Appeal No. B352851

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 5

SOUTHERN CALIFORNIA
EDISON COMPANY et al.,
Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,
Respondent.

GUILLLERMO FIGUEROA et al.,
Real Parties in Interest

Appeal from the Superior Court
Case No. JCCP5266 (Lead Case No. 22STCV30891)
The Honorable Carolyn B. Kuhl

REAL PARTIES IN INTEREST'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

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CERTIFICATE OF INTERESTED PERSONS OR ENTITIES

The following entities or persons have (1) an ownership interest of 10 percent or more in the party or parties filing this certificate, or (2) a financial or other interest in the outcome of the proceedings that the justices should consider in determining whether to disqualify themselves:

- Not Applicable.

Dated: April 10, 2026

TIMOTHY D. McGONIGLE

By: _____
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I. PRELIMINARY ISSUE: THE PETITION IS UNTIMELY

Before getting to the merits, there is a fatal procedural problem with the Petition for Writ of Mandate ("Petition") filed by Southern California Edison Co. ("SCE") which defeats this Court's jurisdiction to hear the Petition. As was already discussed in Real Parties' informal preliminary opposition, SCE's Petition was not filed within the statutory timeframe, and this Court therefore lacks jurisdiction to entertain it.

The Petition – inaccurately – purports to have been filed on March 5, 2026 (see Petition at ¶36); but, as SCE later acknowledged, and this Court duly noted, the Petition was actually filed March 6, 2026 (Order dated March 30, 2026). It was filed one day too late. (The calculation is straightforward since the Petition itself indicates that March 5, 2026 was the last day upon which it could be filed timely following a 10 day extension granted by the Superior Court. (Petition at ¶36, citing 14 Appen. 3829; 14 Appen. 3865.)

In a declaration filed with this Court after Real Parties in Interest raised the timeliness issue, SCE stated that it had *attempted* to file the Petition on March 5, 2026, only to have that filing rejected by the Clerk. According to the same declaration, SCE corrected the deficiency and "refiled the Petition" on March 6, 2026.

But, any such *attempted* filing is irrelevant insofar as the time limits for statutory writs are strictly jurisdictional. *See Eldridge v. Superior Court* (1989) 208 Cal.App.3d 1350, 1355). *Eldridge* establishes that when the petition is untimely, "this court is without jurisdiction to hear the petition." *Id*. at 1353. *See, also, MinCal Consumer Law Group v. Carlsbad Police Dept*. (2013) 214 Cal.App.4th 259, 264 ("A time limit prescribed by the Legislature for filing a petition for writ of mandate is jurisdictional" and "if a writ petition is not filed within the time limit, we are without power to review the merits of the trial court's ruling." (citation and internal quotation marks omitted).)

The Court of Appeal in *Sturm, Ruger & Co. v. Superior Court* (1985) 164 Cal.App.3d 579, 582 found the time limit for seeking writ review of a ruling under Cal. Code. Civ. Proc. §437c to be mandatory after having found that the "clearly articulated legislative purposes can best be effectuated by applying section 437c, subdivision (l), in a manner which compels litigants timely to seek extraordinary relief upon their being made aware of the trial court's ruling." *Id*.[1]

[1] In the version of Cal. Code. Civ. Proc. §437c that was in effect in 1985 subsection (l) provided the applicable time limits for writ review which are now codified at Cal. Code. Civ. Proc. §437c (m)(1).

In response to Real Parties in Interest's informal preliminary response raising the lack of jurisdiction, SCE merely explained *why* its Petition was not filed timely; SCE never cited any authority authorizing appellate jurisdiction over a late-filed petition for writ of mandate. Because the deadline is both mandatory and jurisdictional, the Petition should be denied. But, even if the Court determines it has jurisdiction to entertain the late-filed Petition, it should still be denied on substantive grounds and because extraordinary relief is not warranted.

II. INTRODUCTION

SCE is "an investor-owned public utility . . .." [2] Real Parties in Interest are plaintiffs who suffered damages allegedly caused by SCE's failure to maintain one of its disused but still energized powerlines which led to ignition of the Fairview Fire.

