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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Coordination Proceeding Special Title (Rule 3.550)	CASE NO. JCCP 4955
CALIFORNIA NORTH BAY FIRE CASES	**SUBROGATION PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY AND PG&E CORPORATION'S DEMURRER [C.C.P. §430.10(e)]**
	DATE: May 18, 2018
	TIME: 9:00 a.m.
	DEPT: 304
	JUDGE: Hon. Curtis E.A. Karnow

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I. INTRODUCTION

Plaintiffs' cause of action for inverse condemnation is based on Article I, section 19 of the California Constitution which provides, in part that "private property shall not be taken or damaged for public use without just compensation having first been made… to the owner."

Generally, when the construction or operation of a public improvement results in damage to private property without just compensation having been paid, the property owner may bring an inverse condemnation action against the owner of that improvement. *Breidert v. Southern Pac. Co.* (1964) 61 Cal. 2d 659, 663, fn. 1. In this instance, well-established California law holds that a property owner who suffers damage as a result of the operation of a power line may recover against a privately owned public utility under an inverse condemnation theory. *Barham v. So. Cal. Edison* (1989) 74 Cal. App. 4th 744, 753; *Pacific Bell Telephone Co. v. Southern Cal. Edison* (2012) 208 Cal. App. 4th 1400.

Procedurally, PG&E's demurrer ignores California law which limits the attack on the pleadings to only defects on the face of the complaint or matters subject to judicial notice. Under the guise of its Request for Judicial Notice, PG&E seeks to have the Court consider the substance of a "CPUC" hearing and CPUC decision to support its arguments that the *Barham* case should be overturned by this Court and that inverse condemnation as applied to PG&E is unconstitutional. Such a position flies in the face of longstanding authorities that for the purposes of ruling on a demurrer, no extrinsic evidence is allowed and judicial notice is limited to only matters that are indisputably true and not hearsay. In other words, the court cannot accept as true the contents of other pleadings or decisions in other actions just because they are part of the court file.

The fallacy of this demurrer is that PG&E's arguments are based on its claim that the CPUC's decision in SDG&E's for Authorization to Recover Costs is a "CPUC Policy." The foundation for this entire motion is based on a "House of Cards," because the supposed CPUC "policy" decision simply does not exist; in its place is a single CPUC ruling applicable to a single application for a rate increase for a different utility, (San Diego Gas & Electric), involving

different wildfires which occurred over 10 years ago in a location over 700 miles south of the present fires. Further, even if this decision were the basis for some kind of fundamental policy shift, the only portions of the decision cited by PG&E are inadmissible hearsay and/or contested factual arguments. California law is clear that such matters are neither facts nor amenable to judicial notice and have no place in a demurrer.

II. LEGAL ARGUMENT

A. The Demurrer Must Be Overruled Because Plaintiffs Have Properly Alleged All Elements of the Inverse Condemnation Cause of Action.

The procedural rules relating to a Demurrer are well settled. The limited role a demurrer is to test the legal sufficiency of a complaint. *Cal. Practice Guide: Civil Procedure Before Trial* ¶7:5. A demurrer is designed only to challenge those defects which exist on the face of the complaint or from other matters which are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. California law requires that "in ruling on [a] demurrer, the trial court ha[s] to accept as true all material facts properly pleaded in plaintiff's petition." *Burt v. Cnty. Of Orange* (2004) 120 Cal. App. 4th 273, 277. *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591.

Plaintiffs have met their obligation to properly plead this cause of action by stating the elements of inverse condemnation which are that: (1) Plaintiffs had an interest in real or personal property[1]; (2) Defendant planned, constructed, approved, operated or otherwise substantially participated in some activity for a public use; (3) Plaintiffs' property was physically taken or damaged; and (4) the Defendant's activity or failure to act as planned was a substantial cause of the taking or damage. *Cal. Civ. Prac. Real Property Litigation (2017) § 15:129.*

The Subrogation Master Complaint specifically alleges that: (1) Plaintiffs' insureds were owners of real and/or personal property damaged in the wildfires (See Plaintiffs' Request for Judicial Notice ("PRJN") Exhibit No. 4 ¶221); (2) PG&E installed, owned, operated, used,

