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The Honorable Chief Justice Cantil-Sakauye
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Re: *San Diego Gas & Electric Company v. Public Utilities Commission of the State of California*
Case No. S252748
Court of Appeal Case No. D074417

Letter Brief of *Amici Curiae* Pacific Gas & Electric Company and Southern California Edison Company in Support of San Diego Gas & Electric Company's Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, Pacific Gas & Electric Company ("PG&E") and Southern California Edison Company ("SCE") respectfully submit this *amici curiae* letter brief in support of San Diego Gas & Electric Company's ("SDG&E") petition for review in this case. The petition presents this Court with the proper vehicle to address an urgent conflict regarding inverse condemnation claims against investor-owned utilities ("IOUs"). On the one hand, courts have permitted strict-

liability inverse condemnation claims against IOUs so that those utilities can spread losses throughout the communities they serve. On the other hand, the California Public Utilities Commission ("CPUC") rejected this loss-spreading rationale, resulting in losses instead being consolidated in the IOU. As global warming and urban sprawl make catastrophic wildfires increasingly common in California, this disconnect can result—and, in this case, *has* resulted—in crippling costs falling upon an IOU. No decision of this Court or the Court of Appeal ever contemplated *consolidating* damages via inverse condemnation; to the contrary, the intention was to spread those losses so that no single individual or entity had to bear them alone. In denying loss spreading, the CPUC expressed skepticism about the extension of inverse condemnation to IOUs and suggested the courts should revisit the issue. Mechanistic application of Court of Appeal precedent and section 451 of the Public Utilities Code has thus yielded a result never justified in any reasoned decision. It is also a result contrary to the California Constitution, and one that could yield terrible consequences for the operation of utilities in the state.

This Court should thus grant the petition. Amici submit that the Court should do so for the purpose of reversing the CPUC's decision. But, at a minimum, this issue is of such profound importance that it deserves serious consideration on the merits, rather than escaping meaningful judicial review through a summary affirmance order that failed to engage with the foundational legal issues in the petition.

I. Interest of *Amici Curiae* PG&E and SCE

Like Petitioner SDG&E, amici are investor-owned utilities that are regulated by the California Public Utilities Commission. Both amici are involved in significant, ongoing wildfire litigation. Just as SDG&E faced in this case, amici face civil inverse condemnation liability, which exists so that the defendant can spread individual plaintiffs' losses to the community benefitting from the utility. Also like SDG&E, amici face the prospect of being unable to carry out the second, loss-spreading step of that process if the CPUC denies rate recovery based on its stringent reading of section 451 of the Public Utilities Code, a reading that expressly disregards inverse condemnation principles. This case demonstrates just how severe the consequences can be: the CPUC's departure from a causation-based fault analysis in applying section 451 here meant that SDG&E was not entitled to recover *any* of the inverse liability in rates merely based on certain rule infractions that did not necessarily proximately cause that damage. Without careful application of the proximate cause standard, *all* inverse liability will fall on an IOU for any finding of imprudence under section 451. Moreover, even if amici were not involved in wildfire litigation, they face challenges raising capital based on the

prospect of future inverse condemnation liability that cannot be recovered in rates. Amici thus have a vital interest in the legal question presented in this case.

In this letter brief, amici offer the Court a view of these important issues from a broader, industry perspective. Amici's understanding of, and interest in, these issues comes from their position as two of the largest utilities in the state. PG&E has a service area covering about 70,000 square miles in northern and central California, comprising about 43 percent of the state. Much of PG&E's service territory faces elevated fire risks. PG&E's electricity distribution network consists of over 100,000 circuit miles of electric distribution lines and nearly 20,000 circuit miles of interconnected transmission lines. It also has over 40,000 miles of natural gas distribution pipelines. PG&E employs over 20,000 Californians, and it serves approximately 16 million Californians with their electrical and natural gas needs. SCE has a service area of roughly 50,000 square miles in central, coastal, and southern California, with over 100,000 miles of transmission and distribution electricity lines. Roughly a quarter of SCE's service territory is categorized as a high fire risk area. SCE delivers power to over 15 million people in its service area, and employs thousands of Californians. Altogether, amici and SDG&E provide electricity to 75 percent of Californians. They are also some of the state's largest employers, and the main implementers of California's ambitious environmental policies to fight climate change.