SCE'S Petition arises from Superior Court's denial of one aspect of SCE's Motion for Summary Adjudication, the portion in which SCE argued it could not be held liable in inverse condemnation for a fire caused by its failure to maintain a disused – but energized – power line known as the "Sprague

[2] https://www.sce.com/about-sce

Circuit" or the "Subject Circuit." 14 Appen. 3830. Plaintiffs presented evidence that part of the Sprague Circuit suffered from excessive line sag that violated CPUC requirements, and had SCE only disconnected/deenergized the span between two poles on the Sprague Circuit (the "Subject Span") after it was taken out of service, the Fairview Fire would not have occurred. (13 Append. 3558 ¶15-18). (SCE takes no issue with the Superior Court's granting of the portion of its Motion for Summary Adjudication barring punitive damages against the utility.)

In the portion of its ruling for which SCE now seeks immediate review through its untimely Petition, the Superior Court correctly noted that there was evidence presented that the Sprague Circuit was "part of SCE's publicly regulated electric grid" (14 Appen. 3830.) Plaintiffs contend that a failure of the Sprague Circuit caused the Fairview Fire when a sagging conductor – which had been maintained by SCE in violation of CPUC standards – contacted a Frontier communication wire which in turn sparked the Fairview Fire. (*Id*.) Plaintiffs provided evidence that the Sprague Circuit was in the top 25% of SCE circuits for fire risk (13 Append. 3558 ¶13); that a portion of the circuit consisting of the span between Poles 220028S and 220029S ("Subject Span") sagged excessively (13 Append. 3558 ¶14); "[h]ad SCE had taken

timely corrective action to repair the excessive sag on the conductors, the Fairview fire would more than likely not have happened" (13 Append. 3558 ¶16); the Subject Span had not been serving any customers since approximately 2018 or 2019, meaning there was no need for this span to remain energized at the time of the Fairview Fire (13 Append. 3558 ¶17); and, had SCE only disconnected the Subject Span and placed it in an deenergized state *in compliance with SCE's own policy*, the fire would not have happened (13 Append. 3558 ¶18). SCE concedes that the Subject Span "was not providing electricity to anyone" at the time of the fire. Petition at ¶14.

The right of an individual to obtain fair compensation for damages caused by public improvements is an important and constitutionally protected right; inverse condemnation is the mechanism through which plaintiffs may vindicate those rights by obtaining compensation on a favorable basis compared to traditional tort remedies. "[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 by the making of public improvements' (citation) 'to socialize the burden ... —to afford relief to the landowner in cases in which it is unfair to ask him to bear a burden that should be assumed by society.'" *Holtz v. Superior Court* (1970) 3

Cal.3d 296, 303 (*Holtz*) (citations omitted). Normally, even an investor-owned public utility is liable in inverse condemnation for fires caused by its faulty equipment. *Barham v. Southern Cal. Edison Co*. (1999) 74 Cal. App. 4th 744, 753 ("*Barham*.") *See, also*, *Simple Avo Paradise Ranch, LLC v. Southern California Edison Co*. (2024) 102 Cal.App.5th 281, 298 *et seq*., *rev. den*. (Aug. 28, 2024) ("*Simple Avo*") (holding that plaintiff stated a claim for inverse condemnation arising from a fire alleged to have been caused by SCE's power infrastructure).

But, in the portion of SCE's Motion for Summary Adjudication that was denied, SCE formulated a clever – but wholly unreasonable – argument seeking to immunize its conduct from liability for inverse condemnation. SCE sought to shoehorn the facts of the present case through a loophole presented by the rulings in two distinguishable Court of Appeal cases each involving utility company improvements that had been installed pursuant to a private contract, most particularly *Cantu v. Pacific Gas & Electric Co*. (1987) 189 Cal. App. 3d 160, 165 ("*Cantu*"). 1 Appen. 0024 *et seq*. In *Cantu* the utility had dug a joint utility trench pursuant to a private contract with a private developer so that gas, electric, and telephone lines could thereafter be installed underground. *Cantu*, 189 Cal. App. 3d at 162-63. Following heavy

rains, a landslide occurred and the plaintiffs contended that the trench dug above their home had contributed to the slide. *Id*. The trial court found that the utility could be held liable for inverse condemnation, only to have the Court of Appeals reverse, finding that due to the "uniquely private nature of this service," the trench dug exclusively pursuant to a contract with a private developer was not a "public use," since the "trench installed here was designed to fulfill an individual need . . . unlike the construction of permanent transmission towers or power lines . . . which are designed to transmit electricity over a much greater area and which would exist even if these particular plaintiffs were not customers." *Id.,* 189 Cal.App.3d at 164-65 (citations omitted).