[1] The subrogation plaintiffs' who have filed and/or adopted the Subrogation Master Complaint have standing as the insurers of the affected owners to bring an action for inverse condemnation as a subrogee. *Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal. 3d 865.

controlled and/or maintained power lines and other electrical equipment for the public delivery of electricity, including power lines in and around the location of the North Bay Fires (*Id. ¶222);* (3) the resulting fires caused damage or destruction of Plaintiffs' Insureds' property (*Id. ¶223);* and (4) the damage was legally and substantially caused by PG&E for a public use (*Id. ¶224).* With these legal elements met, the cause of action for Inverse Condemnation has been properly pled and for this reason, the court should overrule PG&E's demurrer on procedural grounds.

California caselaw under *Barham, supra,* 74 Cal.App.4th 744 and *Pacific Bell Telephone Co., supra,* 2018 Cal.App.4th 1400, hold that a privately held public utility may be held liable for inverse condemnation. PG&E does not dispute the holdings of these cases, it just claims those cases are wrongly decided.

However, the reasoning of *Barham* and *Pacific Bell* is sound. Under California law, an electric utility is empowered with the right of eminent domain. Public Utilities Code § 612. That right has been repeatedly asserted by PG&E and other electric utilities to "take" or obtain property rights for power lines. See, e.g., *Pacific Gas and Electric Co. v. W. H. Hunt* (1957) 49 Cal.2d 565; *Pacific Gas and Electric Co. v. Hufford* (1957) 49 Cal.2d 545; *Smith v. Pacific Gas and Electric Co.* (1933) 132 Cal.App. 681; *San Diego Gas & Electric Company v. Daley* (1988) 205 Cal.App.3d 1334. More importantly, the providing of electrical power to the general public has been held to be a "public use" for purposes of inverse liability *Slemons v. Southern Cal. Edison* (1967) 252 Cal.App.2d 1022, 1026.

In *Barham,* (*supra*), the court was presented with a factual scenario virtually identical to the present case and held that a privately owned public utility may be liable in inverse condemnation as a public entity under Article I, section 19 of the California Constitution. The court in *Barham* held that the principal focus is the concept of "public use," as opposed to the nature of the entity appropriating the property (*Barham, supra,* 74 Cal.App.4th at p. 753).

As a result, property owners who suffer damage as a result of the failure of a power line, while it was in use for a public use, may recover against an electric utility under inverse condemnation theories. *Pacific Bell Telephone Co., supra* 208 Cal. App. 4th 140; *Marshall v.*

Department of Water and Power, (1990) 219 Cal.App.3d 1124; *Aetna Life and Casualty Company, supra,* 170 Cal.App.3d 865; *Barham, (supra)* 74 Cal.App. 4th 744. In *Pacific Bell*, the Court of Appeals reaffirmed the holding of *Barham* and revisited the issue of public use as applied to a privately owned, public utility. In that case, the court noted that Southern California Edison (hereinafter "SCE"), a privately owned public utility, possessed **monopolistic or quasi-monopolistic authority,** which derived directly from its **exclusive franchise** provided by the state (citing *Gay Law Students Association v. Pacific Tel. & Tel. Co.* (1979) 24 Cal. 3d 458). There, the court noted that the public utility's monopoly is guaranteed and safeguarded by the State Public Utilities Commission. Here, PG&E is in exactly the same position as Edison in the *Pacific Bell* case.

In the present case, any mention of PG&E's state sanctioned monopoly is notably absent from its moving papers. Rather, PG&E makes the astounding claim that it is entitled to a **guaranteed rate increase** to recover the costs of wildfires caused by the failure of **its equipment** in delivering electricity for a public use. In essence, PG&E wants to have it all: (1) a state sanctioned monopoly on the delivery of electrical power; (2) a guarantee that it can raise its rates to cover costs of wildfire damages incurred by homeowners whose homes are destroyed by fires started by PG&E's facilities; (3) a corresponding exemption from CPUC regulation requiring that utilities be governed by a prudent manager standard and (4) an exemption from the protections provided to our citizens under the constitution to be free from a taking of private property without giving just compensation. If PG&E's position is accepted, it would result in a terrible injustice to the victims of this catastrophy.

