No. S_____
(Court of Appeal No. B294164)
(Los Angeles Super. Ct. No. JCCP 4965)

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EDISON INTERNATIONAL; SOUTHERN CALIFORNIA EDISON COMPANY,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

ROBERT ABATE *et al.*,

Real Parties in Interest,

From an Order Summarily Denying a Petition for a Writ of Mandate or Prohibition by the Court of Appeal, Second Appellate District, Case No. B294164

PETITION FOR REVIEW

John C. Hueston* (SBN 169421)
jhueston@hueston.com
Moez M. Kaba (SBN 257456)
Douglas J. Dixon (SBN 275389)
Jonathan D. Guynn (SBN 307285)
Derek R. Flores (SBN 304499)

HUESTON HENNIGAN LLP
523 West 6th Street, Suite 400
Los Angeles, CA 90014
Tel.: (213) 788-4340

Leon Bass, Jr. (SBN 127403)
Brian Cardoza (SBN 137415)

SOUTHERN CALIFORNIA EDISON COMPANY
2244 Walnut Grove Avenue
Rosemead, CA 91770
Tel.: (626) 302-6931

Attorneys for Petitioners Edison International and Southern California Edison Company

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ISSUES PRESENTED

1. Can a private utility be subject to inverse condemnation liability where the record demonstrates that it is not entitled to spread losses to the benefitted community?

2. Can a private utility be subject to inverse condemnation liability based on allegations of unintentional and accidental wildfire damage, rather than deliberate action?

3. Can a private utility be subject to inverse condemnation liability if the alleged damage does not further the public interest?

INTRODUCTION

This case arises out of the 2017 Thomas Fire. Since then, a series of more intense and deadlier wildfires have gripped California. According to Governor Brown, the frequency and intensity of these fires have become the "new abnormal."[1] As a

[1] Alan Tchekmedyian, *Gov. Brown: Mega-fires 'the new abnormal' for California*, L.A. Times (Nov. 11, 2018), https://www.latimes.com/local/california/la-me-california-fires-woolsey-hill-camp-gov-brown-mega-fires-the-new-1541985742-htmlstory.html ("'And this new abnormal will continue certainly in the next 10 to 15 to 20 years . . . .' Brown said.").

result of these devastating events, plaintiffs have sued private utilities—including Petitioners Southern California Edison Company ("SCE") and Edison International ("EIX") (collectively, "Edison")—in tort and inverse condemnation to recover damages.

This petition involves an issue of great importance to all of California's private utilities, the tens of thousands of people they employ, and the millions of California residents they serve: Does inverse condemnation apply to accidental wildfire damage allegedly caused by a private utility's infrastructure where the utility has no automatic right to socialize those costs? With inverse condemnation, plaintiffs are provided a strict liability shortcut traditionally reserved against governmental entities which are otherwise entitled to sovereign immunity. Without it, plaintiffs would still be able to recover damages from private utilities, they would just have to prove actual negligence or other unreasonable conduct as required in tort.

This Court has never addressed the fundamental question of whether private utilities can be liable for inverse condemnation.

As a result, the lower courts have struggled to apply the precedent established by this Court. Here, citing two prior Court of Appeal cases,[2] Respondent Court ruled that inverse condemnation does apply despite a private utility's inability to automatically socialize those costs. But that ruling is inconsistent with decades of binding precedent from this Court. As both the Constitution and those cases make clear, inverse condemnation exists only to recompense individuals whose property is "taken or damaged" by a government entity "for public use." Cal. Const. art. I, § 19. Respondent Court's Order departs from the constitutionally approved scheme in at least three ways.

First, this Court has repeatedly held that the fundamental underpinning of inverse condemnation liability is a public entity's ability to socialize losses. *See, e.g.*, *Holtz v. Superior Court* (1970) 3 Cal.3d 296, 303 ("The underlying purpose of our constitutional provision in inverse—as well as in ordinary—condemnation is to

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[2] *See Pac. Bell Tel. Co. v. S. Cal. Edison Co.* (2012) 208 Cal.App.4th 1400; *Barham v. S. Cal. Edison Co.* (1999) 74 Cal.App.4th 744.

distribute throughout the community the loss inflicted upon the individual . . . to socialize the burden . . . that should be assumed by society.").

But Edison and other private utilities have no right to adjust their rates to recover inverse losses. Indeed, they may only do so with regulatory approval. *See, e.g.*, Cal. Pub. Util. Code § 454(a) ("a public utility shall not change any rate . . . except upon a showing before the commission and a finding by the commission that the new rate is justified"). Nor do they have access to the taxing power available to government entities. Despite these limitations, *Barham* and *Pacific Bell* extended inverse condemnation liability to private utilities based on the assumption that the utilities would be able to spread inverse condemnation losses (much like a governmental actor) through rate increases. However, this assumption has since proven false. The California Public Utilities Commission ("PUC") recently declared that it would not consider inverse condemnation liability when setting utility rates. Notwithstanding this new evidence, Respondent

Court believed itself to be bound by the outcomes of *Barham* and *Pacific Bell*.[3]

Second, the Takings Clause applies only when the government "deliberately" takes property. *See, e.g.*, *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 382 ("[I]nverse condemnation liability, absent fault, [is limited] to physical injuries of real property that were proximately caused by the improvement as deliberately constructed and planned."). Ignoring the fact that the Master Complaints plead no deliberate act, Respondent Court failed to properly grapple with this element of inverse condemnation liability, stating that *Barham* decided the issue. (4 Appen. 1360 ("Even assuming [Edison's] critiques of *Barham* have merit, this Court is bound by the *Barham* decision,

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[3] Respondent court also erroneously rejected Edison's argument that the application of inverse condemnation to Edison violates both the Takings and Due Process Clauses. Because Edison is not entitled to a rate increase to spread any losses it may incur, applying inverse condemnation to Edison would merely transfer funds from one private party and its subsidiary (Edison) to other individuals and entities (Plaintiffs). Without compensation, this is both arbitrary and capricious under the Fifth and Fourteenth Amendments and constitutes an unconstitutional taking in violation of Article I, section 19 of the California Constitution.

and cannot refuse to follow it.").) But *Barham* did not analyze the Takings Clause's deliberate action requirement. And, even if it did, *Barham* cannot be followed for a proposition that is inconsistent with this Court's decisions.

