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

Fairview Fire Cases
JCCP5266

Dept. 12 SSC
Hon. Carolyn B. Kuhl
Date of Hearing: January 5, 2026

Defendants Southern California Edison Company and Edison International's Motion for Summary Adjudication

Court's Ruling: The Motion is denied as to the Plaintiffs' claim for inverse condemnation and is granted as to Plaintiffs' claim for punitive damages..

Plaintiffs bring this litigation to recover for damages suffered as a result of the "Fairview Fire." All Plaintiffs in this coordinated proceeding bring claims against Southern California Edison Company (SCE) for having allegedly caused the Fairview Fire.

On March 14, 2023, a group of insurers (Subrogation Plaintiffs) filed their Master Complaint (SPMC), alleging causes of action for (1) inverse condemnation, (2) negligence, (3) trespass, (4) private nuisance, (5) public nuisance, (6) premises liability, (7) violation of Public Utilities Code section 2106, and (8) violation of Health and Safety Code section 13007.

On March 15, 2023, a group of individuals (Individual Plaintiffs) filed their Master Complaint (IPMC). The IPMC is substantially similar to the SPMC and alleges the same causes of action.

On March 24, 2023, a group of public entities (Public Entity Plaintiffs) filed their Master Complaint (PEPMC). The PEPMC is substantially similar to the IPMC and the SPMC and alleges the same causes of action as the other two Master Complaints.

SCE now moves for summary adjudication as to Individual Plaintiffs' and Public Entity Plaintiffs' (1) cause of action for inverse condemnation, and (2) request for punitive damages.

Individual Plaintiffs (referred to herein as "Plaintiffs) oppose the Motion.

Relevant Evidence

"CAL FIRE determined that on September 5, 2022, at approximately 3:35 p.m., the Fairview Fire ignited beneath SCE's Sprague 12 kV circuit between Poles 220028S and 220029S." (Pls' Fact No. 1.) "SCE owns and operates the Sprague 12 kV circuit and related poles and equipment in Riverside County." (Pls' Fact No. 2.) The parties refer to this as the "Sprague Circuit." The Sprague Circuit "is part of SCE's publicly regulated electric grid … ." (Pls' Fact No. 3.)

Plaintiffs have contended that a failure of SCE's powerline and supporting electrical equipment between Pole Nos. 22028S and 220029S (Subject Span) caused the Fairview Fire. (SCE's Fact No. 2.) "Plaintiffs specifically allege that SCE's sagging conductor on the Subject Span contacted a Frontier communication wire and caused a shower of sparks that fell to the ground and ignited vegetation, sparking the fire." (SCE's Fact No. 3.) "CAL FIRE concluded the east phase conductor on the Sprague 12 kV circuit sagged below required CPUC [i.e., the California Public Utilities Commission] General Order ('GO') 95 clearance, contacted a Frontier messenger cable, arced, and ignited vegetation causing the Fairview Fire." (Pls' Fact No. 5.)

"SCE obtained the rights to construct and maintain the facilities at issue through an easement. The easement was granted by Oswald O. Fox and Josephine M. Fox to California Electric Power Company, SCE's predecessor, and executed on March 15, 1954. The easement was recorded on March 18, 1954 as Recorder's Instrument No. 13691 in Book 1566, page 242 of Official Records of Riverside County." (SCE's Fact No. 17.) The Subject Span is "located in the easement." (SCE's Fact No. 18.)

Raymond Fugere (Fugere), the director of SCE's Wildfire Safety Group, states that the Subject Span was installed in 1954 and "provides electricity to one customer." (Fugere Decl., ¶ 9.) However, at the time of the Fairview Fire, the Subject Span was not providing electricity to anyone. Plaintiffs' retained expert, Howard Levin (Levin), notes that the Subject Span "had not been serving any customers since approximately 2018 or 2019 … ." (Levin Decl., ¶ 17.) There is no evidence in the record suggesting that the Subject

Span ever supplied electricity to anyone other than the "one customer" mentioned in the Fugere declaration. Instead, the evidence is that the Subject Span was an "extension" to the single customer. (See Salinas Decl., ¶ 6 [Plaintiffs' objection to this testimony is overruled; the declarant may testify that the Subject Span was a "pole and line extension service"].)

SCE operates pursuant to tariffs approved by the California Public Utilities Commission. (SCE's Fac. No. 22.) SCE Tariff Electric Rule 15(A)(2)(a) provide that "SCE will own, operate and maintain Distribution Line Extension facilities only: (1) along public streets, alleys, roads, highways and other publicly dedicated ways and places which SCE has the legal right to occupy (Franchise Areas), and (2) on public lands and private property across which rights of way and permits to SCE may be obtained without cost to or condemnation by SCE." (*Id.*)

The parties present substantial evidence regarding SCE's general operations and practices. "SCE maintains more than 105,773 miles of distribution lines, and approximately 1.4 million electricity poles." (SCE's Fact No. 23.) "In 2022, SCE completed 334,732 distribution equipment inspections." (SCE's Fact No. 24.) "Since 2020, SCE has conducted more than 1 million inspections on its equipment." (SCE's Fact No. 25.)