The present wildfires are not isolated incidents. In addition to the prior wildfires alleged in the Master Complaints, the *Pacific Bell, Marshall, Aetna* and *Barham* cases, all involved fires caused by power lines. Plaintiffs are clearly entitled to recover their damages under the doctrine of inverse condemnation as illustrated by the holding in *Marshall.* In *Marshall*, the facts were substantially similar to the present case. A fire occurred as a result of downed power lines which ignited dry vegetation in the area of origin. In that case, the court specifically held:

> In order to establish an actionable "taking," the plaintiff must demonstrate a causal relationship between the governmental activity and the property loss complained of [citations]. Typically, this element is referred to as "proximate cause." Unlike the corresponding element in negligence cases, however, foreseeability is not a consideration for inverse condemnation. Instead, ***a governmental entity may be held strictly liable, irrespective of fault, where a public improvement constitutes a substantial cause of the plaintiffs damages***, even if only one of several concurrent causes [citations], *Marshall, supra,* 219 Cal.A[[.36 at p. 1139, emphasis added).

In this instance, PG&E, as a public utility, will be held to the same standard as a public entity for the purposes of inverse condemnation liability.

The justification for holding a privately held public utility liable for inverse condemnation was explained in *Gay Law Students Assn., (supra)* 24 Cal.3d 458. In that case, the California Supreme Court held that a public utility is more akin to a governmental entity than a purely private actor. "[T]he nature of the California regulatory scheme demonstrates that the state generally expects a public utility to conduct its affairs more like a governmental entity than like a private corporation." *Id.* at 469. The holding in *Gay Law Students* forms the core of the *Barham* decision that there is no basis to differentiate between damage caused by public utilities and damage caused by privately owned utilities for the purposes of inverse condemnation. PG&E's incorrect and misguided interpretation of the legal effect of the CPUC's preliminary WEMA Decision is so broad that it asserts that forty years of this Court's Constitutional jurisprudence was effectively overturned by the CPUC's decision.

B. PG&E's Broad Request For Judicial Notice Is Improper And Should Be Denied.

The matters raised by PG&E pertaining to the ongoing CPUC hearings are not subject to judicial notice as discussed in detail in Plaintiffs' accompanying Objections to Request for Judicial Notice. Judicial notice should be given only to prove the fact that on November 30, 2017, the CPUC denied an Application by San Diego Gas & Electric (hereinafter "SDG&E") to recover costs related to the 2007 Southern California Wildfires, the "Decision Denying

Application," relating to the Wildfire Expense Memoranda Account (hereinafter the, "WEMA Decision"). (See Plaintiffs' Opposition to Request for Judicial Notice.)

A demurrer may only test the pleadings alone and not the evidence or other extrinsic matters. *Cal. Practice Guide: Civil Procedure Before Trial* ¶*7:8.* The only issue involved, is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action. *Afuso v. United States & Guar. Co., Inc.* (1985) Cal.App.3d 859, 862 (disapproved on other grounds). In the matter at hand, the WEMA Decision is a **preliminary** decision by the CPUC that is not yet final and not subject to review by this court. (See PRJN Exhibits 1,2,3) Judicial notice of other court records and files is limited to matters that are indisputably true, as distinguished from the contents of the documents and the truthfulness of the contents. *Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.

A court may only grant a demurrer when a complaint is defective on its face or from matters that are judicially noticeable. *Cal. Practice Guide: Civil Procedure Before Trial* ¶*7:5.* Given that the substance of PG&E's demurrer is based upon the **content** it perceives in the WEMA Decision, and the content is inadmissible, the demurrer must be overruled.

C. The WEMA Decision is Not a Final Decision.

The WEMA Decision that is at the heart of PG&E's demurrer is not ripe for review because it is not a final decision. When properly limited, the parties' requests for judicial notice show that: (1) SDG&E, PG&E, and SCE have filed applications for rehearing of the WEMA Decision; (2) the CPUC has not ruled on those applications; and (3) SDG&E, PG&E, and SCE have threatened to appeal any adverse ruling by the CPUC to the proper court.[2] (See Plaintiffs' Opposition to Request for Judicial Notice;) Further, as discussed in the next section, the proper court for such review is either the court of appeal or Supreme Court because this Court lacks jurisdiction to conduct any such review.