Plaintiffs' theory is that Edison caused a wildfire by negligently operating and maintaining its electrical infrastructure. Yet, damage is only compensable under inverse condemnation when it is the "necessary consequence" of the public improvement "as deliberately designed or constructed." C*lement v. State Reclamation Bd.* (1950) 35 Cal.2d 628, 641; *Sheffet v. Cty. of Los Angeles* (1970) 3 Cal.App.3d 720, 734. Allegations of negligence, random accidents, unintended property damage, and acts done without government authorization do not state a claim under the Takings Clause. This Court should correct Respondent Court's error.

Third, the Takings Clause applies only when property is taken or damaged "for public use." Cal. Const. art. I, § 19. To establish that a taking was "for public use," a plaintiff must allege

that the "destruction or damaging of property is sufficiently connected with 'public use.'" *Customer Co.*, *supra*, 10 Cal.4th at 382. Accidental fire damage does not constitute destruction or damage for public use. But, again, Respondent Court felt constrained by *Barham*. (*See* 4 Appen. 1363.) Insofar as *Barham* stands for the rule that the public use element is satisfied because "transmission of electric power through the facilities that caused damage to the Barham's property was for the benefit of the public," *Barham* is incorrect and should be overruled. *Barham*, *supra*, 74 Cal.App.4th at 754.

Respondent Court's and other courts' orders permitting individuals to pursue inverse condemnation claims against private utilities have had (and will continue to have) negative consequences for California and its private utilities, including:

- Jeopardizing the state's environmental objectives, including efforts to develop renewable energy sources;
- Undermining the financial stability of California's private utilities, thereby rendering them

"uninvestable"[4] and limiting their access to capital markets;

- Threatening California's workforce by placing the viability of some of its largest employers, private utilities, at risk;
- Reducing the pool of resources needed for further investment into research and development and grid hardening technologies that can combat the effects of drought and climate change and the escalating wildfire risk;
- Reducing the amount of tax revenue collected by the state from private utilities; and
- Increasing the cost and scarcity of insurance coverage available to private utilities.

Given the critical role that these entities play as citizens, employers, taxpayers, and engines of economic growth, California's economy, environment, and communities will suffer as well.

The current landscape is untenable and poses a danger to private utilities. Their investments in human capital, infrastructure, improvements to a public service, and safety help energize the state's vibrant economy and spur innovation, while

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[4] Mike Yamato, *Market Notes Tuesday December 12, 2017*, Investitute (Dec. 12, 2017), https://investitute.com/activity-news/market-notes-tuesday-december-12-2017/.

providing an essential service across the state. Meanwhile, climate change and land-use practices have combined to increase the environmental, physical, and economic threats posed by wildfires.[5] Yet, under Respondent Court's Order, private utilities absorb all of the additional risk and expense caused by man-made forces outside of Edison's control, even if it is completely without fault. This makes Edison an absolute insurer of property across large swaths of land—an outcome not contemplated or supported by the Takings Clause.

Respectfully, it is incumbent upon this Court to intervene now, to reaffirm its precedent and establish proper rules for the application of inverse condemnation to alleged wildfire damage.

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[5] *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, http://www.pnas.org/content/pnas/113/42/11770.full.pdf; 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/.

Due to the substantial potential liability, Edison and other private utilities may have no practical choice but to settle plaintiffs' inverse condemnation claims under superior court decisions wrongly interpreting the law. Edison would then have no recourse against any plaintiffs who received settlements that are later determined to be paid under that erroneous standard. Clarification from this Court is urgently needed before Edison and other private utilities sustain irreversible damages through the misapplication of inverse condemnation.

STATEMENT OF THE CASE

I. PETITIONERS SCE AND EIX

SCE is a private utility, and EIX is its corporate parent. (1 Appen. 16, ¶ 14.)

II. PLAINTIFFS' INVERSE CONDEMNATION CLAIMS AGAINST EDISON

On December 4, 2017, the Thomas Fire commenced in two separate locations: first, near Steckel Park in Santa Paula, California, and second, near the top of Koenigstein Road in Upper Ojai, California. (1 Appen. 22-23, ¶¶ 30–32.) On December 5, 2017, the Rye Fire started at Rye Canyon Loop in Santa Clarita, California. (*Id.* at 14, ¶ 7.)

Plaintiffs allege that Edison's electrical facilities "arced" at the alleged ignition locations near Steckel Park and Koenigstein Road, igniting both fires. (*Id.* at 22-23, ¶¶ 31–32.) Plaintiffs also allege that the Rye Fire ignited when Edison's electrical facilities "sparked." (*Id.* at 15, ¶ 10.) Plaintiffs allege that the Thomas Fire and Rye Fire were "a direct and legal result of the negligence,

carelessness, recklessness, and/or unlawfulness of" Edison. (*Id.* at 57-58, ¶ 200.)

The actions brought by individual, subrogation, and public entity plaintiffs were coordinated as the *Southern California Fire Cases*, No. JCCP 4965.

III. THE PUC'S NOVEMBER 2017 DECISION DENYING RECOVERY OF INVERSE CONDEMNATION COSTS TO A PRIVATE UTILITY

In September 2015, San Diego Gas & Electric Company ("SDG&E") applied to the PUC to recover, through a rate increase, $379 million for non-insured costs that SDG&E paid to resolve inverse condemnation claims arising from certain 2007 wildfires. (1 Appen. 283-284.) On November 30, 2017, the PUC applied its administratively created "prudent manager" standard and denied SDG&E's application. In so doing, the PUC announced for the first time that inverse condemnation liability was irrelevant to rate setting: "Inverse Condemnation principles are not relevant to a Commission reasonableness review under the prudent manager standard." (*Id.* at 346.) Concurrently, the PUC held a hearing in which PUC commissioners affirmed the PUC's policy and urged

courts to revisit the continued application of inverse condemnation liability to private utilities. As Commissioner Rechtschaffen stated:

> [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 [because] courts applying the [doctrine] to public utilities have done so without really grappling with the salient difference between public and private utilities, which is that there's no guaranty that . . . private utilities can recover the cost from their rate payers.

(1 Appen. 373.)