"SCE undertook and continues to undertake various wildfire mitigation measures outlined in its wildfire mitigation plans as presented to SCE's regulators. These measures are implemented within HFRA [i.e., "High Risk Fire Areas"] as identified by the CPUC Fire Threat Map to minimize the likelihood that SCE lines and equipment could increase fire hazards and minimize the consequence if by unfortunate chance an ignition does occur. In addition to [other measures], SCE has undertaken grid hardening as outlined in SCE's various wildfire mitigation plans not just in the incident area, but throughout SCE's service territory in HFRA." (SCE's Fact No. 27.) Plaintiffs do not present evidence to dispute that SCE undertakes various wildfire mitigation measures; but Plaintiffs dispute (1) that such measures were adequately taken with respect to the Subject Span, and (2) that the mitigation measures are sufficient to prevent wildfires. (See Pls' Response to SCE's Fact No. 27.)

"SCE has a longstanding Annual Grid Patrol ('AGP') program designed to provide for the visual inspection of SCE's overhead electrical distribution facilities every year to identify and document obvious safety and reliability conditions that require corrective actions." (SCE's Fact No. 28.) But Plaintiffs dispute whether the AGP "demonstrated effective hazard detection." (Pls' Response to SCE's Fact No. 28.) Plaintiffs claim that the evidence shows that "the May 11, 2022 AGP on the Sprague grid (ED77-

OH-5561800) was visual only, performed from the ground or vehicle, without sag clearance charts or tools, and limited to 'obvious or egregious hazards.' " (Pls' Response to SCE's Fact No. 28.)

"SCE inspectors are trained in SCE's Distribution Inspection and Maintenance Program ('DIMP'), which seeks to ensure public and worker safety and regulatory compliance by completing scheduled Detailed Inspections and Grid Patrols." (SCE's Fact No. 30.) Plaintiffs attempt to dispute this fact by noting the DIMP failure to make sure that inspectors measured "the clearances or amount of sag," and that inspectors relied simply on visual inspections from the ground/vehicle patrols that failed to detect the hazards of the Subject Span. (Pls' Responses to SCE's Fact No. 30.)

"Annual patrols are performed primarily from ground vehicles but can also be completed by foot or aircraft. If the inspector notes a Priority 1 condition during the patrol, as defined by GO 95 Rule 18, the inspector will request for a Troubleman to come to the site, assess the condition, and ensure the safety of the site." (SCE's Fact No. 31.) Plaintiffs dispute the "adequacy of SCE's patrol response procedures." (Pls' Responses to SCE's Fact No. 31.)

"SCE requires Overhead Detail Inspections ('ODI'), which involves a close in-depth inspection of SCE's overhead distribution facilities, such as poles, capacitors, switches, transformers, conductors, guy wires and risers, with the intent to identify and document visually apparent conditions." (SCE's Fact No. 32.) "For non-high fire risk areas, ODI inspections take place every five years, consistent with [the regulatory requirements in General Order (GO) 165]." (SCE's Fact No. 33.) "For high-fire risk areas, ODI inspections take place every three years," which is more often than is required by GO 165. (SCE's Fact No. 34.) Plaintiffs do not dispute that the ODI program exists; Plaintiffs dispute that the ODI program was sufficient to prevent the Fairview Fire. (Pls' Responses to SCE's Fact No. 32.)

"SCE has historically had two major pole replacement programs, Deteriorated (Det) Pole Program and Pole Loading Program (PLP), [which are meant] to improve the safety and reliability of the electric grid." (SCE's Fact No. 35.) Plaintiffs point to evidence to suggest that these pole replacement programs do not include routine sag measurement. (Pls' Responses to SCE's Fact No. 35.)

"SCE's Quality Control group performs independent evaluations of activities by SCE's Transmission and Distribution group that impact the safe, reliable, and affordable delivery of electricity, and addresses and corrects

any quality gaps discovered. The Quality Control group assesses compliance with GO 95, 128, 165, and 174 in addition to various SCE maintenance, construction, and inspection standards that in many cases exceed regulatory requirements." (SCE's Fact No. 39.) "Plaintiffs dispute that SCE's Quality Control group adequately addressed field safety gaps." (Pls' Responses to SCE's Fact No. 39.)

"SCE also has several programs designed to increase the frequency of inspections in HFRA. Between 2020 and 2022, SCE completed approximately 541,400 distribution and 73,600 transmission structure inspections in HFRA, including Areas of Concern, using an approach that inspects transmission and distribution structures that represent up to 99% of risk each year. SCE also performed needed repairs and replacements." (SCE's Fact No. 40.) "Plaintiffs dispute that SCE's increased HFRA inspections were adequate or timely." (Pls' Responses to SCE's Fact No. 40.)