[2] On March 1, 2018, Sempra Energy announced that it would also seek appellate review if the CPUC denied SDG&E's request for rehearing. (See https://www.rtoinsider.com/sempra-energy-sdge-wildfire-cost-recovery-87547/.)

On January 2, 2018 SDG&E filed an application for rehearing of the WEMA Decision. (See PRJN No.1). On January 2, 2018 PG&E and SCE jointly filed an application for rehearing. (See PRJN No. 2) On January 17, 2018, the Office of Ratepayers Association filed a response to these applications by the utilities arguing that the CPUC correctly determined that inverse condemnation is not relevant to its application of the Public Utilities Code § 451, and that the denial of cost recovery is supported on the record. (See PRJN No. 3)

Whether or not SDG&E, PG&E, or SCE seeks appellate review, the decision of the CPUC is not "final" because the CPUC has not issued a ruling on the application for rehearing. (*City of Los Angeles v. Public Utilities Commission* (1975) 15 Cal.3d 680, 707; *Communications Telesystems Int'l v. California Public Utilities Commission*, 196 F.3d 1011, 1016 (9th Cir. 1999) ["According to California law, the 'final' administrative decision is the one made on an application for rehearing, not the original decision.".)

D. This Court Is Not The Proper Venue To Rule On The Validity Of The WEMA Decision.

"'[T]he [C]PUC is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers.'" *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300; *New Cingular Wireless PCS, LLC v. Public Utilities Commission* (2016) 246 Cal.App.4th 784, 806.

This Court lacks jurisdiction to conduct a review of the WEMA Decision because that jurisdiction rests exclusively with the Court of Appeal or the Supreme Court. As the First District Court of Appeal recently held in *PegaStaff v. California Public Utilities Commission* (2015) 236 Cal.4th 374, 383, "[P]ursuant to its plenary authority under Article XII, section 5 of the state Constitution 'to establish the manner and scope of review of commission action in a court of record,' the Legislature has explicitly restricted the jurisdiction of the superior court in cases involving the CPUC."

The *PegaStaff* court further held:

> "The Legislature's provision in [Public Utilities Code §] 1760 for full consideration of constitutional issues in the appellate courts means that a party such as PegaStaff that is aggrieved by a statute it contends is unconstitutional has an adequate remedy. It also supports an interpretation of [Public Utilities Code §] 1759 as ***depriving superior courts of jurisdiction even in constitutional cases involving constitutional issues***. [Emphasis added].)

(*Id.*, at p. 391; see *California Public Utilities Commission v. Superior Court* (2016) 2 Cal.App.5th 1260, 1272 ["[B]y its nature, the broad limitation on jurisdiction in section 1759, subdivision (a) will sometimes result in depriving the superior court of jurisdiction it might otherwise have as a court of general jurisdiction had the party been other than the CPUC. (See Cal. Const., Art. VI, § 10.)"; see also, *PG&E Corporation v. Public Utilities Commission* (2004) 118 Cal.App.4th 1174, 1221 ["We acknowledge that a superior court action premised on a violation of a CPUC order poses the peculiar problem that section 1759 precludes the superior court from reviewing the propriety of the CPUC order that forms the basis for the action."].)

Public Utilities Code § 1759(a) provides:

> "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court."

Public Utilities Code § 1760 sets forth the manner in which the Court of Appeal or Supreme Court would conduct such a review:

> "Notwithstanding Sections 1757 and 1757.1, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court or court of appeal shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final."

For these reasons, this Court simply has no subject matter jurisdiction to inquire into the lawfulness of the CPUC's Decision. (See *Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 681 ["The CPUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a

concurrent superior court action addressing the same issue."]; see also *Anchor Lighting v. Southern California Edison Co.* (2006) 142 Cal.App.4th 541, 548.) Any such inquiry must be left to the Court of Appeal and the Supreme Court.[3]

E. The Decision Is Not Ripe Until All Administrative Remedies Have Been Exhausted.

Where there are concurrent judicial and administrative proceedings, the ripeness doctrine "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." (*Pacific Legal Foundation, supra,* 33 Cal. 3d 158, 171; see *PegaStaff, supra*, 236 Cal.App.4th at p. 388 ["The general rule is that a plaintiff must first exhaust administrative remedies before seeking a judicial remedy. [Citation.]"; see also *Davis v. Southern California Edison* (2015) 236 Cal. App. 4th at p. 645; *PG&E Corporation, supra,* 118 Cal.App.4th at p. 1217; *Schell v. Southern California Edison Co.* (1988) 204 Cal.App.3d 1039, 1047.) Here, PG&E has failed to exhaust its administrative remedies and therefore the WEMA decision is not ripe for review.