On December 26, 2017, PUC President Picker and Commissioner Guzman-Aceves filed a joint concurrence to the Application Decision, asking that the courts reconsider the rationale for applying inverse condemnation to private utilities because "the logic for applying inverse condemnation to utilities—costs will necessarily be socialized across a large group rather than borne by a single injured property owner, regardless of prudence on the part of the utility—is unsound." (1 Appen. 453, 457.)

On July 13, 2018, the PUC denied SDG&E's, SCE's, and Pacific Gas & Electric Company's ("PG&E's") request for rehearing of the Application Decision. (1 Appen. 460-494) In that denial, the

PUC stated that the application of inverse condemnation is for the courts, not the PUC, to decide. (*Id*. at 487 ("It is not in our purview to render determinations regarding whether inverse condemnation or other legal tort doctrines should be applied in assessing damages claims. Those issues are for the Courts, not this Commission.").)

IV. THE RULING OF THE SUPERIOR COURT

On October 4, 2018, Respondent Court issued its order overruling the Demurrer (the "Order"). (4 Appen. 1331-1350.) Respondent Court acknowledged the logic of Edison's arguments but stated that it was bound by a pair of Court of Appeal decisions—*Barham* and *Pacific Bell*—which Respondent Court believed resolved the key issues against Edison. (*Id*. at 1415.)

V. EDISON'S WRIT PETITION TO THE COURT OF APPEAL

On December 3, 2018, Edison filed a petition for writ of mandate in the Court of Appeal. Edison's petition argued that Respondent Court erred by misapplying inverse condemnation law and denying Edison's demurrer in light of the PUC's decision in the SDG&E matter. Edison also showed that a post-judgment

appeal was an inadequate remedy and that Edison would suffer irreparable injury absent writ relief because it would be unable to claw back settlements and payments awarded based on inverse condemnation liability and the ongoing uncertainty is currently negatively affecting Edison's investors and creditworthiness. On December 7, 2018, the Court of Appeal denied Edison's petition without laboration. (Ex. A.)

WHY REVIEW SHOULD BE GRANTED

I. THIS COURT'S REVIEW IS REQUIRED TO SETTLE CRITICAL QUESTIONS OF LAW

A. Private Utilities Cannot Be Subject To Inverse Condemnation Liability Unless They Can Socialize Losses As A Matter Of Right

Loss-spreading is the fundamental underpinning of inverse condemnation liability under California law. *See, e.g.*, *Holtz*, *supra*, 3 Cal.3d at 303 ("[T]he underlying purpose of our constitutional provision in inverse . . . condemnation is to distribute throughout the community the loss inflicted upon the individual . . . to socialize the burden . . . that should be assumed by society.").[6]

This Court has never held that a private utility can be liable for inverse condemnation. While the Court of Appeal has twice permitted inverse condemnation claims to proceed against a private utility, critical to those holdings was their express

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[6] *See also, e.g.*, *Bacich v. Bd. of Control of California* (1943) 23 Cal.2d 343, 350 ("[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.").

assumption—mandated by precedent—that the defendant utility could raise rates to socialize inverse condemnation losses. *See, e.g.*, *Pac. Bell Tel. Co. v. S. Cal. Edison Co.* (2012) 208 Cal. App. 4th 1400, 1407 (concluding that there was no evidence that the PUC would prevent Edison from "pass[ing] on damages liability" to the public through a rate increase). This assumption has now proven false.

Respondent Court relied on *Barham* and *Pacific Bell* to rule that Plaintiffs sufficiently alleged Edison could be liable in inverse, even if the PUC does not allow Edison to increase rates. (*See* 4 Appen. 1358-1359 (citing *Pac. Bell*, *supra*, 208 Cal.App.4th at 1408 n.6) (noting that the PUC's numerous, forward-looking ratemaking policy pronouncements were "not dispositive" and not "indicative of some future [PUC] decision on [Edison] and the 2017 wildfires").) But, as explained below, this misapplies *Barham*, *Pacific Bell*, and other binding law, ignores the PUC's Decision in the SDG&E matter and other policy pronouncements, and relieves

Plaintiffs from the burden of pleading each element of an inverse claim.

1. *Barham* And *Pacific Bell* Assumed That Edison Could Socialize Inverse Condemnation Losses

Relying on *Barham* and *Pacific Bell*, Respondent Court ruled that Plaintiffs sufficiently alleged inverse condemnation claims. But neither *Barham* nor *Pacific Bell* supports Respondent Court's holding. The issue here is whether, on these facts, Edison may be subjected to inverse condemnation liability. Though *Barham* and *Pacific Bell* held that private entities *may* be liable for inverse condemnation under certain factual circumstances, both courts explicitly assumed that the private utility defendant could socialize the plaintiffs' losses "throughout the community" with a rate increase. *See, e.g.*, *Pac. Bell*, *supra*, 208 Cal.App.4th at 1407 (concluding that there was no evidence that the PUC would ever prevent SCE from socializing losses).

Barham was the first court to hold that a private utility could be liable for inverse condemnation. *See* 74 Cal.App.4th at 753. The *Barham* court carefully limited its holding to the "factual

scenario" presented there: a scenario including the court's then-untested assumption that Edison could spread inverse condemnation losses as a matter of right through a PUC-approved rate increase. *Id.* at 753. Now that Edison has presented evidence that it cannot socialize Plaintiffs' losses as a matter of right, *Barham* does not support Respondent Court's expansion of inverse condemnation liability.

In *Pacific Bell*, the Court of Appeal upheld inverse condemnation claims against a private utility. But *Pacific Bell* expressly did not, as Respondent Court suggests, categorically reject the argument Edison advances here. (*See* 4 App. 1356.) Rather, *Pacific Bell* relied on and approved of *Barham*'s cost-spreading rationale, noting that the inverse claims against the defendant (Edison) could proceed only because the defendant had not furnished "*any* evidence" of its inability to socialize the plaintiffs' property damages. 208 Cal.App.4th at 1407 (emphasis added). *Pacific Bell* thus acknowledged that, absent the power to socialize inverse condemnation losses, Edison could not lawfully be

subjected to the plaintiffs' inverse condemnation claims. Indeed, neither *Barham* nor *Pacific Bell* could have held that loss-spreading is irrelevant (as Respondent Court ruled) because decades of Supreme Court precedent dictate that it is an essential element of inverse condemnation liability. *See, e.g.*, *Holtz*, *supra*, 3 Cal.3d at 303 ("[T]he underlying purpose of our constitutional provision in inverse . . . condemnation is to distribute throughout the community the loss inflicted upon the individual . . . to socialize the burden . . . that should be assumed by society.").