In contrast to the trench in *Cantu*, SCE's Sprague Circuit was not constructed as part of a private contract with a private developer, it was most certainly not *maintained* pursuant to any private contract, but as part of SCE's responsibility to maintain the entire grid since it formed part of the electrical grid itself, the system "designed to transmit electricity over a much greater area. . . ." that was distinguished by the *Cantu* court. Indeed, the inverse condemnation claim here was based not so much on the historical construction of the line in the 1950s, but on SCE's failure to adequately maintain its

disused circuit which was no longer serving *any* customers at the time of the fire, but was still being inspected and maintained by SCE as part of its responsibilities to maintain the grid in a safe condition for the public.

The Superior Court correctly analyzed *Cantu* and determined that the broad language upon which SCE relies (namely, that the right to sue in inverse condemnation "does not exist" unless a public utility exercises eminent domain powers to acquire the right to extend a utility line) is dicta. 14 Appen. 3840. (And dicta it was, in part because the *Cantu* case involved a *trench*, not an electrical line subject to future maintenance requirements, and one that was dug only pursuant to a private contract.) The Superior Court also properly distinguished another private contract case relied upon by SCE, *Foley Investments, L.P. v. Alisal Water Corp.* (2021) 72 Cal.App.5th 535, 544 (*Foley*) ("as with the utility company in *Cantu*, Alco installed the Santana main pursuant to a contract with a private developer . . .")

SCE would prefer to overlook the fact that the electrical line here was not installed pursuant to a private contract as it was in *Cantu* and *Foley* and would like to further ignore the fact that it had assumed responsibility for the line by inspecting and maintaining it even after the loss of the original customer. By doing so, SCE seeks to vastly, and unjustifiably, expand the

limited private contract exception to inverse condemnation liability recognized in those cases. That would be a significant change in the law and would greatly expand what is presently only a very limited immunity for inverse condemnation: neither case[3] has *ever* been extended to relieve a public utility from liability for faulty maintenance of its electrical grid, nor has any case extended immunity to a situation not involving a privately contracted improvement.

Nor, indeed, *should* the narrow exception discussed in those cases be extended outside the context of a privately-contracted improvement to immunize SCE's nonperformance of one of its core functions as a public utility, namely, the safe and proper maintenance of its electrical grid, in this case, a line the utility kept energized and repeatedly inspected despite the fact that it was no longer in use by any customer. Any such extension of *Foley/Cantu* to these circumstances would plainly be contrary to the public interest as it would disincentivize both SCE's compliance with CPUC regulations and the taking of reasonable precautions that are necessary to prevent wildfires caused by its electrical grid.

It is well known that SCE's electrical infrastructure has been

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[3] *Foley* has never been cited by a reported decision.

implicated in many devastating wildfires over the past decade, including the Thomas Fire[4] and the Woolsey Fire[5], preceding the Fairview Fire, to name just a few. Expanding the scope of *Cantu* and *Foley* to permit SCE to evade inverse condemnation liability for failing to adequately maintain its own disused but still energized powerlines that were not installed pursuant to a private contract (as had been the case in *Cantu* and *Foley*) would, to put it mildly, be sending the wrong message entirely.

The Superior Court correctly rejected SCE's attempt to misapply *Cantu* and *Foley*, and denied that portion of SCE's Motion for Summary Adjudication seeking to have the Plaintiffs' claims for inverse condemnation dismissed (14 Appen. 3829):

> When SCE is operating pursuant to a tariff rule, and therefore pursuant to authority granted by the CPUC, the utility operations implicate the core rationale for imposing inverse condemnation liability when the utility operations cause injury. In that instance, the consequential costs of utility operations "should be spread among those benefited rather than allocated to a single member of the community." (*Foley*, *supra*, 72 Cal.App.5th at p. 542.) It is the government franchise that requires the utility to act in the stead of the government and thus entails liability for harm

[4] 13 Append. 3453, et seq.

[5] 13 Append. 3489, et seq.

> resulting from the exercise of the franchise. When "the government has chosen to grant a franchise and delegate the furnishing of electricity to [a utility] rather than operating the utility itself[,] [s]uch a delegation does not remove the policy justifications underlying inverse condemnation liability: that individual property owners should not have to contribute disproportionately to the risks from public improvements made to benefit the community as a whole." (*Pacific Bell Telephone Co. v. Southern California Edison Co.* (2012) 208 Cal.App.4th 1400, 1407 (*Pac Bell*).)
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> 14 Append. 3838.