F. The CPUC's Authority to Decide Rate Increases Does Not Impact Inverse Condemnation Law.

The CPUC's authority to fix rates is set by the California Constitution, Art. XII, § 6, that provides: "The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction." The CPUC's process of establishing rate amounts is set by statute. Public Utilities Code §§451, 454.

Well-established agency practice requires that a utility demonstrate to the CPUC that its actions were both reasonable and prudent in order to recover costs through a rate adjustment. "A

[3] To challenge the WEMA Decision, PG&E must bring a writ of review in the Court of Appeal or the Supreme Court. Public Utilities Code § 1756(a).

utility may recover all costs which the commission determines to be **reasonable and prudent** by adjusting rates paid by its customers. If the commission determines that any costs were not reasonably incurred, it orders the utility to make an adjustment to reduce rates prospectively or make a refund to its ratepayers." (*Southern California Gas Co. v. Public Utilities Commission* (1990) 50 Cal.3d 31, 36, fn. 3. Emphasis added.)

Here, there is a major disconnect in PG&E's logic because a finding of liability under Inverse Condemnation has no effect on a determination by the CPUC of whether rates should be adjusted. It is notable that PG&E has not shown that it ever sought authority from the CPUC to recover costs for the California North Bay Fires. PG&E has not shown that it ever sought approval from the CPUC to recover any settlement amounts. PG&E has not shown that the CPUC has actually applied the "WEMA" to any utility. For the purposes of this demurrer, there is simply no logical connection between the CPUC's rate setting authority and inverse condemnation law.

Based on the record before this Court, the CPUC has not applied its interpretation of the relationship of liability under inverse condemnation to a concrete set of facts and any review of that interpretation would necessarily depend on speculative future facts. Such as it is, that interpretation is not ripe for review by any court.

G. PG&E's Acceptance Of A State Sanctioned Monopoly in Exchange For Its Agreement To Be Regulated By The CPUC Cannot Be Challenged By Demurrer.

As noted above, the CPUC is not an ordinary administrative agency, but a constitutionally established body with broad legislative and judicial powers. *Wise, supra,* 77 Cal.App.4th at p. 300. In exchange for being granted an effective monopoly on the provision of utility services, PG&E has submitted to the vast regulatory powers of the CPUC. *See* Cal. Const. Art. XII §§ 5-6. The California Constitution "confers broad authority on the PUC to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparations, and establish its own procedures." *Utility Consumers Action Network v. Public*

Utilities Comm. (2004) 120 Cal.App.4th 644, 645. The CPUC's jurisdiction includes the authority to establish rates collected by privately owned utilities which will permit the utility to recover its cost and expenses, plus a reasonable rate of return on the value of its property devoted to public use. *Southern Cal. Gas. Co., supra,* 23 Cal.3d at p. 476.

PG&E seeks to frame the CPUC's "WEMA Decision" as demonstrable evidence that the application of Inverse Condemnation to privately owned utilities is inappropriate because the CPUC may decline to automatically grant any subsequent rate increase requests for failing to meet the commissions prudent manager standard. This argument fundamentally misunderstands the CPUC's role in regulating such privately owned utilities. The CPUC has the **exclusive responsibility** of making policy decisions related to rate setting. *SFPP, L.P. v. Public Utilities Commission* (2013) 217 Cal. App. 4th 784, 798. Those policy decisions are non-reviewable by California courts, even when they conflict with the policy decisions made by another authority in a manner that adversely affects the utilities. *Id.*

