

**Sunrise Powerlink Transmission Line Project
Application No. 06-08-010
MGRA Phase 1 Direct Testimony, Appendix G**

APPENDIX G – LIABILITY FOR POWER LINE FIRES

G1.	Data Sources	1
G1.1.	Case & Statutory Law Quotations.....	1
G1.2.	Harvard Law School Alumni Bulletin	1
G2.	Liability Theories.....	2
G2.1.	Case Law.....	2
G2.1.1.	Lozano v. PG&E Co., 70 CA.2d 415(1945).....	2
G2.1.2.	Scally v. PG&E, 23 CA.3d 806 (1972).....	2
G2.1.3.	Ireland-Yuba Gold Quartz Mining Co., v. PG&E, (1941) 18 C.2d 557.....	3
G2.1.4.	Beresford v. PG&E (1955) 45 C.2d 738.....	3
G2.1.5.	Elton v. Anheuser Busch etc. (1996) 50 CA.4th 1301.....	3
G2.1.6.	Baker v. Ramirez, Santa Fe etc., (1987) 190 CA.3d 1123.....	3
G2.1.7.	Barham v. So. Cal. Edison, (1999) 74 CA.4th 744.....	4
G2.1.8.	Marshall v. Dept. of Water and Power (1990) 219 CA.3d 1124	4
G2.1.9.	Pierce v. PG & E Co. (1985) 166 CA.3d 68	4
G2.1.10.	Mancuso v. So. Cal.. Edison Co. (1991) 232 CA.3d 88.	5
G2.1.11.	State of California v. PG&E, (1997[1996?])	6
G2.1.12.	Marin Mun. Wat. Dst. v. C. Mill Valley (1988) 202 Cal App 3rd 1161	6
G2.2.	Statutes.....	6
G2.2.1.	CACI 416.....	6
G2.2.2.	Cal. Evi.Code § 669	6
G2.2.3.	Cal Health & Safety Code § 13007.....	6
G2.2.4.	Cal Health & Safety Code § 1300.....	7
G2.2.5.	Cal. CCP § 1021.9	7

G1. Data Sources

G1.1. Case & Statutory Law Quotations

Distribution: Open

Description: Collection of case and statutory law with relevant quotations which have been used in power line fire cases. Collected from Power Line Wildland Fire Conference, Power Line Fire Handbook, correspondence.

Location: See cited cases & statutes for direct reference.

G1.2. Harvard Law School Alumni Bulletin

Distribution: Open

Name: Harvard Law Bulletin, Fall 1997

Availability:

<http://www.law.harvard.edu/alumni/bulletin/backissues/fall97/classnotes/main2.html>

Description: Contains description of “State of California v. PG&E, 1997[1996?]” which is a criminal prosecution of a utility for a powerline fire.

Restrictions & Limitations: Lower court rulings not available through law database searches. Limited information.

G2. Liability Theories

G2.1. Case Law

G2.1.1. Lozano v. PG&E Co., 70 CA.2d 415(1945)

“. . . if, under changing circumstances, a hazardous condition arose, nonaction or the failure to remedy such condition would constitute negligence (Cites).” (P.422)”

“The duty of due care with which the company was charged consists not only in the proper installation of the dangerous instrumentality but in the maintenance thereof in a safe condition at all times and places and under the changing circumstances of the particular case. Even if at the outset of the installation of the equipment the company may have been entirely free from fault, yet, if under changing circumstances, a hazardous condition arose, nonaction or the failure to remedy such condition would constitute culpable negligence. (Cites)” (P.423)”

“In the case of Roberts v. Pacific etc. Co., 102 Cal.App. 422, 431, this court stated as follows:

‘It is well settled that it is the imperative duty of such a company not only to install proper appliances, but also to make reasonable and proper inspection of such appliances, and to use due diligence to discover and repair defects therein, and a failure to do so constitutes negligence’ (P.425)”

G2.1.2. Scally v. PG&E, 23 CA.3d 806 (1972).

“In installing, maintaining, and supervising electric transmission lines and facilities, caution commensurate with the existing danger is required.”

“While an electric company is not under an absolute duty to insulate or make the wires safe in any particular manner, it does have a duty to make the wires safe under all the exigencies created by the surrounding circumstances. (Cite) (Ibid)”

MGRA Phase 1 Direct Testimony, Appendix G
Sunrise Powerlink Transmission Project
Application No. 06-08-010

“ . . . The law is well settled that conformity to general custom of power companies with relation to the manner of maintaining powerlines does not excuse a defendant from liability unless that practice is consistent with due care under the circumstances.” (P.816)

G2.1.3. Ireland-Yuba Gold Quartz Mining Co., v. PG&E, (1941)
18 C.2d 557.