"[I]n 2021 SCE introduced the concept of a pre-patrol as a component of the effort to prepare for peak fire season in certain Area[s] of Concern ('AOC') in HFRA. The Fall AOCs pre-patrol consists of a vehicle-based (where possible) patrol which looked for Priority 1 emergency conditions, mid-span clearance conditions (e.g., vegetation in lines or potential wire slap) and Communication Infrastructure Provider (CIP)/third party hazardous conditions." (Fugere Decl., ¶ 17.) Plaintiffs point to evidence tending to show that the patrols "focused on 'obvious' hazards, and did not include measurement of conductor sag or clearance." (Pls' Responses to SCE's Fact No. 41.)

"In April 2019, SCE began to perform aerial detailed visual inspections via helicopter or drone to supplement ground-based inspections in HFRA to identify deterioration or unfavorable asset conditions. SCE also piloted a single visit 360 inspection for distribution (for inspections on 33kV assets and below) starting in 2022." (SCE's Fact No. 43.) Plaintiffs respond to this fact by presenting evidence tending to show that these aerial visual inspections did not make "clearance and sag measurements." (Pls' Responses to SCE's Fact No. 43.)

SCE similarly presents substantial evidence tending to show that it had a program in place to inspect vegetation for the purpose of mitigating wildfire risks. (See SCE's Fact Nos. 50-80.)

The Subject Span underwent "Annual Grid Patrol inspections in 2019, 2020, and 2021[;] [n]o Priority 1 hazards were noted." (SCE's Fact No. 44.) Plaintiffs note that these inspections failed to identify the hazardous sagging. (Pls' Responses to SCE's Fact No. 44.) SCE also notes that other types of

inspections of the Subject Span were performed over the years. "In the five years prior to the Fairview Fire, the area containing the Subject Poles underwent annual line clearing pre-inspections in 2018, 2019, 2020, 2021, and 2022." (SCE's Fact No. 81.)

Plaintiffs attempt to show that SCE should have known that there was hazardous sag on the Subject Span that would likely cause a wildfire. Plaintiffs' expert, Levin, has concluded that the hazardous sag on the Subject Span, in violation of GO 95, was the cause of the Fairview Fire. (Levin Decl., ¶ 6.) Levin claims that "SCE was aware for a period of over 2 years prior to the Fairview Fire that the sag of the span between Poles 220028S and 220029S was excessive and out of compliance with CPUC General Order 95 Rules and SCE's own standards." (Levin Decl., ¶ 14.) However, this testimony is inadmissible, as Levin fails to demonstrate any basis for this conclusion. Similarly, Levin fails to provide testimony to support his conclusion that "[t]he evidence [he] reviewed shows systemic noncompliance and repeated CPUC findings of inadequate inspection and line clearance contributing to catastrophic fires." (Levin Decl., ¶ 11.) This testimony is thus inadmissible.

Plaintiffs claim that "SCE has been repeatedly cited for violations of GOs 95 and 165," but Plaintiffs do not cite to any evidence in support of this factual claim. (See Pls' Fact No. 10 [citing the entirety of SCE's wildfire mitigation plans].) Plaintiffs also rely on SCE's two wildfire mitigation plans to make the following claim: "SCE's managing agents knowingly continued operating aging, uninsulated conductors in High Fire-Threat Districts -- including but not limited to the one ignited in this fire – in contravention of SCE's statutory duties and despite CPUC enforcement actions." (Pls' Fact No. 11.) As SCE points out, Plaintiffs do not identify any "managing agents." The cited evidence does not support Plaintiffs' Fact Nos. 10 and 11.

Levin, relying on a report, states that "[t]he CPUC found that SCE's inspection failures and lack of maintenance emphasize its operational negligence evident in the excessive sag on the phase 1B conductor which significantly increased before the Fairview Fire ignition on September 5, 2022." (Levin Decl., ¶ 15.)

Levin also states his opinion that, "[s]ince the [Subject Span] had not been serving any customers since approximately 2018 or 2019 there was not any need for this span to be energized" at the time of the Fairview Fire. (Levin Decl., ¶ 17.) Fugere has testified that the Subject Span remained "energized" because it was possible that the single customer served by the Subject Span might again require electricity. (Pls' Comp. Evid., Ex. J at 37:16-20.)

Levin also expresses the following opinion: "SCE intended to re-conductor the Sprague 12kV circuit by the end of 2022 with covered conductor. However, the re-conductor work did not happen in 2022. If it had been completed in a timely manner the fire would more than likely not have happened." (Levin Decl., ¶ 21.)

Plaintiffs make the following factual claim:

> SCE consciously disregarded known safety risks by permitting the Sprague conductor to sag and failing to inspect or maintain adequate clearances despite wildfire risk. Fugere admitted SCE takes no scheduled sag measurements and patrols only "look for obvious conditions." Milligan testified inspections were visual only, and lacked or sag charts/measurements. (Compendium Exh. J, Fugere Depo. 30:1-32:2; 34:16-35:14; 105:9-107:7; 109:8-110:17; Compendium Exh. U, Milligan Depo. 25:20-26:2).