SCE asserts that the issue presented on its Petition is:

> Is a public utility strictly liable in inverse condemnation for damage caused by a line extension solely by virtue of the fact that the extension is regulated by the California Public Utilities Commission, even when the extension did not serve a public use as required by the California Constitution?
>
> Petition pg. 13.

To the contrary, SCE's installation and continuing maintenance of the disused powerline that is alleged to have caused the Fairview Fire -- even after there was no longer any customers being served by the line -- was not done pursuant to any private contract and was therefore in furtherance of a "public use." There was evidence presented that the Sprague Circuit "is part of SCE's publicly regulated electric grid." 14 Appen. 3830. The Court also

correctly relied on *Barham,* 74 Cal.App.4th at 754 to hold that "the transmission of electric power to the public" is "a public use." 14 Appen. 3837. Finally, the Superior Court determined that "[b]ecause SCE has been granted the right to own, operate and maintain the extension line by a public agency in order to transmit electric power to the public, Plaintiffs can make out a claim that their property was damaged by the failure of a public improvement (the Subject Span) maintained by SCE for the benefit of the public." 14 Appen. 3838.

The Petition should be denied because this Court lacks jurisdiction over the untimely Petition, because there's no need for immediate review, and because SCE is flatly wrong on the merits – its electrical transmission network, of which the disused Subject Span formed a portion, was not constructed pursuant to a private contract and was being maintained by SCE as part of its core responsibility to provide electrical services to the public and to maintain the safety of its grid – *not* for any particular private customer. That is a critical distinction – and one which properly recognizes that SCE's obligations to maintain the safety of its electrical grid have a public purpose. In addition, because extending *Cantu/Foley* immunity to SCE under these facts would grossly violate public policy and potentially lead to more

wildfires and resulting losses of life and property – this Court should deny the Petition.

III. ARGUMENT

A. There's No Need For Immediate Review, Nor is it Even Appropriate

"Writ review is deemed extraordinary and appellate courts are normally reluctant to grant it." *Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1220–1221. "[W]rit relief is to be used sparingly, with doubts resolved in favor of denial of review." *Roman Catholic Archbishop v. Superior Court* (1971) 15 Cal.App.3d 405, 410. Here, there are no grounds that justify immediate writ relief of the Superior Court's partial denial of SCE's Motion for Summary Adjudication. As noted *supra*, SCE takes issue with only one of the rulings on its Motion for Summary Adjudication, the Superior Court's denial of the portion of the Motion that sought to strike Real Parties' claims based on inverse condemnation. There's no reason why SCE cannot wait until final judgment in this case for appellate review of that issue.

Appeal ordinarily lies only from a final judgment under the "one final judgment rule" codified in Cal. Code. Civ. Proc. § 904.1(a)(1), which precludes interlocutory appeals from orders such as denials of summary

adjudication motions. While writ relief is theoretically possible under Code of Civil Procedure section 437c, subdivision (m)(1), as a practical matter, appellate courts "seldom use extraordinary writs to review interlocutory summary adjudication orders (grants or denials) . . .." *International Ins. Co. v. Superior Court (Rhone-Poulenc Basic Chemicals Co.*) (1998) 62 Cal.App.4th 784, 788. This case does not provide any compelling reason for immediate writ review – and SCE has a perfectly adequate remedy at law. "A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the extraordinary writ of prohibition." *Rescue Army v. Municipal Court of City of Los Angeles* (1946) 28 Cal.2d 460, 466.

Certainly, the expense and inconvenience of trial do not justify interlocutory writ intervention, or extraordinary relief would become merely ordinary, since a writ could be taken in virtually every case involving a summary judgment/adjudication motion. Nor should it: "[t]he Court of Appeal is generally in a far better position to review a question when called upon to do so in an appeal instead of by way of a writ petition. When review takes place by way of appeal, the court has a more complete record, more time for deliberation and, therefore, more insight into the significance of the

issues." *Omaha Indemn. Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273.