Here, because of the PUC's Application Decision, Respondent Court faced (and now this Court faces) a distinguishable "factual scenario." Based upon the principal rationale of *Barham* and *Pacific Bell*, along with decades of California precedent, this new scenario compels an opposite result.

(a) Pacific Bell's Discussion Of A Hypothetical Fact Pattern Has No Precedential Value

In its order, and at oral argument, Respondent Court stated that footnote six of *Pacific Bell* made the loss socialization rationale for inverse condemnation irrelevant and compelled

Respondent Court to rule that Edison could be liable in inverse.[7] (*See, e.g.*, 4 App. 1443 (Respondent Court believed that the "PUC issue" was not "dispositive because of what [the court] interpret[ed] to be the direction on the *Pac Bell* case footnote 6").) But Respondent Court's statements and ruling are inconsistent with *Pacific Bell* and this Court's binding precedent.

Pacific Bell's footnote 6 merely distinguishes *municipal* utilities (which have the benefit of sovereign immunity) from *private* utilities (which do not) for the purpose of inverse condemnation. Subjecting private utilities to extraordinary

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[7] Footnote six of *Pacific Bell* provides:

> We also note that the Supreme Court has stated that, although the Legislature has chosen not to do so, nothing in the Constitution prevents the Legislature from placing municipally owned utilities under the regulations of the Public Utilities Commission, including regulation of rates. *County of Inyo v. Public Utilities Com.* (1980) 26 Cal.3d 154, 156, 167, 161 Cal.Rptr. 172, 604 P.2d 566. We do not believe such regulation would immunize municipal utilities from inverse condemnation liability under the theory that they were no longer able to spread the cost of public improvements.

(2012) 208 Cal.App.4th 1400, 1407.

inverse condemnation liability where those utilities cannot spread losses should not be based on a single footnote addressing a hypothetical circumstance. Indeed, *Pacific Bell*'s hypothetical fact pattern is dicta, and neither states the law nor binds Respondent Court (or, of course, this Court). *See Trope v. Katz* (1995) 11 Cal.4th 274, 287 ("A precedent cannot be overruled in dictum, of course, because only the ratio decidendi of an appellate opinion has precedential effect . . . ."). Regardless, *Pacific Bell* cannot overrule longstanding Supreme Court precedent that establishes the constitutional rationale for inverse condemnation liability. *Cf. Auto Equity Sales, Inc. v. Superior Court of Santa Clara Cty.* (1962) 57 Cal.2d 450, 455 ("Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.").

Moreover, even if a municipal utility's rates were regulated by another governmental entity, inverse condemnation could be appropriate against such municipal utility because it could still socialize losses by raising taxes. But private utilities cannot

exercise the taxing power, raising rates is the *only* way they can spread losses. Those rates are regulated by the PUC, which is why *Pacific Bell* emphasized, in the body of the opinion, that Edison had not presented *any* evidence that it would not be allowed to raise rates. *Id.* at 1407.

(b) Pacific Bell's Discussion Of Monopoly Power Provides No Basis For Respondent Court's Order

Respondent Court interpreted *Pacific Bell* to state that "where the government has created a monopolistic or quasi-monopolistic entity," plaintiffs may assert inverse condemnation claims against that entity. (4 Appen. 1359.) Respondent Court's ruling misunderstands *Pacific Bell* and is inconsistent with California law.

Pacific Bell's discussion of monopoly power is merely an additional articulation of *Barham*'s loss spreading rationale. A monopolist, by definition, has the power to control market price, meaning that it can unilaterally raise prices and thereby recover increased costs or losses from its customer base. Hence, imposing inverse condemnation liability on a monopolist is in keeping with

Barham's loss-spreading rationale. But, because Edison's rates are regulated by the PUC, it lacks a true monopolist's price-making power. Thus, *Pacific Bell*'s monopoly rationale—merely another restatement of the Takings Clause's loss-socialization principle—is absent here and cannot justify Respondent Court's Order.

2. The PUC's SDG&E Decision Invalidates The Critical Loss-Spreading Assumption Of *Barham* And *Pacific Bell*

In reaching its conclusion that Plaintiffs' inverse condemnation claims could go forward, Respondent Court ignored or minimized the significance of the PUC's recent decisions and policy announcements, which plainly establish the agency's position that inverse liability is irrelevant to ratemaking decisions. Respondent Court stated that the PUC's recent pronouncements did not necessarily mean that Edison would be unable to obtain a rate increase from the PUC to socialize Plaintiffs' losses. (4 Appen. 1358.) This reasoning is faulty for the reasons stated in Part I.C, *infra*, but it also fails to accept the significance of the PUC's pronouncements on their own terms.

The PUC has plainly stated its view that a private utility has no right to a rate increase for any inverse liability. (*See* 1 Appen. 346 ("Inverse Condemnation principles are not relevant" to a private utility's rates).) The PUC has repeatedly announced this policy statement in unambiguous terms, making clear that the policy is not limited, nor intended to be limited, to the specific factual scenario presented by SDG&E in the Application Decision. (*See, e.g.*, *id*. at 373 ("[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 [because] courts applying the [doctrine] to public utilities have done so without really grappling with the salient difference between public and private utilities, which is that there's no guaranty that . . . private utilities can recover the cost from their rate payers.").) These policy statements are the PUC's official position, even if asserted in the context of legal proceedings. *See Auer v. Robbins* (1997) 519 U.S. 452, 462 (holding that an agency's statements in a legal brief constituted the agency's position). Moreover, as the PUC

recently affirmed in its response to SDG&E's petition for review of the Application Decision:

> The Commission respectfully requests that this Court affirm the Commission's determination that *even if Petitioner had been found strictly liable for wildfire-related damages under a theory of inverse condemnation, which was never in fact determined, utility shareholders, not ratepayers, must absorb the costs* if the Commission determines that the utility did not reasonably and prudently operate and maintain its facilities leading up to and in direct response to the wildfire event.