(Pls' Fact No. 27.) However, the cited testimony does not adequately support the claim that "SCE consciously disregarded known safety risks by permitting the Sprague conductor to sag and failing to inspect or maintain adequate clearances." Milligan testified that inspectors measured sag by visually inspecting lines, rather than by using any undisclosed "tools" to measure the amount of sag. (Pls' Comp. Evid, Ex. U, at 25:20-23.)

The CPUC's Safety and Enforcement Division's (SED) investigative report made the following conclusions in a report submitted by Plaintiffs:

> SED's investigation identified SCE's multiple violations of GO 95, which contributed to the Fairview Fire ignition. SCE failed to identify and correct the excessive sag on its phase 1A and phase 1B conductors for over two years prior to the start of the Fairview Fire.
> In addition, SCE failed to maintain the minimum clearance between an energized conductor and a communication cable and failed to maintain the minimum height above ground for the conductors at the Incident Span. …
> As of June 2, 2020, SCE had LiDAR data in its possession which showed that the sag on the conductors supported by Incident Pole 220029S and Pole 220028S on the [Subject] Span exceeded the maximum limit required by SCE's internal overhead construction manual. SCE conducted two

> grid patrol inspections and six ODIs and EOIs between 2020 and 2022 and did not identify and correct the excessive sag on the conductors. SCE, per their own procedures, could have, and should have, identified the excessive sag on the conductors, but SCE did not. As the Incident Span was in a high wind area, SCE should have taken the possibility of excessive sag more seriously, trained its inspectors better, and provided timely repairs on its facilities.

(Pls' Comp. Evid., Ex. W, at p. 42.)

Plaintiffs also offer evidence that they believe suggests that an SCE employee engaged in "spoliation." Plaintiffs cite a Cal Fire investigation report wherein the investigating officer states that, after leaving the inspection area, he saw a SCE vehicle, "noticed the rear passenger exit the vehicle and walk east into the brush," and saw that this "rear passenger" collected "what appeared to be a mylar type ballon." (Pls' Comp. Evid., Ex. X at p. CALFIRE 0000051.) The investigating officer spoke with someone who identified herself as "Bernice Cordero, an Edison Senior Advisor." (Pls' Comp. Evid., Ex. X at p. CALFIRE 0000051.) Both Bernice Cordero and the unidentified "rear passenger" stated that "they were picking up trash," not "collecting evidence." (Pls' Comp. Evid., Ex. X at p. CALFIRE 0000051.) The same investigating officer has clarified in deposition testimony submitted by Plaintiffs that the SCE vehicle was "[w]ell outside" the area of the origin of the Fairview Fire, and that he "was confident that what [the rear passenger] picked up had no ties to the ignition of the fire." (Pls' Compl., Evid. Ex. T, at 44:25—46:3.) "In her deposition, Ms. Cordero identified the other SCE personnel present at the time of the mylar balloon incident as Jose Moran (another Senior Advisor) and a field supervisor, Mr. Schlicker." (Pls' Fact No. 33.)

Judicial Notice

Plaintiffs request judicial notice of 21 documents. SCE opposes the request.

Plaintiffs request judicial notice of reports by the CPUC and Cal Fire. Plaintiffs are correct that the existence of these reports is subject to judicial notice. However, SCE is correct that this court cannot take judicial notice of the truth of the facts presented in the reports. The request is thus denied as to these exhibits. However, denial of the request for judicial notice does not prevent Plaintiffs from attempting to present the contents of the reports as evidence of facts Plaintiffs may be able to prove and thus the contents are relevant.

Plaintiffs request judicial notice of CPUC documents concerning other fires. Judicial notice is appropriate under Evidence Code section 452, subdivision (c). SCE is incorrect that such documents are entirely irrelevant here.

Plaintiffs request judicial notice of SCE's own internal documents. Such documents are evidence, but they are not the proper subject of judicial notice. The request for judicial notice is thus denied as to these internal documents.

Plaintiffs request judicial notice of CPUC's General Orders. The request is proper. The court grants the request pursuant to Evidence Code section 452, subdivision (c).

Plaintiffs request judicial notice of court documents filed in separate litigation. Judicial notice of the existence of such documents is appropriate under Evidence Code section 452, subdivision (d).

Discussion

Inverse Condemnation

"An inverse condemnation action is an eminent domain action initiated by one whose property was taken or damaged for public use. [Citations.] The fundamental policy underlying the concept of inverse condemnation is that the costs of a public improvement benefiting the community should be spread among those benefited rather than allocated to a single member of the community." (*Foley Investments, L.P. v. Alisal Water Corp.* (2021) 72 Cal.App.5th 535, 542 (*Foley*), internal citations, quotation marks, and ellipses omitted.)