“It is not unreasonable to require Appellant to anticipate that with high winds usually blowing in the vicinity in which the fire occurred, the tree might fall across and break one of the wires. Under the circumstances here presented, Appellant was bound to anticipate the existence of a wind even of high velocity where such winds were not unusual. (Cite)”. (P.565).

G2.1.4. Beresford v. PG&E (1955) 45 C.2d 738

“ . . . if, under changing circumstances, a hazardous condition arose, nonaction or the failure to remedy such condition would constitute culpable negligence. (Cite).” (P.746)”

“ . . . not unreasonable to require the power company to anticipate that during a high wind a tree might fall across high voltage lines and result in a fire.”

G2.1.5. Elton v. Anheuser Busch etc. (1996) 50 CA.4th 1301

“It would be difficult to justify a distinction between damage caused by the thermal energy of a fire and that caused by the kinetic energy of vibrations. Certainly, a fire presents a potential for damage and destruction which is at least as great as that presented by vibrations. When negligently inflicted with resulting actual damage, either way constitute a trespass. Since it is undisputed that the fire in this instance cause actual damage to the Plaintiff’s property and since the jury expressly found that those damages were caused by the Defendant’s negligence, the invasion of the fire onto Plaintiff’s property constituted a trespass.” (P.1307)

G2.1.6. Baker v. Ramirez, Santa Fe etc., (1987) 190 CA.3d 1123

“Under this section, if the trespass is found to be willful and malicious, the court may impose treble damages but must impose double damages. If the trespass is found to be casual and involuntary or under a mistake of fact, the court must impose double damages. (Drewry v. Welch (1965) 236 Cal.App.2d 159, 181, 46 Cal.Rptr. 65.) The damages to be doubled or trebled are those determined by the trier of fact to constitute just compensation within the overall limits of reasonableness, regardless of what specific measure of damages is used. (Heninger v. Dunn, supra, 101 Cal.App.3d 858, 869, 162 Cal.Rptr. 104.)”

G2.1.7. Barham v. So. Cal. Edison, (1999) 74 CA.4th 744

“ . . . SCE may be liable in inverse condemnation as a public entity. Further, Art. 1 § 19 of the California Constitution and the cases which interpret and apply it have as their principal focus the concept of public use, as opposed to the nature of the entity appropriating the property.” (P.753)

“Rather, the issue is whether the Barham’s property was taken for a public use, i.e., the transmission of the electric power to the public. The evidence reflects the circuit of which the subject pole and transmission wires were a part, provides electric service to more than 1000 households. Based upon the above cited authority, we must conclude that the transmission of electric power through the facilities (i.e. broken electric line) that caused damage to the Barham’s property was for the benefit of the public . . . Thus the Barham’s property was ‘taken or damaged’ for a public use.” (P.754)

G2.1.8. Marshall v. Dept. of Water and Power (1990) 219 CA.3d
1124

“ . . . inverse condemnation also has been extended to compensate for the loss of personal property. (Aetna)” (P.1138),

“This includes losses due to fire. (Aetna)” (P.1139),

“In order to establish an actionable ‘taking’ the plaintiff must demonstrate a causal relationship between governmental activity and the property loss complained of. (Cite)”

“Typically this element is referred to as ‘proximate cause.’” (P.1139)

“Unlike the corresponding element in negligence cases, however, FORESEEABILITY is NOT a consideration for inverse condemnation. Instead, a governmental entity may be held STRICTLY LIABLE, irrespective of fault, where a public improvement constitutes a SUBSTANTIAL CAUSE of the plaintiffs damages even if only one of several concurrent causes. (Cite)” (P.1139)

G2.1.9. Pierce v. PG & E Co. (1985) 166 CA.3d 68

“PG & E contends a ‘determination’ that it can be held strictly liable in tort is beyond the jurisdiction of this court because it would contradict an order of the Public Utilities Commission (PUC), whose decisions are reviewable only by our highest court. (Pub.Util.Code, § 1759; Waters v. Pacific Telephone Co. (1974) 12 Cal.3d 1, 4, 114 Cal.Rptr. 753.) PG & E asserts the PUC has shielded it from liability for non-negligent acts in Rule 31.1 of General Order No. 95, as set out in the margin. PG & E’s argument, although ingenious, is totally without merit.