Not helping is SCE's claim that immediate review of the inverse condemnation issue is somehow necessary in order for the utility to be relieved of the "immense pressure" the public utility is under to "settle short of trial" in the face of the "specter of inverse condemnation." Petition at ¶31. Neither the fact that entered SCE settlements prior to the Superior Court's decision on its motion (*id*.), nor SCE's possible decision to settle still pending cases short of trial justifies relief by writ petition. If it did, every partial defeat on summary adjudication would justify emergency relief from the Court of Appeal because every such loss increases the "pressure" on defendants to settle.

In any case, there's certainly no *undue* pressure to settle here: SCE's purported factual basis for that argument is undermined by the fact that the Superior Court *granted* SCE's Motion as to the issue of punitive damages (14 Append. 3829 *et seq*.) – thereby eliminating the utility's potential liability for punitive damages, a decision that greatly reduced any pressure on SCE to

settle, having taken the "unpredictability of high punitive awards"[6] entirely off the table.

SCE's parade of horribles includes the breathless assertion that if the Superior Court's ruling is not reversed, "every public utility will be held strictly liable for any damage its facilities substantially cause, regardless whether the facility served a public or private use." Petition at pg. 27. That, again, greatly overstates the actual holding SCE seeks to challenge. If a public utility can establish that a particular improvement was constructed *pursuant to a private contract* (as was the case in *Cantu* and *Foley*), the narrow private contract exception to inverse condemnation liability of *Cantu/Foley* will continue to apply (at least where the utility has not assumed maintenance of the improvement as was the case here), because there's no public use under those circumstances. But, while a narrow exception to such liability exists, the general rule allowing inverse condemnation claims against electrical utilities comports with sound public policy. If an electrical utility's public infrastructure, or its failure to maintain its transmission grid causes damages to an individual, it is only fair, and indeed, is constitutionally

[6] *Exxon Shipping Co. v. Baker* (2008) 554 U.S. 471, 502.

required that the costs be spread among the utility, its ratepayers and insurers, and not borne solely by the victims.

Furthermore, there's no evidence that the inverse condemnation issue will somehow "elude appellate review" (Petition pg. 16) if SCE's Petition is denied. To the contrary, only if SCE were to decide to settle *every* case arising from the Fairview Fire would the issue avoid appellate review, a circumstance which is, in any event, entirely within SCE's sole control.

B. Even if the Issue Presented a True Emergency Warranting Immediate Review (And it Does Not); SCE Would Lose on the Merits Since the Sprague Circuit Was Neither Installed nor Maintained Pursuant to a Private Contract

1. The Cost-Spreading Purpose of Inverse Condemnation

The purpose of inverse condemnation liability is to spread the burden caused by public improvements throughout the community. *City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091, 1107; *Belair v. Riverside County Flood Control Dist*. (1988) 47 Cal.3d 550, 558. Absent liability for inverse condemnation, one citizen would be disproportionately forced to bear the burden of a public work intended to benefit the public as a whole. *Holtz,* 3 Cal.3d at 303. "The concept of public use is a broad one that encompasses changing public needs. [Citations] . . . However, the concept has limits and

does not extend to projects undertaken pursuant to private contract rather than eminent domain authority, and that are designed to fulfill a private need rather than to serve the public at large." 7 Miller & Starr Real Est. § 23:1 (4th ed.) (citations omitted; emphasis added).

SCE's argument against inverse condemnation liability fails under these circumstances. The question of public use is determined "not upon the fact of who or how many may be using or may be expected to use the particular service, but rather upon whether use of the service is available to anyone in a position to use it regardless of who he may be." (*Slemons v. Southern California Edison Co*. (1967) 252 Cal.App.2d 1022, 1028 (finding power poles and lines to be devoted to a public use))[7].

The Superior Court correctly understood the public purpose of SCE's improvements, even without discussing the very relevant question of f*or whom SCE was continuing to maintain* its disused circuit at the time of the fire:

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[7] Although investor-owned, SCE is subject to liability for inverse condemnation as a consequence of its "monopolistic or quasi-monopolistic authority, deriving directly from its exclusive franchise provided by the state . . . .." *Pacific Bell Telephone Co. v. So. Cal. Edison Co*. (2012) 208 Cal.App.4th 1400, 1406, *as mod*. (Sept. 13, 2012). *See, also*, *Barham, supra,* 74 Cal.App.4th at 752-753.