"In order to prevail on [a] cause of action for inverse condemnation, the [plaintiff] must prove that a public entity has taken or damaged their property for a public use. [Citation.] Article I, section 19 (formerly § 14) of the California Constitution has been interpreted by our Supreme Court to mean that 'any actual physical injury to real property proximately caused by [a public] improvement as deliberately designed and constructed is compensable … whether foreseeable or not.' " (*Barham v. Southern Cal. Edison Co.* (1999) 74 Cal.App.4th 744, 751 (*Barham*), internal citations omitted.) "The question [of public use] does not concern the land upon which the electrical transmission facilities were located. Rather, the issue is whether the [plaintiff's] property was taken for a public use, i.e., the transmission of electric power to the public." (*Id.* at p. 754.) "[I]nverse

condemnation liability is limited to physical injuries to real property caused by a public improvement as deliberately constructed and planned." (*Id.,* at p. 755, discussing the reasoning of *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 383.) "Whether a use is public or private is a question of law." (*Id.* at p. 752.)

The evidence here is that the Subject Span was constructed by SCE over land it acquired by easement. There is no evidence that SCE paid any money to acquire the easement. Therefore, the Subject Span would appear to be a Distribution Line Extension Facility on "private property across which rights of way [were] obtained without cost to or condemnation by SCE." (El-Harazi Decl., Ex. 5, Tariff Electric Rule 15(A)(2)(a).) As such it is an extension line that SCE "*will* own, operate and maintain… ." (*Id.*, emphasis added.) SCE offers no evidence to the contrary. Because 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.

SCE argues that Plaintiffs' land was not taken for a public use because the land over which the Subject Span was built was private property subject to an easement. SCE claims that the public use element of inverse condemnation is not met where "the right to construct and maintain the equipment was not obtained through eminent domain." (Def's Mot., at p. 17.)

At oral argument, this court asked defense counsel what public policy would support a distinction in the application of inverse condemnation liability between failure of electric lines that were over public land or were acquired through inverse condemnation and electric lines that were over private land over which SCE has an easement. Counsel responded that *no* extension lines to individual customers should be considered to be a public use, but that where the right to construct an extension line was acquired by eminent domain and such line failed causing injury, it would be fair to impose liability for inverse condemnation because government power was exercised to build the line. In this court's view, Defense counsel's proposed distinction conflicts with the structure of the public authority given SCE by Tariff Electric Rule 15(A)(2)(a). Under that provision, SCE is given the responsibility to own, operate and maintain distribution line extensions regardless of whether they are over public land or over private land, but the rule does not cover lines across private property when SCE has had to purchase or condemn the right-of-way.

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 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*).)

To be sure, the Tariff Electric Rule defines Distribution Line Extension facilities along public streets, roads and other public areas as the "Franchise Areas," but it equally provides SCE the duty and right to own, operate and maintain Distribution Line Extension facilities on public and private lands across which SCE obtains rights of way at no cost. Thus, SCE equally stands in the shoes of the government when operating a distribution line extension to connect electricity to either public or private property so long as it has not exceeded the tariff limitation regarding expending funds to acquire a permit or right-of-way.

Defendants argue that *Cantu v. Pacific Gas & Electric Co.* (1987) 189 Cal.App.3d 160 (*Cantu*) stands for the proposition that a utility's connection to a small number of customers is not a "public use" unless the right to make the connection has been acquired through eminent domain. (Def's Mot., at p. 17.) In *Cantu*, the Court of Appeal agreed with the defendant utility that it was not subject to inverse condemnation liability where a utility service was provided pursuant to a contract between a private developer and the utility, no eminent domain rights were exercised, and the utility did not pay for any franchise right to use the street. (*Id.* at p. 164.) In that case, the utility contracted with developers of a subdivision to extend gas and electric service to 16 lots within a subdivision. The utility dug a trench in order to install the utilities. The trench subsequently conducted water to a slope and was a contributing cause of a landslide. (*Id.* at pp. 162-163.) The Court of Appeal held that the utility could not be sued for damages under an inverse condemnation theory. "The connection from these homes to a distribution line is a private service to which eminent domain and inverse liability principles do not apply." (*Id.* at p. 165.)

In *Cantu*, the CPUC precluded the utility from condemning private property to furnish line extensions, and the trench was "designed to fulfill an individual need." (Id. at pp. 164-165.) The court found no precedent that imposed inverse condemnation liability on a public utility which did not acquire an easement through eminent domain authority or "where the utility did not act jointly with a governmental entity." (*Id.* at p. 165.) But in *Cantu*, unlike in this case, the improvement that failed, which was not itself a transmission line, was not operated pursuant to any right granted by the government. (*Id.* at p. 164 ["PG&E did not pay for any franchise rights to use the street"].)

To be sure, *Cantu* includes broad general language 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. (*Id.* at pp. 161-162.) But this broad language does not reflect all of the facts that dictated the result in *Cantu* (the broad language is dicta), the language is not followed in subsequent cases, and it is contradicted by subsequent authority.