II. The Court Should Grant the Petition for Review to Resolve a Conflict Between the Court of Appeal and the CPUC and to Address Issues of Great Statewide Importance Involved in Wildfire Litigation

The acceleration of climate change, the state's persistent and recurrent droughts, and the expansion of residential development to high fire risk areas of California mean that the risk of catastrophic wildfires is growing. The costs of those wildfires is staggering and utterly dwarfs the losses at issue in the two cases in which the Court of Appeal expanded inverse condemnation to IOUs. And when that expansion happened, the courts contemplated that the losses would be spread among the communities that benefit from their services, not borne exclusively by the utilities. This case demonstrates how dramatically conditions have changed: catastrophic wildfires resulting from unprecedented weather conditions; extraordinary resulting costs imposed on an IOU based on inverse condemnation governed by a strict liability standard; and a refusal of the CPUC to allow that utility to spread *any* of those costs based on infractions that plainly were not the proximate cause of the wildfires.

This case is both proof that it is urgently necessary to assess whether inverse liability should apply to IOUs *and* the perfect vehicle to take up that issue. Unlike in other cases for which review has been sought, here the question of IOUs' inverse condemnation liability has been presented to the courts and the CPUC. Yet, even though the issue is procedurally ripe for review, it has escaped meaningful judicial consideration. SDG&E first raised its objection to inverse condemnation liability by demurring in the Superior Court; the demurrer was overruled, and both the Court of Appeal and this Court summarily denied writ review. SDG&E, facing billions in strict liability inverse condemnation claims, settled. In the rate recovery proceeding before the CPUC, however, the CPUC denied all recovery, determining for the first time that inverse condemnation was irrelevant to its prudent manager analysis under section 451 of the Public Utilities Code.[1] The CPUC indicated it had doubts about extending inverse liability to IOUs, but explained that it lacked authority to review that question or consider those Court of Appeal decisions. In doing so, the CPUC undermined the basis on which the Court of Appeal had extended inverse condemnation liability to IOUs, namely, that the CPUC would allow rate recovery of such liability as a matter of course. Despite the conflict with its case law, and the CPUC's own indication of the need for judicial reevaluation of the inverse question, the Court of Appeal again refused to review the case in a summary order that did not even address the issues presented in the petition.[2]

This Court should grant review for three reasons:[3]

First, there is now a direct conflict between the Court of Appeal cases expanding inverse condemnation liability to IOUs, which depend on the loss-spreading purpose of such liability and the expectation that the CPUC will permit rate recovery of those losses, and the CPUC's decision that it need not permit, or even consider, inverse condemnation principles in deciding whether to permit rate recovery of such liability.

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[1] The CPUC granted amici limited party status—the administrative equivalent to amicus status—during SDG&E's application process.

[2] It also denied as moot amici's application to file an amicus brief in support of SDG&E, although that application was timely filed well before the Court of Appeal considered the petition.

[3] In addition, amici share SDG&E's concern that the Acting Presiding Justice who signed the Court of Appeal's summary order was personally involved in the underlying litigation against SDG&E.

Second, the CPUC's decision worsened this conflict by removing the limiting principle of proximate causation from its section 451 review, thereby consolidating all inverse losses in an IOU upon any finding of imprudence.

Third, the issues involved in this case are of immense importance to the state. Amici submit that the CPUC incorrectly resolved those issues. But whether it is right or wrong to apply inverse principles to IOUs in civil lawsuits while ignoring those principles in administrative rate recovery, the consequences of that decision are sufficiently weighty that careful judicial consideration is warranted.

