

S273340

**IN THE
SUPREME COURT OF CALIFORNIA**

**ANTHONY GANTNER, individually and on behalf of all those
similarly situated,
*Plaintiff and Appellant,***

v.

**PG&E CORPORATION and PACIFIC GAS AND ELECTRIC
COMPANY,
*Defendants and Respondents.***

UPON CERTIFICATION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.548, TO DECIDE A QUESTION
OF LAW PRESENTED IN A MATTER PENDING IN THE UNITED STATE COURT OF APPEALS FOR THE NINTH
CIRCUIT — CASE No. 21-15571

**ANSWER TO BRIEFS OF AMICI CURIAE
CALIFORNIA PUBLIC UTILITIES COMMISSION
AND FORMER PRESIDENT OF THE PUBLIC
UTILITIES COMMISSION LORETTA LYNCH,
FORMER ADMINISTRATIVE LAW JUDGE
STEVEN WEISSMAN, AND PROFESSOR SETH
DAVIS**

CRAVATH, SWAINE & MOORE LLP
*OMID H. NASAB (ADMITTED PRO HAC VICE)
WORLDWIDE PLAZA, 825 EIGHTH AVENUE
NEW YORK, NEW YORK 10019
(212) 474-1000 • FAX: (212) 474-3700
onasab@cravath.com

HORVITZ & LEVY LLP
ROBERT H. WRIGHT (BAR No. 155489)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
rwright@horvitzlevy.com

HORVITZ & LEVY LLP
JEREMY B. ROSEN (BAR No. 192473)
505 SANSOME STREET, SUITE 375
SAN FRANCISCO, CALIFORNIA 94111-3175
(415) 465-5600 • FAX: (844) 497-6592
jrosen@horvitzlevy.com

ATTORNEYS FOR DEFENDANTS AND RESPONDENTS
**PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC
COMPANY**

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PG&E Corporation and Pacific Gas and Electric Company (“PG&E”) write in response to the briefs of *amici curiae* the California Public Utilities Commission (“PUC” or “Commission”) and Former President of the Public Utilities Commission Loretta Lynch, Former Administrative Law Judge Steven Weissman and Professor Seth Davis.

ANSWER TO BRIEF OF THE PUC

On the first question before the Court—whether Public Utilities Code section 1759 (“section 1759”) preempts Plaintiff’s claim—the Commission agrees with PG&E that it does. As set forth in the Commission’s brief, Plaintiff’s claim is preempted because “imposing negligence liability on a utility for damages caused by a [public safety power shutoff (“PSPS”)] event, where the Plaintiff does *not* allege violations of any Commission regulations relating to PSPSs, would interfere with the Commission’s broad, general, and ongoing administration of PSPS policies”. (PUC Br. at p. 24.) PG&E agrees.

On the second question before the Court—whether Plaintiff’s claim is barred by PG&E’s Tariff Rule 14—the Commission notes that the Court need not reach this question if it agrees with PG&E and the Commission that Plaintiff’s claim is preempted by section 1759. If the Court finds Plaintiff’s claim is not preempted, the Commission asks the Court to refrain from interpreting Tariff Rule 14—which neither the Commission nor a lower court has interpreted thus far—so that the Commission can engage in a formal process to issue a decision on the reasonable

application of Rule 14 to public safety power shutoffs, pursuant to the doctrine of primary jurisdiction. Given the significant policy implications, PG&E agrees with the Commission’s suggested approach if the Court reaches the second question.

ANSWER TO BRIEF OF LYNCH, *et al.*

PG&E does not respond to each of the arguments set forth in the brief of *amici curiae* Loretta Lynch and others (the “Lynch Brief”) because that brief repeats several of Plaintiff’s arguments and misreads the holdings of cases that are addressed at length in the prior merits briefing. But PG&E does note that the Lynch Brief misunderstands PG&E’s argument regarding section 1759. The Lynch Brief describes the issue as whether the PUC “may immunize a public utility from civil liability simply by authorizing *any action involved in the causal chain.*” (Lynch Br. at p. 25 [emphasis added]; *see also id.* at pp. 12, 20.) That is not PG&E’s argument.

Claims brought under Public Utilities Code section 2106 are barred under section 1759 “when *the relief sought* would [] interfere[] with a broad and continuing supervisory or regulatory program of the commission.” (*San Diego Gas & Elec. Co. v. Superior Ct. (Covalt)* (1996) 13 Cal. 4th 893, 919 [emphasis added].) PG&E has shown this test bars Plaintiff’s claim. Plaintiff seeks damages that arise—directly and exclusively—from PSPS events that were conducted in compliance with the Commission’s guidelines for such events. Imposing damages for PSPS events that Plaintiff concedes were implemented in full

compliance with the Commission’s PSPS framework—a framework that is specifically intended to guide utilities in weighing the tradeoffs between keeping power on during high risk conditions and shutting it off—would interfere with the Commission’s broad and ongoing regulation of PSPS. For all the reasons set forth in PG&E’s merits brief and in the briefs of the Commission and the other *amici curiae* in support of PG&E, section 1759 bars Plaintiff’s claim.