In 2012, the Court of Appeal was called upon to directly address the theoretical basis for subjecting a privately owned public utility to liability in inverse condemnation. (*Pac Bell*, *supra*, 208 Cal.App.4th 1400.) After a thorough review of precedents, the court focused on the private utility's "monopolistic or quasi-monopolistic authority, deriving directly from its exclusive franchise provided by the state [citation], [which] distinguishe[d] [the private utility's] action from the cases it cite[d] rejecting inverse condemnation cases against private parties who do not have such monopolistic authority from the state." (*Id.* at p. 1406.) The court likened a private utility's operations to the delegation of the functions that government itself otherwise would provide – authorizing the private utility to assume public authority in utility operations pursuant to a "franchise." The delegation of government power to a private entity "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," at least where the utility would be allowed "adjustments to pass on damages liability during its periodic reviews." (*Id.* at p. 1407.)

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, no eminent domain rights were exercised, and the utility did not operate the utility connection in question pursuant to any franchise right. (*Id.* at p. 1406, fn. 4.)

Subsequent to *Pac Bell*, the appellate courts again considered whether a utility could be held liable under inverse condemnation when the utility constructed an improvement pursuant to a private contract as the means of providing utility services. In *Foley*, the Court of Appeal considered whether liability based on inverse condemnation could apply when a utility owned a water main that was installed under a private contract "for the sole benefit" of an apartment complex and the water main "repeatedly ruptured." (*Foley*, *supra*, 72 Cal.App.5th at p. 537.) The Court of Appeal decision followed *Cantu*, but focused on the fact that the water main was constructed pursuant to a contract with a private developer and was designed to fulfill an individual need. (*Id.* at p. 584.) The court also found it to be significant that the water main was effectively disconnected from the water system at large due to a gate valve that was never opened. (*Id.* at p. 584.) The *Foley* court did not repeat *Cantu*'s more sweeping language suggesting that liability for inverse condemnation can only exist when a utility exercises eminent domain powers to extend a utility line. Instead, 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.)

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.

There is evidence that the Subject Span was not in use at the time of the Fairview Fire – that is, that it served no customer(s) even though it remained activated. But Tariff Electric Rule 15 does not suspend or eliminate SCE's rights and responsibilities for Distribution Line Extension facilities when the provided service is no longer being used by a customer. Moreover, 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.

The court denies SCE's Motion for Summary Adjudication of the Plaintiffs' claims for inverse condemnation.

Punitive Damages

A plaintiff may recover punitive damages "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice … ." (Civ. Code, § 3294, subd. (a).)

"An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) "A corporation is not deemed to ratify misconduct, and thus become liable for punitive damages, unless its officer, director, or managing agent actually knew about the misconduct and its malicious character. A 'managing agent' is an employee with authority to establish corporate policy, that is, the broad principles and rules of general application which govern corporate conduct." (*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 163.) "By so confining liability, [Civil Code section 3294, subdivision (b)] avoids punishing the corporation for malice of low-level employees which does not reflect the corporate 'state of mind' or the intentions of corporate leaders. This assures that punishment is imposed only if the corporation can be fairly be viewed as guilty of the evil intent sought to be punished." (*Id.* at p. 167.)

" 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "Despicable conduct is conduct that is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people. [Citation.] Such conduct has been described as having the character of outrage frequently associated with crime. [Citation.] "Conscious disregard means that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to

avoid those consequences. [Citation.] Put another way, the defendant must have actual knowledge of the risk of harm it is creating and, in the face of that knowledge, fail to take steps it knows will reduce or eliminate the risk of harm." (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159 (*Butte Fire Cases*), internal citations, quotation marks, and emphasis omitted.)

"Because punitive damages are imposed for the sake of example and by way of punishing the defendant [citation], they are typically awarded for intentional torts such as assault and battery, false imprisonment, intentional infliction of emotional distress, defamation, nuisance intentionally maintained, fraud, trespass, conversion, civil rights violations, insurer's breach of covenant of good faith, wrongful termination and job discrimination, and products liability cases. [Citation.] By contrast, cases involving unintentional torts are far fewer and the courts have had to consider various factors in determining whether the defendant's conduct was despicable. Thus, punitive damage awards have been reversed where the defendant's conduct was merely in bad faith and overzealous …, or the defendant took action to protect or minimize the injury to the plaintiff." (*Id.* at p. 1161, internal citations and quotation marks omitted.)

"Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages. Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate." (*Id.* at p. 1170, internal citations, quotation marks, and ellipses omitted.)