> The fact that the Subject Span served only one private household does not vitiate the public use of that portion of the electrical utility system. By its nature, a utility system is of no benefit to the public if no links to private users are established. The CPUC chose to define SCE's franchise to provide service to the public to include, some, but not all, Distribution Line Extension facilities. Under the undisputed facts here, the Subject Span was a portion of the public electrical system that SCE was authorized to "own, operate and maintain." Imposition of inverse condemnation liability is fully consistent with the theoretical underpinnings of that concept as developed in California appellate cases.
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> 14 Append. 3841.

While SCE did not require eminent domain to install the Sprague Circuit, neither did it install the circuit pursuant to a private contract with a private developer, a fact that wholly distinguishes its improvements from the improvements in the two cases upon which SCE bases its argument for non-public use, namely, *Cantu* and *Foley*.

2. SCE Was *Maintaining* the Subject Circuit For a Public Use

SCE's asserts that it originally constructed the Sprague Circuit for purposes of supplying electricity to a single customer in the 1950s, arguing that such historical fact means that there could never be a "public use" nor any

corresponding liability for inverse condemnation arising from that infrastructure, even after SCE failed to maintain it when there were no longer any customers still using the line. Not so.

By the time of the ignition of the Fairview Fire the line was admittedly no longer in use *by anyone* (Petition at ¶14), yet SCE maintained it as an active – and *energized* – portion of SCE's grid. SCE's decision to maintain the line in an energized as part of its grid is only explainable by some contemplated possible future use, which could only have been by some member of the public.

Critically, SCE also claimed to have repeatedly inspected the poles that formed the Subject Span to look for hazards requiring maintenance: "[i]n the five years prior to the ignition of the Fairview fire, the Subject Poles underwent no less than ten separate electrical inspections by SCE personnel or contractors . . . aerial inspections were undertaken on the poles in 2019, 2020, and 2021, and the poles also underwent an intrusive pole inspection in 2022 and a pole loading analysis in 2017 and 2018 . . . the Sprague circuit, in which the Subject Span is located, underwent infrared inspections, which look for 'hot spots' on equipment, between October and December 2019, and between March and May 2021; no abnormal readings were noted." 1 Append. 0032

(SCE's Motion for Summary Adjudication). SCE also inspected the nearby vegetation by conducting a "hazard tree inspection." 1 Append. 0032-33.

That was more than enough for SCE to be held responsible in inverse condemnation for its failures to adequately maintain the line. Even if something started off as a privately constructed improvement (which this was not), once a public utility owns or "exert[s] control over and assume[s] responsibility for maintenance" of it, it then constitutes a public work subject to inverse condemnation liability. *Shenson v. County of Contra Costa* (2023) 89 Cal.App.5th 1144 (citation omitted). The same court noted "[o]fficial acts of dominion and control constituting acceptance of the private [infrastructure – there, a drainage system] can be shown if the public entity does maintenance and repair work." Here, it was undisputed that SCE maintained the Sprague Circuit and the Subject Span in its role as a public utility, and it was Plaintiffs' contention that SCE's failure in that regard led to the ignition of the Fairview Fire. *Id*., 89 Cal.App.5th at 1159.

Thus, even assuming *arguendo* that the fact that the line was initially installed for a single customer made a difference (it does not, since it was not installed pursuant to a private contract as was the case in *Cantu* and *Foley*, as discussed *infra* and by the Superior Court at 14 Appen. 3840), SCE's

argument misses the mark, in part because the Subject Span was no longer providing power to any individual customer at the time that SCE's negligent maintenance of its equipment is alleged to have sparked the Fairview Fire and because SCE had responsibility for the maintenance of the line.

Furthermore, SCE never explains why the line was not dismantled before the fire, which would have removed the risk it posed. The answer, plainly, points to public use. SCE should not be permitted to shirk its responsibility to properly maintain its grid for the purposes of supplying electricity to the public while also maintaining public safety because of the happenstance that the line happened to have been installed for a single customer many decades ago. SCE's gross abdication of responsibility to the public, which resulted in two tragic deaths and many millions of property damages, should not be rewarded with an extension of *Cantu/Foley* immunity merely because of the fact a single household *used to be* served by the line SCE was charged with maintaining.