(4 Appen. 1274 (emphasis added).)[8] There is simply no basis for Respondent Court's suggestion that the PUC's decisions and policy statements are limited to SDG&E's case. To the contrary, they are final articulations of agency policy and would compel the PUC to ignore any inverse condemnation liability stemming from this case if Edison seeks approval of a rate increase.

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[8] Respondent court denied as untimely Edison's request to judicially notice the PUC's response to SDG&E's petition for review of the Application Decision. But Edison filed the Demurrer on August 3, 2018, and the PUC filed its response to SDG&E's petition on September 7, 2018, making it impossible for Edison to include the PUC's further policy clarification in the Demurrer.

Respondent Court's Order is also not justified by the PUC's indication that some losses could be recovered if the so-called "prudent manager" standard was met. The fact that the PUC applies the "prudent manager" standard as a hurdle to cost recovery demonstrates that recovery of inverse losses is *not* available to Edison as a matter of right. Respondent Court's Order thus allows for Edison to be strictly liable under inverse condemnation, but the PUC will not allow cost recovery unless Edison can establish that it satisfied the "prudent manager" standard. In stark and critical contrast, actual government-owned utilities need not meet this standard to spread inverse losses among their residents, whether through tax or rate increases.

The PUC's Application Decision and subsequent reinforcing statements disprove *Barham* and *Pacific Bell*'s stated justification for extending inverse condemnation liability to private utilities. As a result, those decisions are distinguishable, particularly in the instant matter, and should not be followed.

3. Plaintiffs' Have Not Pled Or Established, As They Must, That Edison Can As A Matter of Right Socialize Their Losses Through A PUC-Approved Rate Increase

Respondent Court stated that, by raising the PUC's Application Decision and associated policy statements, Edison had "introduce[d] a factual dispute for the Court to weigh," which "alone dictate[d] a decision to overrule the demurrer." (4 Appen. 1358.) This assessment, however, was in error because the PUC unambiguously stated that it will not consider inverse condemnation liability in ratemaking decisions. Plaintiffs cannot dispute this.

Ostensibly relying on *Pacific Bell*, Respondent Court stated that "the Court of Appeal faulted the defendant for failing to provide evidence that the commission would not allow Edison to pass on damages liability." (4 Appen. 1358 (internal quotations omitted).) But that is not what *Pacific Bell* held. *Pacific Bell* permitted an inverse condemnation claim to proceed because the defendant had not furnished "*any* evidence" of its inability to socialize the plaintiffs' property damages. 208 Cal.App.4th at

1407. Edison has now presented evidence demonstrating that the PUC will not consider inverse condemnation liability if Edison seeks a rate increase to recover inverse losses. Such evidence was not presented to *Barham* or *Pacific Bell*.

4. Applying Inverse Condemnation Liability To Edison Violates The Takings And Due Process Clauses

The expansion of inverse condemnation liability to Edison in these circumstances is also unconstitutional. As a private entity, Edison is entitled to just compensation and due process before its property is taken. But forcing Edison to bear liability for inverse condemnation violates these fundamental constitutional protections.

(a) Extending Inverse Condemnation Liability To Edison Violates The Takings Clause

Permitting inverse condemnation claims to proceed against Edison on these facts violates the Takings Clause. Sustaining the Plaintiffs' inverse condemnation claims would result in the transfer of funds from one private party (Edison) to another (Plaintiffs), for no legitimate public purpose and without Edison

receiving "just compensation." Cal. Const. art. I, § 19; U.S. Const. amend. V.

As the United States Supreme Court recognized in *Eastern Enterprises v. Apfel*, the improper imposition of liability can itself be a taking. *See* (1998) 524 U.S. 498, 538 (plur. op.) (holding that the government's "allocation of liability to Eastern violates the Takings Clause"). Edison's theoretical opportunity to request reimbursement for inverse losses through a rate increase does not change the result that the imposition of liability without a corresponding right to increase rates or receive reimbursement in another form is an unconstitutional taking. *Id.* at 531 ("Although the Act preserves Eastern's right to pursue indemnification . . . it does not confer any right of reimbursement.").

Respondent Court believed that Edison's argument "would suggest that any strict liability cause of action would constitute a taking." (4 Appen. 1365.) That is incorrect. The United States Supreme Court has repeatedly held that imposing liability may constitute a taking. *See, e.g.*, *E. Enters.*, *supra*, 524 U.S. at 538.

The proper analysis, which Respondent Court failed to perform, considers: "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Connolly v. Pension Ben. Guar. Corp.* (1986) 475 U.S. 211, 225 (citations and internal quotation marks omitted). Together, these factors preclude imposing inverse condemnation liability on a private utility like Edison: (1) Edison's potential liability in this case is massive, estimated in the billions of dollars, (2) Edison and its investors had, until the PUC's Application Decision, reason to expect that the PUC would understand and apply the connection between inverse condemnation and loss spreading among those benefitted by a private utility's electric system, and (3) where Respondent Court applied inverse condemnation liability to Edison, an entity that cannot spread inverse losses, "the governmental action implicates fundamental principles of fairness underlying the takings clause."

E. Enters., *supra*, 524 U.S. at 537. This Court should reverse Respondent Court's ruling.

(b) Extending Inverse Condemnation Liability to Edison Violates Edison's Due Process Clause Rights

The Fourteenth Amendment similarly protects Edison against deprivations of its property. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 416–17 ("The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor."). As explained above, Plaintiffs' allegations do not support the imposition of inverse condemnation-based strict liability in circumstances, as in the present cases, that have nothing in common with traditional governmental takings. Further, because Edison lacks the power to perform the loss-spreading function of the Takings Clause, allowing Plaintiffs to recover against Edison would shift losses from a large group of parties (i.e., the thousands of Plaintiffs) to a single private party and its subsidiary (Edison). Permitting Plaintiffs to recover under the Takings Clause in such circumstances would be arbitrary and

capricious, in violation of Edison's Due Process rights. Imposing such liability is arbitrary and capricious because it fails to accomplish its own primary goal: spreading losses stemming from facilities that benefit the public among that benefitting public.