Given the subject matter of the case, the holding in *Butte Fire Cases* is illustrative of how to apply the above principles to Plaintiffs' request that punitive damages be awarded against SCE for having started the Fairview Fire. There, the plaintiffs brought suit against PG&E for having caused the Butte Fire, which occurred because a tree fell on one of PG&E's powerlines. The plaintiffs alleged that PG&E failed "to properly train and to supervise employees and agents responsible for maintenance and inspection of the distribution lines and/or vegetation areas near those lines." (*Id.* at p. 1162, internal quotation marks omitted.) The plaintiffs alleged "that PG&E ha[d] a pattern and practice of disregarding public safety, as demonstrated by other fires attributed to PG&"s power lines, various regulatory actions against PG&E by the [CPUC], and the rupture of a PG&E gas line in San Bruno in September 2010." (*Id.*) The plaintiffs thus sought punitive damages.

PG&E sought summary adjudication of the issue of whether the plaintiffs were entitled to seek punitive damages. PG&E submitted evidence

that it had "vegetation management programs" that were "intended to minimize the risk of wildfire." (*Id.* at p. 1163.) "PG&E's vegetation management operations encompass[ed] a variety of programs and initiatives, including routine annual patrols, quality assurance and quality control programs, a vegetation management improvement initiative, a vegetation management catastrophic event memorandum account (CEMA) program, and a public safety and reliability program." (*Id.*) The plaintiffs nonetheless claimed that "PG&E demonstrated conscious disregard for the rights and safety of others by failing to ensure the proper functioning of risk management controls and fire mitigation measures designed to protect the public from the known risk of wildfire." (*Id.* at p. 1166.) "[The plaintiffs] submitted evidence that PG&E's risk management controls were flawed in numerous respects. Among other things, [the] plaintiffs argued that PG&E's risk and compliance committee was ineffective, its quality assurance and quality control audits unreliable, and its instructions to contractors inconsistent with the goal of mitigating fire risk. Plaintiffs also submitted evidence that PG&E made no changes to its risk management controls and fire mitigation measures as a result of the Butte Fire. Of greatest significance, [the] plaintiffs submitted evidence that PG&E failed to ensure that [its vegetation management contractor's] employees were properly trained." (*Id.*)

The Third District Court of Appeal determined that the trial court erred when denying PG&E's motion for summary adjudication of the punitive damages request. First, the appellate court determined that PG&E had met its initial evidentiary burden of showing the nonexistence of any triable issue of material fact on the issue of malice. (*Id.* at pp. 1168-1170.) The court stated:

> PG&E presented evidence that (1) the company devotes substantial resources to vegetation management programs intended to mitigate the risk of wildfire, (2) the company hired contractors to conduct routine patrols in the area near the subject tree, and (3) contractors' employees visited the area near the subject tree on several occasions, and did not report anything that should have put PG&E on notice that the subject tree posed a danger. PG&E's evidence negates any inference that the company acted despicably, and with willful and conscious disregard for the rights and safety of others, and was sufficient to shift the burden to plaintiffs to present admissible evidence creating a triable issue of material fact as to malice.

(*Id.* at p. 1168.) Second, the court found that the plaintiffs had failed to raise a triable issue of material fact as to malice. (*Id.* at pp. 1170-1176.) The court acknowledged the evidence submitted by the plaintiffs of "numerous potential shortcomings in PG&E's risk management controls and fire mitigation efforts." (*Id.* at p. 1170.) But the court found that such evidence, at most, showed "mere carelessness or ignorance, which is insufficient to establish malice." (*Id.* at p. 1171, internal citations and quotation marks omitted.) The appellate court "therefore conclude[d], as the trial court did, that no reasonable jury could find plaintiffs' challenges to PG&E's risk management controls and fire mitigation efforts to be clear and convincing proof of malice." (*Id.*)

The court went on to reject the plaintiffs' argument that the numerous identified inadequacies of PG&E's fire mitigation policies/programs demonstrated "corporate malice." The court declined to "conclude that an unsuccessful risk management policy necessarily reflects a conscious and willful company decision to ignore or disregard the risk." (*Id.* at p. 1173.) The court stated further:

> That PG&E adopted policies that failed to prevent the Butte Fire does not, without more, raise a triable issue as to malice. Although plaintiffs need not produce a "smoking gun," they must nevertheless present evidence that "permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in 'willful and conscious disregard of the rights or safety of others.' " ([*Romo v. Ford Motor Co.* (2002) 99 Cal.App.4th 1115, 1141.]) Plaintiffs have failed to present any such evidence. [¶] … Although plaintiffs dismiss the company's risk management controls and fire mitigation efforts as a mere "façade," they fail to produce clear and convincing evidence from which a reasonable jury could find that PG&E consciously disregarded the risk of wildfire or willfully ignored fire safety standards.

(*Id.* at pp. 1173-1174.)

Here, as in *Butte Fire Cases*, there is substantial evidence presented by SCE with its Motion to show that SCE had numerous programs and policies in place that were meant to prevent wildfires like the Fairview Fire. Given this evidence, SCE has met its initial evidentiary burden of showing the nonexistence of any triable issue of material fact on the issue of malice. Plaintiffs thus have the burden to raise a triable issue of material fact as to malice.