The Court's review will clarify the legal obligations involved in wildfire litigation and settle the expectations of the parties, the industry, and the markets. In the alternative, the Court should grant the petition and order the Court of Appeal to consider the issues raised in SDG&E's petition on the merits.

A. The Court's Review Is Necessary to Resolve the Conflict Between the Court of Appeal's Decisions Extending Inverse Condemnation to IOUs Based on Its Loss-Spreading Rationale and the CPUC's Rate Setting Decision Holding that Inverse Condemnation Is Irrelevant

As this Court has long recognized, "the underlying purpose of our constitutional provision in inverse … condemnation is 'to distribute throughout the community the loss inflicted upon the individual by the making of public improvements' [citation]: 'to socialize the burden ….' [citation]." (*Holtz v. Superior Court* (1970) 3 Cal.3d 296, 303 (*Holtz*).) Because "the cost of such damage can better be absorbed, and with infinitely less hardship, by the taxpayers as a whole than by the owners of the individual parcels damaged," the government compensates the injured individual and then spreads the losses throughout the benefitted community through taxes, usage fees, rates, or other means of sharing these costs. (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 263.) Inverse condemnation is therefore imposed on the *community* through an intermediary—the entity undertaking the public improvement—not imposed on the intermediary itself. (See *Cantu v. Pacific Gas & Electric Co.* (1987) 189 Cal.App.3d 160, 165 ["'The law of inverse condemnation, viewed broadly and in perspective, seeks to identify the extent to which otherwise uncompensated private losses attributable to governmental activity should be socialized and distributed over the taxpayers at large rather than be borne by the injured individual.' [citation]"].)

The doctrine of inverse condemnation historically applied solely to government entities. (See, e.g., *Marshall v. Department of Water & Power* (1990) 219 Cal.App.3d

1124, 1139 ["Any governmental entity may be liable for inverse condemnation, even agencies which lack eminent domain authority."].) More recently, two districts of the Court of Appeal extended the doctrine from government-owned utilities to IOUs based on "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, as modified (Sept. 13, 2012) (*Pacific Bell*); see also *Barham v. Southern California Edison Co.* (1999) 74 Cal.App.4th 744, 752 (*Barham*) [extending the doctrine to IOUs for the first time with reference to the inverse condemnation policy of "spread[ing] among the benefiting community any burden disproportionately borne by a member of that community"].)

In both cases, SCE vigorously argued that IOUs were fundamentally different from government utilities in ways that made inverse condemnation inappropriate.[4] (*Barham*, *supra*, 74 Cal.App.4th at pp. 752–754; *Pacific Bell*, *supra*, 208 Cal.App.4th at pp. 1407–1411.) SCE explained that unlike the government, which has the power to raise taxes, and government utilities, which have the power to raise rates, IOUs must seek CPUC approval to adjust their rates. (See *Pacific Bell*, *supra*, 208 Cal.App.4th at p. 1407.) The Court of Appeal found that argument unavailing because there was no evidence that "the commission would not allow [SCE] adjustments to pass on damages liability during its periodic reviews." (*Ibid.*)

The CPUC's denial of SDG&E's request to recover inverse liability costs now starkly provides the missing "evidence to support [SCE's] implication that the commission would not allow [an IOU] adjustments to pass on [inverse condemnation] damages liability during its periodic reviews." (*Pacific Bell*, *supra*, 208 Cal.App.4th at p. 1407.) The CPUC is committed to the position that "Inverse Condemnation principles are not relevant to a Commission reasonableness review under the prudent manager standard." (31 App. 11840.)[5] The CPUC recognizes that the constitutional "policy underlying inverse condemnation is one of cost sharing or cost-spreading." (CPUC Answer to SDG&E Petition in Court of Appeal ("CPUC Answer") at p. 24.) And the CPUC agrees that such liability is imposed in order to "spread[] the costs among the larger community of individuals that benefit from the public improvement." (*Id.* at pp.