B. Inverse Condemnation Liability Cannot Extend To Edison Because Plaintiffs Did Not Allege That A Deliberate Act Infringed Their Property Rights

Inverse condemnation requires a plaintiff to demonstrate that its harm was a "necessary consequence" of the public improvement "as deliberately designed or constructed." *Customer Co.*, *supra*, 10 Cal.4th at 383. Unintended or incidental damage does not satisfy the "deliberate action" element of inverse condemnation liability. *Id.* at 378 ("property damage incidentally caused by the actions of public employees in the pursuit of their public duties" is not recoverable under inverse condemnation). Nor does damage resulting from allegedly negligent operation of a public improvement give rise to inverse liability. *Id.* at 382 ("damage caused by the negligent conduct of public employees or a

public entity does not fall within the aegis of [the Takings Clause]").

To facilitate the government's prerogative while protecting the public, the Takings Clause "waive[s] the immunity of the state where property is taken or damaged for public purposes" but does not "subject the state to general tort liability under the theory of eminent domain." *Bauer v. Ventura Cty.* (1955) 45 Cal.2d 276, 283. On its face, accidental property damage caused by an uncontrolled wildfire "cannot be likened to an exercise of the power of eminent domain" and, like other allegedly negligent property damage, does not give rise to an inverse claim. *Customer Co.*, *supra*, 10 Cal.4th at 388.

Plaintiffs allege that their property rights were infringed by accidental wildfire damage caused by Edison's negligent acts and omissions, including those associated with the maintenance and operation of its equipment. (*See, e.g.*, 1 Appen. 10-76, ¶¶ 119, 144, 200.) But Plaintiffs do not allege, as they must, that their property was damaged as "a result of dangers *inherent in the construction*

of the public improvement as distinguished from dangers *arising from the negligent operation of the improvement*." *Customer Co.*, *supra*, 10 Cal.4th at 382 (emphasis in original); *see also City of Austin v. Liberty Mut. Ins.* (Tex. App. 2014) 431 S.W.3d 817, 827 ("It is self-evident that the fire was not the substantially certain result of the City's mere provision of electric power, nor was it necessary that it occur in order for the City to provide power to its residents. When property damage is an unintended result of the government's act or policy, it cannot be said that the property was 'taken or damaged for public use.'"). Nor do they allege that the wildfire ignition was "a deliberate act which has as its object the direct or indirect accomplishment of the purpose of the improvement as a whole." *Bauer*, *supra*, 45 Cal.2d at 285. Or that Edison "treated private damage costs, anticipated or anticipatable, but uncertain in timing or amount or both, as a deferred risk of the project." *McMahan's of Santa Monica v. City of Santa Monica* (1983) 146 Cal.App.3d 683, 697.

Despite Plaintiffs' failures, Respondent Court erroneously concluded that accidental wildfire damage allegedly caused by poor maintenance of an electric system states an inverse condemnation claim. Respondent Court believed it was bound by *Barham*, which allowed an inverse claim concerning accidental fire damage to proceed. *See Barham*, *supra*, 74 Cal.App.4th at 755. As explained further below, *Barham* is inconsistent in this regard with Supreme Court law.

1. Plaintiffs' Inverse Condemnation Claims Fail Because The Alleged Accidental Fire Damage Is Not A Deliberate Taking

Only where a public entity "has made the deliberate calculated decision to proceed with a course of conduct, in spite of a known risk [will] just compensation [ ] be owed." *Arreola v. Cty. of Monterey* (2002) 99 Cal.App.4th 722, 742. This is because the government has made a deliberate decision to "treat[ ] private damage costs, anticipated or anticipatable, but *uncertain in timing or amount or both*, as a deferred risk of the project." *McMahan's*, *supra*, 146 Cal.App.3d at 697 (citation omitted) (emphasis added).

This Court's decision in *Miller v. City of Palo Alto* (1929), is instructive. The property owners in *Miller* alleged that their property had been "damaged for public use" by a fire. 208 Cal. at 76–77. Government employees used a garbage incinerator but negligently disposed of the smoldering remains, thereby igniting a fire that spread to the plaintiffs' property. *Id.* The Court rejected the plaintiffs' inverse claim, even though the government's use of the incinerator was deliberate, noting that plaintiffs had alleged their damage resulted from an "act of negligence" rather than deliberate action. *Id.*[9]

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[9] Respondent court attempted to distinguish *Miller* and other similar cases by claiming that they "involve[d] conduct on public property that negligently damaged neighboring property, as opposed to some aspect of the public property itself causing damages." (4 Appen. 1362.) But these cases involve a similar factual scenario to that alleged by Plaintiffs: a damaging instrumentality (fire) was released on allegedly public property and subsequently escaped and caused damage to private property. Just as those allegations were insufficient to support inverse claims in *Miller*, *McNeil*, and *Western Assurance*, so too are Plaintiffs' allegations here. *See Miller*, *supra*, 208 Cal. at 77; *McNeil v. City of Montague* (1954) 124 Cal.App.2d 326, 327; *W. Assurance Co. of Toronto v. Sac. & San Joaquin Drainage Dist.* (1925) 72 Cal.App. 68, 75.

Plaintiffs' allegations are substantially identical to those that this Court rejected in *Miller* and subsequent cases. Plaintiffs do not and cannot allege any deliberate act that infringed their property rights. Instead, they rely on allegations of Edison's purported negligence in the operation and maintenance of its electric infrastructure. But "accidental acts or omissions which are careless, e.g., the allowing of fire to spread onto adjoining lands while burning weeds in levee maintenance," do not give rise to inverse condemnation claims. *Beckley v. Reclamation Bd. of State* (1962) 205 Cal.App.2d 734, 753. As this Court stated in *Bauer* and repeated in *Customer Co.*, allegations of "negligent acts committed during the routine day to day operation of the public improvement" or "negligence in the routine operation having no relation to the function of the project as conceived" do not state a claim for inverse condemnation. *Customer Co.*, *supra*, 10 Cal.4th at 382, 388; *Bauer*, *supra*, 45 Cal.2d at 286.