3. The Subject Circuit Was Not Installed Pursuant to a Private Contract – Wholly Distinguishing *Foley* and *Cantu*

But, the Sprague Circuit was *always* a public improvement because it was not installed pursuant to a private contract. That is a critical distinction

here: the fact that the improvements were installed pursuant to private contract was fundamentally important to the finding of a non-public use in both *Cantu* and *Foley*, as was properly recognized by the Superior Court. Indeed, in *Cantu* and *Foley* the existence of a private contract removed the improvement from the utility's regulated public-service obligation. As the Superior Court held:

> The opinion in *Pac Bell* expressly rejects a rule that would "limit[ ] a public utility's inverse condemnation liability to only situations involving the direct exercise of its eminent domain power." (Id. at p. 1406.) In a footnote, the Court of Appeal interpreted *Cantu*, as this court does here, as distinguishable because, in *Cantu*, the utility improvement that failed was installed pursuant to a contract between a private developer and the utility . . ..
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> . . .citing *Pac Bell*, the *Foley* court concluded that imposition of inverse condemnation liability would be inappropriate in light of "the significance of the parties' private contract and the overarching risk-spreading policy considerations underlying inverse condemnation." (*Id.* at p. 585.)

14 Append at 3840-41.

Here, where the electrical circuit was neither installed nor maintained pursuant to private contract, but under the utility's standard CPUC-approved tariffs *and as part of its statutory duty* to provide "just and reasonable

service," the improvement plainly retains its public character. Cal. Public Utilities Code § 451. The circuit therefore *is* a public improvement, irrespective of whether it initially served only one customer when first installed over half a century ago.

Does it matter for purposes of deciding inverse condemnation liability that the easement containing the Sprague Circuit was not taken by eminent domain? Absolutely not. Although SCE attempts to make much out of the fact that it did not exercise eminent domain, that fact is anything but dispositive: "[w]e do not read the language of *Pettis* [*v. General Tel. Co. of Cal.* (1967) 66 Cal.2d 503] as limiting a public utility's inverse condemnation liability to only situations involving the direct exercise of its eminent domain power." *Pac Bell,* 208 Cal.App.4th 1400, 1405–1406. The California Supreme Court expressly recognized that inverse condemnation actions are not "grounded not on statutory condemnation power, but on the constitutional proscription against the taking (U.S. Const., 5th Amend.) or the taking or damaging (Cal. Const., art. I, § 19) of property for public use without just compensation. A landowner whose property has been invaded by a public entity that lacks eminent domain power suffers no less a taking merely because the defendant was not authorized to take." *Baker v. Burbank-*

Glendale-Pasadena Airport Authority (1985) 39 Cal.3d 862, 866–867. (And, as quoted above, the Superior Court correctly recognized the language of *Cantu* to the contrary was "*dicta*." 14 Append. 3840.)

C. Public Policy Supports Imposition of Inverse Condemnation Liability Under These Facts

Not only are both *Cantu* and *Foley* easily distinguishable – but they *should* be distinguished for reasons of sound public policy. It would be anything but "unfair" to SCE to subject it to inverse condemnation liability under the facts of this case; on the other hand, it would be blatantly unfair to the victims (and deprive them of a constitutionally-derived right) to extend immunity to a utility that failed to safely maintain its infrastructure in the absence of the private contract that existed in *Foley* and *Cantu*, particularly after that infrastructure no longer served any one individual. The fact that one household was the initial user of the Subject Span in the 1950s is insufficient to override the public policy of cost-spreading or the constitutional rights of plaintiffs, to say nothing of the public's interest in avoiding wildfires after SCE kept the line energized and was therefore obligated to maintain it in a safe state even after it was no longer in use by the household for which it was originally installed, as a part of its system-wide grid designed to provide

electricity to the public.

Significantly, *Foley* emphasized that the water project at issue was not installed through the utility's "usual practice," but rather was an additional service provided to address specific requirements made by a fire marshal. (*Foley, supra*, 72 Cal.App.5th at p. 539.) So, too, was the trench in *Cantu* an additional service – the trench did not itself supply any electricity, was installed for the purposes of also running gas and telephone service as well as electricity, and the developer could presumably have dug the trench itself. Here, in contrast, there was no evidence that SCE's installation or maintenance of the Sprague Circuit was providing any kind of "additional service" to a private party as had been the case in *Foley* and *Cantu* -- the line having been constructed for the ordinary and usual provision of electricity to a household, not by way of an extraordinary private contract and then was maintained by SCE even after being taken out of service instead of being decommissioned.