[4] Amici maintain that this is still the case today and reserve all rights to oppose the application of inverse condemnation and strict liability to IOUs and wildfire damages.
[5] All citations to Petitioner's Appendix are by volume and page number, *i.e.*, [vol.] App. [page].

24–25 [citing *Barham*, *supra*, 74 Cal.App.4th at p. 752].) Nevertheless, the CPUC insists that even if "Courts have assumed the cost spreading policy of inverse condemnation could be satisfied by IOU rate recovery," those "assumptions" impose no "legal requirements" on the CPUC. (31 App. 12318; see also CPUC Answer at p. 32 ["Assumptions do not constitute legal mandates."].) The CPUC thus asserts that an agency need not "abdicate its own governing statutes and standards in light of constitutional principles." (31 App. 12318, fn. 78.)

By rejecting the constitutional basis for inverse condemnation as "irrelevant" when deciding whether to permit such loss spreading via a rate adjustment under section 451, the CPUC created a conflict between its rate setting review and the Court of Appeal's extension of inverse condemnation to IOUs. No such conflict was necessary. Carrying out the constitutional purpose under which inverse condemnation costs are imposed on an IOU would not require the CPUC to "abdicate" section 451. Rather, it requires the CPUC to apply section 451's "just and reasonable" standard to an IOU's inverse losses in a manner consistent with the constitutional purpose of inverse liability. Where a utility seeks a rate adjustment in light of inverse condemnation damages, it is "just and reasonable" under section 451 to spread those costs through the benefiting public. (See, e.g., *Holtz*, *supra*, 3 Cal.3d at p. 303.) As this Court has explained, "wherever possible, we will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statute." (*California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594.) Here, such harmonizing between inverse condemnation and section 451 is simple: spreading inverse costs to the public is "just and reasonable" because the costs were imposed on the IOU in the first place precisely because, "in fairness and justice," they "should be borne by the public." (*Williams v. Moulton Niguel Water Dist.* (2018) 22 Cal.App.5th 1198, 1210, as modified (May 18, 2018), review denied (July 11, 2018).)

Alternatively, as SCE argued in *Barham* and *Pacific Bell*, and as the IOUs continue to argue today, inverse condemnation should be limited to government entities (or entities acting in concert with government entities), which can always spread losses to the community, and not be expanded to include IOUs, which cannot necessarily do so. (*Barham*, *supra*, 74 Cal.App.4th at pp. 752–753; *Pacific Bell*, *supra*, 208 Cal.App.4th at pp. 1404–1406.) The loss-spreading rationale for extending inverse condemnation has proven unfounded, and the practical consequences of that extension have gotten much worse. The current state of affairs for IOUs bears no resemblance to the circumstances in which inverse condemnation liability was applied to SCE in *Pacific Bell*. Climate change—and the resulting droughts and windstorms—has created a likelihood of catastrophic wildfires that cause damage that is many orders of magnitude greater than

the $123,841.95 at issue in that case. (*Pacific Bell*, *supra*, 208 Cal.App.4th at p. 1407.) Removing inverse condemnation liability would not absolve the IOUs of responsibility. Negligence cases appropriately compensate victims, and the CPUC's reasonableness review under section 451 would prevent imprudent costs from being passed on to the public.

If nothing else, the inconsistency between civil courts' imposition of inverse liability and the CPUC's treatment of such liability as "irrelevant" warrants this Court's careful consideration. The CPUC itself has called for California courts to "directly grapple[] with whether inverse condemnation should apply to regulated utilities in light of the fact that they are subject to the exclusive jurisdiction of this Commission, including the Commission's exclusive authority to set utility rates and allocate costs." (CPUC Answer at p. 26; see also p. 31.) "The problem, to the extent there is one, is the potential impact of subjecting Commission-regulated utilities to strict liability." (*Id.* at p. 37.) For that reason, the CPUC "urge[d] the California Courts of Appeal to carefully consider the rationale for applying inverse condemnation in these types of cases." (31 App. 11850.) As the concurrence of CPUC President Picker and Commissioner Guzman Aceves bluntly explained, "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." (31 App. 11854.)

