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March 21, 2022

**Re: *Anthony Gantner v. PG&E Corporation***  
**No. S273340 (9th Cir. No. 21-15571)**

Dear Chief Justice Tani Cantil-Sakauye and Associate Justices,

We represent Appellees PG&E Corporation and Pacific Gas & Electric Company (“PG&E”) in the above-referenced matter. PG&E submits this letter in response to the Ninth Circuit Court of Appeals’ Order Certifying Questions to the Supreme Court of California (February 28, 2022) (the “Order”). PG&E takes no position on whether this Court should accept certification of the questions presented by the Ninth Circuit. But if the Court accepts certification, PG&E asks the Court to restate the first question as follows to conform it to the facts of this case:

*Does California Public Utilities Code § 1759 bar a plaintiff’s claim for damages caused by the loss of power during a Public Safety Power Shutoff authorized by and conducted pursuant to CPUC guidelines for such shutoffs, if the Plaintiff alleges that it was the utility’s negligence in constructing and maintaining its facilities that necessitated the shutoff in the first place?*

PG&E does not request any changes to the second question posed by the Ninth Circuit.

Under C.R.C Rule 8.548(f)(5), the restatement of a question presented to this Court for certification is appropriate to conform the question to the facts of the pending appeal. *See Verdugo v. Target Corp.*, 59 Cal. 4th 312, 316 (2014) (reformulating and “narrow[ing]” question accepted for certification “to conform to the facts of the pending appeal”); *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038, 1042 (2020) (granting certification and reformulating question to conform to specific facts of case).

Here, the first question posed concerns regulatory preemption under Cal. Pub. Util. Code § 1759 (“Section 1759”), which bars the adjudication by trial courts of civil claims that would hinder or interfere with a broad and continuing supervisory or regulatory program of the CPUC. *Hartwell Corp. v. Superior Ct.*, 27 Cal. 4th 256, 275 (2002) (“When the bar raised against a private damages action has been a ruling of the commission on a single matter . . . the courts have tended to hold that the action would not ‘hinder’ a ‘policy’ of the commission within the meaning of *Waters* and hence may proceed. But when the relief sought would have interfered with *a broad and continuing supervisory or regulatory program of the commission*, the courts have found such a hindrance and barred the action under section 1759.” (emphasis added) (quoting *San Diego Gas & Electric Co. v. Superior Court (Covalt)*, 13 Cal. 4th, 893, 895, 918 (1996))). As currently posed, the Ninth Circuit’s question is too broad because it involves an evaluation of “subsequent action” taken by a utility regardless of whether the “subsequent action” is authorized by the CPUC as part of a comprehensive and continuing regulatory scheme and regardless of whether that action is executed in full compliance with the CPUC’s regulatory guidelines for that scheme, which are critical facets of the preemption analysis. This broad formulation is not consistent with the parties’ arguments in this case and is not necessary to adjudicate this case.

Appellant Anthony Gantner (“Mr. Gantner”) does not dispute that the CPUC’s Public Safety Power Shutoffs are part of a comprehensive and continuing regulatory scheme, and that the shutoffs at issue complied with the CPUC’s guidelines.<sup>1</sup> Rather, Mr. Gantner alleges that PG&E negligently failed to maintain its electrical system in prior years, and that it was this alleged failure to maintain its equipment that led to the need for the PSPS events in the first place.

The Ninth Circuit’s Order found that this Court’s prior decisions interpreting Section 1759 (*Hartwell and Covalt*) would guide the Ninth Circuit’s adjudication of a claim that PG&E’s non-negligent implementation of the CPUC-authorized PSPS events had *alone* caused Mr. Gantner’s damages. (*See* Order at 8–11.) But because Mr. Gantner’s claim alleges that the PSPS events were a link in the causal chain between PG&E’s alleged negligence and his damages, the Ninth Circuit has asked for this Court’s assistance in applying those precedents. As the Ninth Circuit itself explains in its Order:

This case thus presents the question whether adjudicating Plaintiff’s claim that PG&E negligently maintained its grid would hinder or frustrate CPUC’s regulatory authority with respect to PSPSs, when Plaintiff does not challenge the manner in which the PSPSs were executed but rather argues that they are a link in the

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<sup>1</sup> *See, e.g.*, Appellant Op. Brief, *Gantner v. PG&E Corporation*, No. 21-15571 (9th Cir. June 25, 2021), ECF No. 10, at 9 (“While PG&E did not institute a PSPS or have a PSPS program until 2019, the CPUC has been engaged in setting the parameters for PSPSs since at least 2008 . . . .”); Appellant Reply Brief, *Gantner v. PG&E Corporation*, No. 21-15571 (9th Cir. Oct. 15, 2021), ECF No. 46, at 8 (“As Plaintiff has explained repeatedly, he is challenging PG&E’s negligence, not its decisions to de-energize, which Plaintiff assumes were carried out in strict compliance with CPUC guidelines.”).

causal chain that connects PG&E's alleged negligence to his damages.

(Order at 9.) Thus, the Ninth Circuit's own explanation of the question presented acknowledges the more narrow nature of the issue in this case—which is specific to the issue of Public Safety Power Shutoffs, a public safety measure governed by a comprehensive and continuing set of CPUC guidelines and regulations. The text of the question certified to this Court should reflect this context, and not sweep in other circumstances where this Court's analysis of Section 1759 would likely be different. For this reason, PG&E asks the Court to restate the first question presented for certification.

Very truly yours,

*Omid Nasab*

Omid H. Nasab

Hon. Tani Cantil-Sakauye, Chief Justice, and Associate Justices  
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***Gantner v. PG&E Corporation, et al.***  
**Case No. S273340**

**STATE OF NEW YORK, COUNTY OF NEW YORK**

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 New York, State of New York. My business address is 825 Eighth Avenue, 38th Floor, New York, NY 10019.

On March 21, 2022 I served a true copy of the following document described as **Respondents' Letter in Response to Order of Ninth Circuit Court of Appeals Certifying Questions to the Supreme Court of California** on the interested party in this action as follows:

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\_\_\_\_\_  
Melissa A. Syring

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***Gantner v. PG&E Corporation, et al.***  
**Case No. S273340**

Anthony Gantner : Appellant

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STATE OF CALIFORNIA  
Supreme Court of California

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STATE OF CALIFORNIA  
Supreme Court of California

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

Case Number: **S273340**

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

3/21/2022

Date

/s/Omid Nasab

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Signature

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