CONCLUSION

The Court should answer the first question certified by the Ninth Circuit to this Court affirmatively. In the event the Court answers the first question in the negative, the Court should refrain from interpreting Tariff Rule 14 so that the Commission can engage in a formal process to issue a decision on the reasonable application of Rule 14 to public safety power shutoffs.

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(Cal. Rules of Court, Rule 8.204(c)(1))

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December 28, 2022

CRAVATH, SWAINE & MOORE LLP
OMID H. NASAB

By: _____ /s/ Omid H. Nasab
Omid H. Nasab

Attorney for Respondents
PG&E CORPORATION and
PACIFIC GAS AND ELECTRIC
COMPANY

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Supreme Court Case No. S273340

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/s/ Melissa Syring
Melissa Syring

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Gantner v. PG&E Corporation
Supreme Court Case No. S273340

ATTORNEY NAME/ADDRESS	PARTY REPRESENTED
Nicholas A. Carlin Brian S. Conlon Kyle P. O'Malley Phillips, Erlewine, Given & Carlin LLP 39 Mesa Street, Suite 201 San Francisco, CA 94129 nac@phillaw.com bsc@phillaw.com kpo@phillaw.com	Counsel for Plaintiff and Plaintiff Anthony Gantner [<i>via Truefiling</i>]
Bonny E. Sweeney Seth R. Gassman Tae H. Kim Hausfeld, LLP 600 Montgomery Street, Suite 3200 San Francisco, CA 94111 bsweeney@hausfeld.com sgassman@hausfeld.com tkim@hausfeld.com	Counsel for Plaintiff and Plaintiff Anthony Gantner [<i>via Truefiling</i>]
Peter James Benvenuti Keller Benvenuti Kim LLP One Montgomery Tower, Suite 2200 San Francisco, CA 94104 pbenvenuti@kbkllp.com	Co-Counsel for Respondents PG&E Corporation and Pacific Gas and Electric Company [<i>via Truefiling</i>]
Thomas Bogdan Rupp Keller Benvenuti Kim LLP 650 California Street, Suite 1900 San Francisco, CA 94108-2736 trupp@kbkllp.com	Co-Counsel for Respondents PG&E Corporation and Pacific Gas and Electric Company [<i>via Truefiling</i>]
Robert H. Wright Horvitz & Levy LLP 3601 West Olive Avenue, 8th Floor	Co-Counsel for Respondents PG&E Corporation and Pacific Gas and Electric Company

ATTORNEY NAME/ADDRESS	PARTY REPRESENTED
Burbank, CA 91505-4681 rwright@horvitzlevy.com	<i>[via Truefiling]</i>
Jeremy B. Rosen Horvitz & Levy LLP 505 Sansome Street, Suite 375 San Francisco, CA 94111-3175 jrosen@horvitzlevy.com	Co-Counsel for Respondents PG&E Corporation and Pacific Gas and Electric Company <i>[via Truefiling]</i>

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GANTNER v. PG&E
CORPORATION**

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Omid Nasab Cravath, Swaine & Moore LLP 4499356	onasab@cravath.com	e-Serve	12/28/2022 6:06:48 PM
Henry Weissmann Munger Tolles & Olson 132418	henry.weissmann@mto.com	e-Serve	12/28/2022 6:06:48 PM
Nicholas Carlin Phillips, Erlewine, Given & Carlin LLPP 112532	nac@phillaw.com	e-Serve	12/28/2022 6:06:48 PM
Peter Benvenutti Keller & Benvenutti LLP	pbenvenutti@kellerbenvenutti.com	e-Serve	12/28/2022 6:06:48 PM
Robert Wright Horvitz & Levy, LLP 155489	rwright@horvitzlevy.com	e-Serve	12/28/2022 6:06:48 PM
Candace Morey	candace.morey@cpuc.ca.gov	e-	12/28/2022

California Public Utilities Commission 233081		Serve	6:06:48 PM
Brian Conlon Phillips Erlewine Given and Carlin 303456	bsc@phillaw.com	e- Serve	12/28/2022 6:06:48 PM
Jeremy Rosen Horvitz & Levy LLP 192473	jrosen@horvitzlevy.com	e- Serve	12/28/2022 6:06:48 PM
Seth Gassman Hausfeld LLP 311702	sgassman@hausfeld.com	e- Serve	12/28/2022 6:06:48 PM

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12/28/2022

Date

/s/Robert Zwillich

Signature

Nasab, Omid (4499356)

Last Name, First Name (PNum)

Cravath, Swaine & Moore LLP

Law Firm