B. The CPUC's Failure to Apply Proximate Causation in Its Rate Setting Analysis Worsens the Conflict by Concentrating Inverse Costs on IOUs for Any Imprudence

In its decisions below, the CPUC suggested that costs will be disallowed even when they are not proximately caused by an IOU's imprudent management. This rule worsens the consequences of the conflict between the Court of Appeal and the CPUC. When coupled with a civil court's imposition of strict liability inverse condemnation, the failure to carefully apply proximate causation principles means that an IOU will be unable to spread *any* of the losses, even those not proximately caused by its purported imprudence. Not only is this the exact opposite of the loss-spreading premise of inverse condemnation, it also stands in contrast to how fault-based liability standards limit damages to the harms caused by the fault.

The CPUC has justified its complete denial of SDG&E's cost recovery on the basis that SDG&E's facilities caused the fires. (CPUC Answer at p. 47.) That argument misses the point: in inverse, the question is whether SDG&E's *facilities* caused the fires,

but under section 451, the question is whether SDG&E's alleged *imprudence* caused the fires. If the CPUC denies cost recovery because an IOU is imprudent without requiring a direct connection between the imprudence and the costs, then the entirety of catastrophic wildfire losses can be concentrated on an IOU based on civil inverse condemnation liability regardless of whether and to what extent those losses were caused by any imprudence. Amici respectfully submit that is exactly what happened to SDG&E here.

Worse still, the CPUC deemed any rule violation *per se* imprudent, regardless of whether the violation resulted from conduct that a prudent manager would have avoided. The CPUC's rules impose what amounts to strict liability for failure to achieve certain outcomes, such as power line clearance distances. Even if a utility takes every reasonable action to comply with the CPUC's rules, a violation can still occur. The CPUC nevertheless decreed that SDG&E was prohibited from recovering any costs merely because it violated the CPUC's rules, without regard to the prudence of its conduct.

C. The Court's Review Is Necessary Because These Issues Are Immensely Important as Catastrophic Wildfires Become "the New Normal"

The CPUC's failure to permit SDG&E to recover the just and reasonable costs of inverse condemnation in this case has caused significant negative practical consequences. IOUs have *already* suffered concrete harms from this decision, and those harms are also borne by utility customers and the state. Both PG&E's and SCE's stock prices dropped 40% and 20% respectively in light of the 2017 wildfires; investors feared that IOUs would be subject to massive inverse liability that the CPUC would not permit to be spread, a concern that has only increased with the CPUC's decision in this case.[6] There

[6] See J.P. Morgan, *North America Equity Research: Edison International* (Jan. 11, 2018) at p. 1 (noting that California's inverse condemnation law significantly increases the risk of operating a utility in the state); Evercore ISI, *CPUC Rejects Recovery of SDG&E Wildfire Costs; PCG's Financial Risk Related to Inverse Condemnation Remains* (Dec. 1, 2017) at p. 2 (identifying California's inverse condemnation law as a factor in PG&E's stock price fluctuations); Deutsche Bank, *Market Research: Earnings No Match for Wildfire Talk* (Nov. 3, 2017) at p. 1 ("The call included plenty of discussion of the question of California's inverse condemnation doctrine for utilities which has been a subject of intense scrutiny of late among utility investors."); Teresa Rivas, *PG&E: It's like Sticking a Fork in a Socket*, Barron's (Jan. 2, 2018) <https://www.barrons.com/articles/pg-e-its-like-sticking-a-fork-in-a-socket-1514920990> [as of Dec. 20, 2018]; Wharton Risk Management & Decision Processes Center, Univ. of Penn., *Issue Brief: Wildfire Costs in California, The Role of Electric Utilities* (Aug. 2018) at p. 8 & fn. 29

has been a similar response to the 2018 wildfires, even as the cause of the fires is still undetermined.[7] For the same reasons, IOUs' credit ratings have been downgraded, reducing their access to capital.[8] And as the costs of borrowing increase, ratepayers'

<https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/08/Wildfire-Cost-in-CA-Role-of-Utilities-1.pdf> [as of Dec. 20, 2018].