In *Tilton v. Reclamation Dist. No. 800* (2006), the plaintiffs sought inverse condemnation damages, alleging that government

employees damaged their property by failing to properly maintain a levee, causing the plaintiffs' property to destabilize, and their structures to slide and become unlevel.[10] 142 Cal.App.4th 848, 852. In sustaining the government's demurrer, the Court of Appeal explained that "damage resulting from negligence in the routine operation" of public infrastructure does not give rise to an inverse condemnation claim. *Id*. at 855 (quoting *Customer Co*., 10 Cal. 4th at 382). The *Tilton* court specifically noted that the plaintiffs did not allege, as required, that the government deliberately diverted

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[10] In the proceedings below, Plaintiffs attempted to distinguish the extensive case law set forth in Edison's demurrer by arguing that certain cases arose in the flood control context and were therefore irrelevant. But those cases are not so limited. Though *Albers*, *Bauer*, *Belair*, and *McMahan's*, among others, involved flood control damage, the deliberate action requirement is the same in both flood control and non-flood control cases.

While plaintiffs in flood control cases must also show that the public entity acted unreasonably, they are still required to plead the other inverse condemnation elements that Plaintiffs are required to plead in this case. And, far from being distinguishable or irrelevant as flood control cases, decisions such as *Albers*, *Bauer*, and *Belair* are cited and quoted at length in the California Supreme Court's most recent inverse condemnation opinion—*Customer Co.*, *see* 10 Cal.4th at 382–383—and numerous other non-flood control cases, *See, e.g.*, *Pac. Bell*, *supra*, 208 Cal.App.4th at 1407 (citing *Belair*); *City of Los Angeles v. Superior Court*, (2011) 194 Cal.App.4th 210, 222 (citing *Bauer*); *Cal. State Auto. Assn. v. City of Palo Alto* (2006) 138 Cal.App.4th 474, 480 (quoting *Albers v. Los Angeles Cty.* (1965) 62 Cal.2d 250*)*.

water onto their land; rather, the plaintiffs alleged that the government negligently maintained or operated the levee, which the court held "does not charge a taking of property for public use under the Constitution." *Id*. at 856.

Here, Plaintiffs' allegations fail for the reasons articulated in *Tilton*, *Customer Co.*, and numerous other cases refusing to entertain inverse condemnation claims based on allegations of negligent operation or maintenance of a public improvement. Plaintiffs do not and cannot allege that Edison deliberately ignited the fires, or that it constructed poles, lines, or facilities in "anticipat[ion]" that wildfires would necessarily result. *McMahan's*, 146 Cal.App.3d at 697. Nor do Plaintiffs allege that wildfire damage is a "necessary consequence" of constructing, maintaining, or operating Edison's electric grid. *Sheffet*, 3 Cal.App.3d at 734. Instead, Plaintiffs allege that Edison's *negligent* maintenance and operation of its facilities and surrounding vegetation proximately caused the Fires. These

allegations fail to establish the deliberate action necessary to state a claim for inverse condemnation.

2. The Deliberate Action Requirement Is Not Satisfied Merely Because Edison Constructed, Maintains, And Operates Electric Infrastructure

In ruling that Plaintiffs had pleaded an inverse claim, Respondent Court held, in reliance on *Barham*, that accidental wildfire damage allegedly caused by poor maintenance of an electrical system stated an inverse condemnation claim. (*See* 4 Appen. 1360.) Although it is true that the Court of Appeal in *Barham* reversed an inverse condemnation judgment in favor of the defendant based on accidental fire damage, that court never examined whether the infrastructure at issue was in fact deliberately constructed and planned in a manner inherently subject *to causing wildfires*, or whether the damages claimed were a *necessary consequence* of the public project, or if the damages occurred in connection with the construction of the relevant public improvements. *See id.* ("In the instant case, the damage arose out of the functioning of the public improvement as deliberately

conceived, altered and maintained."). *Barham* misunderstood the deliberate action requirement as simply meaning that infrastructure must be built and operated deliberately, which, of course, all infrastructure is. Utility lines, roads, drainage basins, and railways are not built by accident. The court did not explain how destruction of property miles away from the alleged source by an uncontrolled wildfire could result from the "functioning of the public improvement as deliberately conceived." *Id.*

Instead of considering whether negligent wildfire damage can in fact arise from power lines operating as deliberately designed and planned, *Barham* improperly relied upon dicta in two older cases: *Aetna Life & Cas. Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, and *Marshall v. Dept. of Water & Power* (1990) 219 Cal.App.3d 1124. In both *Aetna* and *Marshall*, however, the courts did not consider or decide whether the property damage resulted from a deliberate action. Therefore, neither case supports

Plaintiffs' claims here. *See People v. Banks* (1959) 53 Cal. 2d 370, 389 ("Cases are not authority for propositions not considered.").[11]

Holding a government entity liable merely because it decided to build or maintain its infrastructure would subject it to perpetual strict liability for all accidents traceable to that infrastructure. But that would amount to a "general repeal" of sovereign immunity, *Customer Co.*, *supra*, 10 Cal.4th at 389, and this Court has rejected any rule that would make public entities "absolute insurers" of land serviced by their infrastructure projects. *Belair*, *supra*, 47 Cal.3d at 564.

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[11] Respondent court said *Customer Co.* was inapplicable because it "was explicitly found to be inapplicable in *Barham*." (4 Appen. 1360.) *Barham* claimed that "*Customer Co.* . . . was distinguishable" because it was a "police powers case." 74 Cal.App.4th at 755. But this is an improper narrowing of *Customer Co.* where this Court performed a thorough analysis of inverse condemnation principles and case law, and only then stated that the police powers exception provided further support for its holding. Indeed, the dissent frames the case as one of first impression concerning the application of inverse to police powers, but the majority explicitly rejects this framing by citing non-police powers cases. *Compare* 10 Cal.4th at 384 (Baxter, J., dissenting), *with id.* at 415 n.7.

Indeed, *Customer Co.* explicitly relied on a series of non-police powers cases for the same propositions as Edison. *See, e.g.*, *Holtz*, 3 Cal.3d at 300 (public transit); *Albers*, 62 Cal.2d at 254 (public road); *Bauer*, 45 Cal.2d at 281 (storm drainage); *Miller*, 208 Cal. at 76–77 (garbage incinerator).

This Court should reaffirm its numerous cases holding that damage caused by the negligent performance of public duties or the operation of infrastructure is not a taking for public use. To the extent that *Barham* can be read to suggest otherwise, that case is inconsistent with this Court's precedent.

