its-year-round-cal-fire/>.

<sup>29</sup> Vives et al., *Southern California’s Fire Devastation Is “the New Normal,” Gov. Brown Says*, L.A. Times (Dec. 10, 2017), <http://www.latimes.com/local/lanow/la-me-socal-fires-20171210-story.html>.

**VI. Conclusion**

*Amici* respectfully request that this Court grant PG&E's Petition and decide that inverse condemnation is inapplicable to privately owned utilities. Alternatively, the Court should grant the Petition and transfer this case to the Court of Appeal with instructions to issue an alternative writ and consider PG&E's writ petition on the merits.

Sincerely,



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**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 620 Newport Center Drive, Suite 1300, Newport Beach, CA 92660.

On October 24, 2018, I served the foregoing document(s) described as:

**APPLICATION TO FILE LETTER BRIEF OF *AMICI CURIAE* SOUTHERN CALIFORNIA EDISON COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY IN SUPPORT OF PACIFIC GAS & ELECTRIC COMPANY**

on the interested parties in this action as stated on the attached mailing list.

- (BY ELECTRONIC FILING SERVICE) I filed and served such documents through the Court of Appeal's electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling).
- (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Hon. Curtis E.A. Karnow  
Superior Court of California  
County of San Francisco  
400 McAllister Street  
San Francisco, CA 94102

**VIA MAIL**

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

Executed on October 24, 2018, at Newport Beach, California.

\_\_\_\_\_  
Sarah Jones  
(Type or print name)

\_\_\_\_\_  
  
(Signature)