[7] David K. Li and Minyvonne Burke, *California's Deadliest Wildfire Is Blamed in Lawsuit on Faulty Utility Transmission Tower*, NBC News (Dec. 6, 2018) <https://www.nbcnews.com/news/us-news/california-s-deadliest-wildfire-blamed-lawsuit-faulty-utility-transmission-tower-n944811> [as of Dec. 20, 2018] ("The Camp Fire, and concerns about any connection between PG&E and how the blaze started, has taken toll on the company's stock value. It closed at $26.03 a share on Thursday — down from its closing price of $48.80 on Nov. 7 and its 52-week high of $53.89."); I-Chun Chen, *California Fires Stoke Sell-Off of PG&E, Edison Stock*, L.A. Biz (Nov. 12, 2018) <https://www.bizjournals.com/losangeles/news/2018/11/12/california-fires-stoke-sell-off-of-pg-e-edison.html> [as of Dec. 20, 2018] ("PG&E shares have declined by nearly one-third, representing $7 billion of the company's market value, since the Camp Fire in Butte County broke out last week. Edison International shares have dropped 23 percent as the Hill and Woolsey fires continue to spread in Ventura and Los Angeles counties.").

[8] StreetInsider.com, *Fitch Downgrades PG&E Corp (PCG) and Utility Sub to 'BBB-' on Negative Watch* (Nov. 16, 2018) <https://www.streetinsider.com/Corporate+News/Fitch+Downgrades+PG%26E+Corp+%28PCG%29+and+Utility+Sub+to+BBB-+on+Negative+Watch/14840871.html> [as of Dec. 20, 2018] ("The rating action reflects the enormous increase in the size, intensity and destructive power of wildfires in California during 2017-2018, the implications of potential, vastly increased third-party liabilities under inverse condemnation and uncertainties regarding full and timely recovery of such costs."); Moody's Investors Service, *Rating Action: Moody's Downgrades Pacific Gas & Electric Company to Baa1 from A3 and PG&E Corporation to Baa2 from Baa1; Rating Outlooks Remain Negative* (Sept. 6, 2018) <https://www.moodys.com/research/Moodys-downgrades-Pacific-Gas-Electric-Company-to-Baa1-from-A3--PR_388453> [as of Dec. 20, 2018]; Moody's Investors Service, *Rating Action: Moody's Revises the Ratings Outlook of Southern California Edison and Edison International to Negative* (Dec. 3, 2018) <https://www.moodys.com/research/Moodys-revises-the-ratings-outlook-of-Southern-California-Edison-and--PR_392015> [as of Dec. 20, 2018]; Moody's Investors Service, *Rating Action: Moody's Changes Edison International and Southern California Edison's Rating Outlooks to Negative* (Apr. 11, 2018) <https://www.moodys.com/research/Moodys-Changes-Edison-International-and-Southern-California-Edisons-Rating-Outlooks--PR_380780> [as of Dec. 20, 2018]

costs increase as well.[9]

The credit downgrades of the major IOUs have in turn triggered downgrades for independent power producers.[10] These independent power producers play important roles alongside the IOUs in executing California's ambitious strategies for addressing climate change. The electricity sector has provided the majority of the reductions in California's greenhouse gas emissions in the state's efforts for a forty percent reduction in emissions from 1990 levels by 2030.[11] The IOUs are also major employers; threats to