As an investor owned utility, PG&E has an obligation to generate profits for its shareholders. However, it is well settled that privately owned utilities have no Constitutional right to profits. *Id.* at 801. Instead, the CPUC determines the reasonable rate of return based upon the value of the service the utility "employs **for the convenience of the public**." *Id.* (emphasis added). It is not the CPUC's mission to ensure that all privately owned utilities are widely profitable every year, and/or that their officers compensation/bonus packages increase significantly each year, regardless of the company's conduct, and/or even if the company is not prudent in its management. In fact, the CPUC "must set the [return on equity] at the lowest level that meets the test of reasonableness." *Application of Pacific Gas and Electric Company* (Nov. 7, 2002) 221 P.U.R. 4th 501, 510. It is plainly within the power of the CPUC to evaluate the entire course of a privately owned utility's conduct and determine that it is not entitled to spread the costs incurred as a result of its failure to manage and operate its facilities as a prudent manager. This is the deal that PG&E struck long ago: it is entitled to enjoy the dominant power of a monopoly position, free from competition in the delivery of electricity; but at the cost of

submitting to the CPUC's decisions even when they negatively impact the profitability of the enterprise. PG&E cannot come running to the courts when this bargain isn't as beneficial as it has come to expect in previous years. Whether it is by design or by oversight, the filing of the present demurrers, while simultaneously appealing the WEMA Decision, has the ability to create chaos in the CPUC process and the Court if left unchecked. For this reason the demurrer must be overruled.

III. CONCLUSION

Plaintiffs' cause of action for Inverse Condemnation, on its face, clearly complies with the California pleading requirements and therefore the court need not even consider PG&E's factual arguments, all of which fall outside the four corners of the complaint. For this reason alone, the demurrer must be overruled.

PG&E cannot cure the defects in its demurrer by its Request for Judicial Notice because the substance of the WEMA Decision which forms the core of its demurrer cannot be judicially noticed. Even if the content of the WEMA Decision could be considered, this court cannot review or interpret the decision because (1) it is not a final decision; (2) the decision is not ripe because PG&E has failed to exhaust its administrative remedies; and (3) by statute(s), the Superior Court lacks jurisdiction.

PG&E argues that it as well as the rest of California are victims of years of successive drought, extreme tree mortality, unprecedented weather events and extreme winds, all of which combined to cause the subject wildfires on October 8 and 9, 2017. In essence, PG&E's arguments amount to a claim that climate change ignited these fires and that "there is nothing we could have done to prevent it." (See demurrer at p.8:14-15). Such arguments ignore the reality that PG&E was well aware of these factors many years before this catastrophe, as illustrated by PG&E's long history of safety failures and the numerous prior wildfires alleged in the Master Complaint at pages 11-18. For the purposes of this demurrer, the history of PG&E's safety

failures and prior wildfires must be accepted as true and in fact, PG&E does not, and cannot, dispute these allegations.

PG&E's demurrer amounts to a commentary on the social consequences of permitting inverse condemnation liability against it. However, a demurrer is not the proper vehicle to address these issues such as the preservation of the economic health of a state sanctioned monopoly; ensuring delivery of electricity or job losses to the state. These may be issues for legislative action or constitutional amendment but not through demurrer.

PG&E's request for guaranteed automatic rate increases is not only a direct challenge to the authority of the CPUC and its constitutional rate setting powers, but also ignores the historical fact that PG&E specifically accepted the regulatory authority of the CPUC in exchange for the privilege of a state sanctioned monopoly. PG&E treads into dangerous territory for ratepayers because its request amounts to a continuation of its monopoly, (which not only eliminates competition for the delivery of electrical power), but also allows PG&E to set its own prices for the product by guaranteeing rate increases to recover costs of wildfire damages caused by fires started by PG&E facilities. It is often said that natural monopolies include public utilities such as electricity and gas suppliers. Such enterprises require huge investments and it is often inefficient to duplicate the products that they provide. Such monopolies inhibit competition, but they are given legal status as state sanctioned monopolies because of the importance of these products to society. In exchange for the right to conduct business without competition, these monopolies must accept regulation. Here, PG&E seeks to maintain its monopoly and escape regulation.

Finally, it is important to note that this opposition does not contend that PG&E is never entitled to a rate increase to cover its costs. Under appropriate circumstances and pursuant to regulations set by the CPUC, rate increases may be properly granted to utilities to cover wildfire costs and PG&E has never shown that it cannot comply with the CPUC's guidelines and regulations. However, invalidating decades-old precedents which apply inverse condemnation

law to privately owned public utilities is not the path to follow and in any event, should not be handled by demurrer.

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