C. Inverse Condemnation Liability Cannot Extend To Edison Because Accidental Wildfire Damage Does Not Further A Public Use

Respondent Court held, in reliance on *Barham*, that Edison's provision of electricity satisfied the requirement that Plaintiffs' property be taken for "public use." (4 Appen. 1364.) But *Barham* incorrectly analyzed whether the underlying infrastructure contributed to the public use, rather than whether the damage contributed to the public use (as is required by the Takings Clause). That analysis contravenes this Court's precedent.

To establish that a taking was "for public use," the "destruction or damaging of property" must be "sufficiently connected with 'public use.'" *Customer Co.*, *supra*, 10 Cal.4th at 382; *accord, e.g.*, *Bauer*, *supra*, 45 Cal.2d at 286 (damage must

relate "to the function of the project as conceived" to be a taking); Cal. Const. art. I, § 19 (providing compensation for property "damaged for public use"). Stated differently, the alleged damage must "promote the ends of a public use" and be "an act necessary to the doing of the work in the performance of which" the public entity was engaged. *W. Assur. Co.*, 72 Cal.App. 68 at 74–75. Thus, plaintiffs must plead that the actual infringement of their property rights furthered a public purpose.

In contravention of *Miller*, *Bauer*, and their progeny, *Barham* and Respondent Court based their findings of "public use" on the general purpose of Edison's electric equipment, rather than the specific purpose of the damage that the equipment allegedly caused. *See Barham*, *supra*, 74 Cal.App.4th at 754 ("the transmission of electric power through the facilities that caused damage to the Barhams' property was for the benefit of the public"); (4 Appen. 1363-64). But it is insufficient that the underlying government activity or infrastructure has a public purpose; the relevant inquiry concerns the damage itself. *San*

Diego Gas & Elec. Co. v. Superior Court (1996) 13 Cal.4th 893, 941 ("it is not true that there is liability for inverse condemnation merely because a utility improves property for a public use; such liability arises only if in doing so the utility 'takes or damages' private property within the meaning of the constitutional provisions on eminent domain"); *see also, e.g.*, *City of Austin*, *supra*, 431 S.W.3d at 827 ("On appeal, the public use asserted by appellees is 'power transmission.' But appellees do not allege or explain how the damage to their property advanced that purpose."); *Am. Family Mut. Ins. Co. v. Am. Nat'l Prop. & Cas. Co.* (Colo. App. 2015) 370 P.3d 319, 328 ("The public purpose of an intended act (the prescribed burn) that ultimately results in an unintentional 'taking' (the wildfire) does not transfer to and supply the 'public purpose' for that taking.").[12]

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[12] Respondent court distinguished *City of Austin* and *Am. Family Mut. Ins. Co.* because they were "from a foreign jurisdiction and" thus "not binding" on the court. (4 Appen. 1363.) But these cases are persuasive and demonstrate how states with nearly identical Takings Clauses to California have held that alleged negligent wildfire damage is not damage for public use. *See* Tex. Const. art. I, § 17; Colo. Const. art. II, § 15.

Customer Co. is instructive. There, this Court held that tear gas damage to a store and its inventory was not damage "for public use," even though officials deliberately fired the canisters for the public purpose of apprehending a felon. 10 Cal.4th at 375–81. As the Court explained, the actual destruction of private property in that case did not itself confer a benefit on the public, even though it was associated with a collateral benefit for the public (capturing a felon). *Id.*

Respondent Court, and *Barham*, erroneously relied on the "non-sequitur" that Edison's infrastructure serves a public purpose. *San Diego Gas & Elec.*, 13 Cal.4th at 941. But, like the damage caused by the accidental fires at issue in *Miller* and *McNeil*, the wildfire damage Plaintiffs allege was not "damage for public use." Plaintiffs thus failed to state a claim for inverse condemnation, and this Court should reverse Respondent Court's ruling to the contrary.

CONCLUSION

The petition for review should be granted and the issues presented reviewed by this Court. Alternatively, this Court should

grant the petition and transfer this case to the Court of Appeal with instructions to issue an alternative writ and consider Edison's writ petition on the merits.

Dated: December 17, 2018

Respectfully submitted,

HUESTON HENNIGAN LLP

By: _____

John C. Hueston
Moez M. Kaba
Douglas J. Dixon
Jonathan D. Guynn
Derek R. Flores
523 West 6th Street
Suite 400
Los Angeles, CA 90014
Tel.: (213) 788-4340
Fax: (888) 775-0898

SOUTHERN CALIFORNIA EDISON COMPANY

Leon Bass, Jr.
Brian Cardoza

Attorneys for Petitioners Edison International and Southern California Edison Company

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that the attached Petition for Review has a typeface of 13 points or more and contains 8,058 words, as determined by the word processing software used to generate the document.

DATED: December 17, 2018

Moez M. Kaba

Exhibit A: Court of Appeal Order

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

EDISON INTERNATIONAL et al., Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent. ROBERT ABATE ET AL., Real Parties in Interest.	B294164 (Super. Ct. No. JCCP4965) (Daniel J. Buckley, Judge) ORDER

THE COURT:

The court has read and considered the petition for writ of mandate filed on December 3, 2018. The petition is denied.

PERLUSS, P. J., ZELON, J., SEGAL, J.

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 December 17, 2018, I served the foregoing document(s) described as:

1. Edison International and Southern California Edison Company's Petition for Review

2. Petition for Review (Petitioner's Appendix of Exhibits Volume 1 of 4);

3. Petition for Review (Petitioner's Appendix of Exhibits Volume 2 of 4);

4. Petition for Review (Petitioner's Appendix of Exhibits Volume 3 of 4); and

5. Petition for Review (Petitioner's Appendix of Exhibits Volume 4 of 4).

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 Supreme Court's electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling).

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the

express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Hon. Daniel J. Buckley
Superior Court of California
County of Los Angeles
111 N. Hill Street
Los Angeles, CA 90012

VIA OVERNIGHT DELIVERY

Clerk, Court of Appeal
Second Appellate District
300 S. Spring Street
Second Floor, North Tower
Los Angeles, CA 90013

VIA OVERNIGHT DELIVERY

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

Executed on December 17, 2018, at Newport Beach, California.

Sarah Jones
(Type or print name)

Sarah Jones
(Signature)