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("'SCE's credit profile is weighed down by the potentially large contingent exposure created by the application of [a] strict liability standard in California in the case of wildfires where utility equipment was determined to be the source of the fire.'"); Moody's Investors Service, *Rating Action: Moody's Changes San Diego Gas & Electric's Rating Outlook to Negative from Stable* (Apr. 11, 2018) <https://www.moodys.com/research/Moodys-Changes-San-Diego-Gas-Electrics-Rating-Outlook-to-Negative--PR_380749> [as of Dec. 20, 2018] ("'The increasing inverse condemnation risk exposure has caused us to reassess our view of the credit supportiveness of the regulatory environment in California.'"); Press Release, Fitch Ratings, *Fitch Downgrades PG&E Corp. and Sub to 'BBB+'; Places on Rating WatchNegative* (Feb. 26, 2018) <https://www.fitchratings.com/site/dodd-frank-disclosure/10021816> [as of Dec. 20, 2018]; S&P Global Ratings, *Will Wildfires Scorch California's Utilities?* (June 18, 2018) at pp. 3, 4 <https://www.capitaliq.com/CIQDotNet/CreditResearch/RenderArticle.aspx?articleId=2058524&SctArtId=456989&from=CM&nsl_code=LIME&sourceObjectId=10584628&sourceRevId=6&fee_ind=N&exp_date=20280710-19:47:38> [as of Dec. 20, 2018].

[9] See 31 App. 11855 ["The increase in the cost of capital and the expense associated with insurance could lead to higher rates for ratepayers, even in instances where the investor-owned utility complied with the Commission's safety standards."].)

[10] See Jason Fordney, *Picker Seeks Guidance on IOUs, Aliso Canyon*, RTO Insider (Mar. 6, 2018) <https://www.rtoinsider.com/cpuc-michael-picker-aliso-canyon-87985/> [as of Dec. 20, 2018]; Press Release, Fitch Ratings, *Fitch Downgrades Topaz Solar Farms, LLC's Senior Notes to 'BBB+'; Places on Rating Watch Negative* (Mar. 2, 2018) <https://www.fitchratings.com/site/pr/10022405> [as of Dec. 20, 2018].

[11] Southern California Edison, *The Clean Power and Electrification Pathway: Realizing California's Environmental Goals* (Nov. 2017) <https://www.edison.com/content/dam/eix/documents/our-perspective/g17-pathway-to-2030-white-paper.pdf> [as of Dec. 20, 2018] ("The electric sector has provided the majority of emissions reductions in California (Figure 2) through energy efficiency, the phasing out of coal, and integration of new renewable resources.").

their financial health put the job security of tens of thousands of Californians at risk. And all of these factors harm the IOUs' ability to attract investment, raise capital, and invest in providing safe, affordable, and reliable electric service to their users.

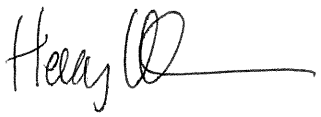
The prospect of future devastating wildfires makes even more urgent the need for this Court to confront the interaction between inverse condemnation and IOU cost recovery.

D. Conclusion

For all of the above reasons, the Court should grant SDG&E's petition for review. Alternatively, the Court should grant the petition and transfer this case to the Court of Appeal with instructions to consider SDG&E's petition for review on the merits.

Respectfully,

MUNGER, TOLLES & OLSON LLP



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On December 21, 2018, I served true copies of the following document(s) described as **Letter Brief of Amici Curiae Pacific Gas & Electric Company and Southern California Edison Company in Support of San Diego Gas & Electric Company's Petition for Review** on the interested parties in this action as follows:

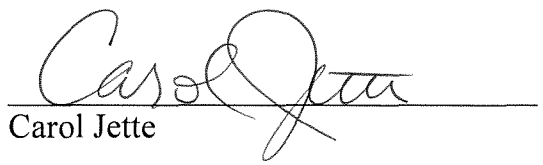
SEE ATTACHED SERVICE LIST

BY TRUEFILING NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Court via the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on December 21, 2018, at Los Angeles, California.



Carol Jette

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