When addressing punitive damages and malice, Plaintiffs claim that there are three actions that SCE could have taken that would have prevented the Fairview Fire: (1) adequately addressing the Subject Span's hazardous sag; (2) installing a covered conductor on the Subject Span; and (3) de-energizing the Subject Span once it was no longer providing electricity to any customers. (Pls' Opp., at pp. 15-16.) Plaintiffs' submitted evidence does not demonstrate any corporate malice related to these three failures. At most, Plaintiffs have only presented evidence of carelessness or ignorance.

The failure to address the sag involves two purported failures by SCE: (1) the failure to identify the sag when conducting inspections; and (2) the unexplained failure to address the sag even though there is evidence suggesting that SCE had LiDAR data in its possession which showed that the sag on the Subject Span exceeded the maximum limit required by SCE's internal overhead construction manual. The purported failure to identify the sag on the Subject Line (for example, because the visual inspections did not involve using tools to measure sag) merely shows negligence; it is insufficient to allow the trier of fact to conclude that SCE engaged in corporate malice. As for the LiDAR data, Plaintiffs have simply failed to provide sufficient evidence regarding how such data was collected, stored, used, and viewed that would permit a clear and convincing inference that, within the corporate hierarchy, authorized persons acted despicably in willful and conscious disregard of the rights or safety of others.

Plaintiffs' mention of the failure to install a covered conductor appears to be based on the following statements made by Levin:

> 21. SCE intended to re-conductor the Sprague 12kV circuit by the end of 2022 with covered conductor. However, the re-conductor work did not happen in 2022. If it had been completed in a timely manner the fire would more than likely not have happened.
>
> 22. SCE itself acknowledged that if covered conductors had been installed on the subject span prior to September 5, 2022 that there would not have been any arcing or sparking if one of those conductors had contacted Frontier's communication line. Without arcing or sparking the fire would never have happened.

(Levin Decl., ¶ 21.) Assuming Levin's statements are admissible evidence, these statements would be insufficient evidence for the trier of fact to conclude that SCE acted with malice in failing to install a covered conductor

on the Subject Span. There is no evidence to contextualize SCE's failure to install a covered conductor; for example, who decided *not* to install it or whether the planned installation only was negligently overlooked. In the absence of such evidence, the trier of fact could not conclude that the failure to install a covered conductor was the product of corporate malice.

Nor is there evidence to show that the failure to de-energize the Subject Span can subject SCE to punitive damages. Plaintiffs insist that SCE's "managing agents" made "[p]olicy-level choices" that caused the Fairview Fire. (Pls' Opp., at p. 3.) However, Plaintiffs' submitted evidence undercuts this factual claim. In a report submitted by Plaintiffs here, the CPUC determined that the Fairview Fire would not have occurred had SCE followed its "own procedures." (Pls' Comp. Evid., Ex. W, at p. 42.) Plaintiffs themselves stress that "SCE's own January 7, 2022 public safety policy required de-energizing idle dangerous facilities" like the Subject Span. (Pls' Opp., at p. 14.) Plaintiffs thus insist that the Fairview Fire would not have occurred had SCE's employees followed SCE's policies with respect to wildfire prevention; this court thus cannot conclude that there is any evidence of corporate malice. In any event, the inadequacy of SCE's policies, at most, shows "mere carelessness or ignorance, which is insufficient to establish malice." (*Butte Fire Cases*, *supra*, 24 Cal.App.5th at p. 1171.) The existence of policies and practices that failed to prevent the Fairview Fire do not, without more, constitute evidence that "permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in willful and conscious disregard of the rights or safety of others." (*Id.* at p. 1173, internal citations and quotation marks omitted.)

Plaintiffs make the additional argument that spoliation of evidence occurring after the Fairview Fire might justify punitive damages. Given the evidence in the record, this argument does not preclude summary adjudication of the punitive damages claim against SCE. When construing Plaintiffs' evidence liberally and accepting all reasonable inferences which could be drawn by the trier of fact in favor of Plaintiffs, this court cannot conclude that the evidence before it would permit a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in willful and conscious disregard of the rights of others merely because low-level employees may have disposed of a mylar balloon from a location "well outside" the area of the origin of the Fairview Fire. There is no evidence that a mylar balloon was ever thought to be a cause of the Fairview Fire. There is no evidence that SCE's managing agents directed its employees to destroy evidence regarding the causes of the Fairview Fire. Any conclusion that SCE directed employees to engage in spoliation of evidence potentially related to the Fairview Fire would be based on a string of unreasonable inferences that cannot justify denial of summary

adjudication here. "When opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork." (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161.) Plaintiffs' offered inferences to the effect that SCE's managing agents ordered spoliation of evidence are not reasonably deducible from any evidence and are insufficient to create a dispute of fact on the issue of whether Plaintiffs can seek punitive damages for the alleged spoliation.

Date: 2/3/2026



Carolyn B. Kuhl / Judge

Judge of the Superior Court of Los Angeles