MGRA Phase 1 Direct Testimony, Appendix G
Sunrise Powerlink Transmission Project
Application No. 06-08-010

“It has long been acknowledged that the PUC has the power, by rule, to limit the liability of utilities subject to PUC regulation and supervision. (Waters v. Pacific Telephone Co., supra, 12 Cal.3d at pp. 6, 10, 114 Cal.Rptr. 753; Cole v. Pacific Tel. & Tel. Co. (1952) 112 Cal.App.2d 416, 417; Davidian v. Pacific Tel. & Tel. Co. (1971) 16 Cal.App.3d 750, 757, fn. 3, 94 Cal.Rptr. 337.)

“Although the PUC is empowered to limit utilities’ liability, we conclude it has not done so in rule 31.1. Rule 31.1 provides that electrical supply and communications systems shall be maintained in safe condition and specifically imposes a duty of due care to minimize the hazards involved with overhead utility wires. (Perrine v. Pacific Gas & Elec. Co. (1960) 186 Cal.App.2d 442, 447, 9 Cal.Rptr. 45.) Manifestly, the rule imposes a duty of care and does not withdraw or limit liability” (P.78-79)

G2.1.10. Mancuso v. So. Cal.. Edison Co. (1991) 232 CA.3d 88.

“Further, we believe that the trial court erroneously barred Edison’s ‘act of God’ defense, which, in effect, was a denial that Edison proximately caused plaintiff’s damages. At the very least, material issues of fact existed with respect to such defense.” (P.97)

“The expert testimonial evidence presented by Edison, if believed, would have supported a finding that the lightning stroke was so powerful that it would have caused plaintiff’s damages irrespective of Edison’s ability to anticipate an electrical storm or to install lightning arrester gear. In other words, no act or omission of Edison’s was the proximate cause of plaintiff’s damage. On that point, the declarations and deposition testimony presented by Edison in opposition to plaintiff’s summary adjudication motion clearly raised triable issues of material fact.

“This case perhaps presents a classic example of the overlap which exists between an ‘act of God’ defense and the issue of causation. The defense that an event was an ‘act of God’ exists and may be asserted in those limited cases where an unanticipated natural occurrence is the sole cause of a plaintiff’s injury or damage. The natural event must be ‘so unusual in its proportions that it could not be anticipated by a defendant’ (Clarke v. Michals, supra, 4 Cal.App.3d at p. 370, 84 Cal.Rptr. 507.) However, it is not enough that the event merely be unforeseeable. ‘[T]he exculpatory rule applies only when human agency does not participate in proximately causing the harm. If defendant’s negligence combines with an ‘act of God’ to cause injury, liability will result [citations].’ (Dufour v. Henry J. Kaiser Co. (1963) 215 Cal.App.2d 26, 29, 29 Cal.Rptr. 871, emphasis added.) In other words, if culpable conduct on the part of the defendant was a proximate cause, the defense is of no avail.” (P.104-105)

G2.1.11. State of California v. PG&E, (1997[1996?])

Nevada County. PG&E is sued and ordered to pay \$2M in criminal fines for a 1994 wildfire that destroyed numerous residences and businesses in Rough & Ready. Filed 739 counts of criminal negligence. (From Section G1.2)

G2.1.12. Marin Mun. Wat. Dst. v. C. Mill Valley (1988) 202 Cal App 3rd 1161

This case is in regard to one public entity invoking a claim of inverse condemnation versus another. Specifically, the water district claimed that the lack of street maintenance by the city caused a landslide which destroyed its infrastructure. (Attorney correspondence)

G2.2. Statutes

G2.2.1. CACI 416

“AMOUNT OF CAUTION REQUIRED IN TRANSMITTING ELECTRIC POWER

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.”

G2.2.2. Cal. Evi.Code § 669

“The failure of a person to exercise due care is presumed if:

- (a) He violated a statute, ordinance, or regulation of a public entity;
- (b) The violation proximately caused death or injury to person or property;
- (c) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and
- (d) The person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted”

G2.2.3. Cal Health & Safety Code § 13007

“Any person who personally or through another wilfully, negligently or in violation of law, set fire to, allows fire to be set to, or allows a fire kindled or attended by him to

MGRA Phase 1 Direct Testimony, Appendix G
Sunrise Powerlink Transmission Project
Application No. 06-08-010

escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.”

G2.2.4. Cal Health & Safety Code § 1300

“(a) Any person(1) who negligently, or in violation of law, sets a fire, allows a fire to be set or allows a fire kindled or attended by him ... to escape onto any public or private property ... is liable for the fire suppression costs...”

G2.2.5. Cal. CCP § 1021.9

“In any action to recover damages to personal or real property resulting from trespassing on lands either under cultivation or intended or used for the raising of livestock, the prevailing plaintiff shall be entitled to reasonable attorney’s fees in addition to other costs, and in addition to any liability for damages imposed by law.”