The Superior Court correctly recognized that public policy strongly militates against exempting SCE from inverse condemnation liability merely because the company's line was no longer serving a customer: "to somehow suspend SCE's responsibility for active electrical lines connected to the

greater electrical grid because of the absence of a customer would remove incentives for SCE to continue to take responsibility for those lines by repair or deactivation." (14 Appen. 3841–3842.) Logically, there's nothing about the disused status of the line that should obviate the utility's obligation to prevent dangerous conditions affecting its electrical grid which threaten the public safety.

SCE would prefer to place its focus on events taking place in the 1950s, when it originally installed the line. But, that myopic focus on historical events bears no logical connection to the public policy surrounding a utility's obligation to continue to maintain its own infrastructure long after the original customer has moved on. Indeed, this very issue has become an issue of significant public importance now that SCE conceded that its dormant powerlines likely caused the Eaton Fire.[8] Should SCE be permitted to evade inverse condemnation liability for failure to maintain or remove disused power infrastructure, it would have an extremely deleterious effect on the public interest and public safety going forward.

SCE, hoping to avoid inverse condemnation liability argues that the

[8] https://www.latimes.com/california/story/2025-04-11/edison-says-dormant-powerline-is-now-leading-theory-for-cause-of-eaton-fire.

existence of "traditional tort" liability and CPUC oversight somehow obviates the need for inverse condemnation. Petition at 70-72. It does not.

First, this argument ignores the *constitutional* dimension of inverse condemnation: "the right assured to the owner by this provision of the constitution [Article 1, section 14, of the California Constitution] is not restricted to the case where he is entitled to recover as for a tort at common law. If he is consequently damaged by the work done, whether it is done carefully and with skill or not, he is still entitled to compensation under this provision." *Holtz,* 3 Cal.3d at 303.

Second, while plaintiffs in this case may be able to establish the right to other remedies, not only are such tort claims far more burdensome to establish, but as a practical matter, none of the alternatives will ever make plaintiffs whole – since they will have to bear their own attorneys fees in virtually every case[9] absent inverse condemnation liability. Such a consequence would sharply undermine their constitutional rights, to say nothing of the public policy behind inverse condemnation.

Third, the effect of eliminating inverse condemnation liability could be

[9] Fees are allowed in trespass cases "on lands either under cultivation or intended or used for the raising of livestock" under Cal. Code of Civ. Proc. § 1021.9, but that is the exception rather than the rule.

devastating to plaintiffs where a governmental entity is charged with creating a dangerous condition, as many plaintiffs, being ignorant of their rights and displaced after a disaster, do not manage to timely submit governmental tort claims; leaving inverse condemnation as their only possible remedy.

Finally, as recently as 2024, SCE was still claiming unsuccessfully (as it had in *Barham* and *Pac Bell*) that it was not liable for inverse condemnation *at all*. *Simple Avo,* 102 Cal.App.5th at 299 *et seq*. Having repeatedly failed to dodge such liability for its infrastructure, SCE now seeks to expand the *Cantu/Foley* exception to evade liability despite the fact that SCE caused death and destruction in its role as a public utility by violating its own internal guidance with respect to its CPUC-regulated function of powerline maintenance, in a context which involved no private contract, nor even any remaining private customer, as had been the case in both *Cantu* and *Foley*.

IV. CONCLUSION

Real Parties in Interest respectfully submit that this Court should decline SCE's Petition as untimely; alternatively, this Court should decline SCE's invitation to extend *Cantu* and *Foley* to exempt the utility from inverse condemnation liability under these circumstances. If accepted, SCE's misreading of both *Cantu* and *Foley* would violate public policy and put the

public at increased risk of future wildfires, while ignoring the entire point of inverse condemnation, and seriously undermine the constitutional rights of Plaintiffs.

Dated: April 10, 2026

TIMOTHY D. McGONIGLE

By: _____
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CERTIFICATE OF WORD COUNT

I, Timothy D. McGonigle, relying on the word count function in Microsoft Word, the word processing program used to generate this brief, do hereby certify that the foregoing brief, including footnotes but excluding the caption, the certificate of interested parties, the table of contents, the table of authorities and this certificate of word count, contains 6164 words.

Dated: April 10, 2026

By: 

Timothy D. McGonigle

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-referenced action. My address is 10850 Wilshire Boulevard, Suite 825, Los Angeles, California 90024.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed April 10, 2026, at Los Angeles, California.

By: 

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