

**Judge Seligman's tentative ruling. No actual document. Text of ruling was typed directly into the docket and is reproduced here.**

This Tentative Ruling is made by Judge Brad Seligman MOTION #1. Demurrer of PGE to the First Amended Complaint filed 6/28/17 is OVERRULED. The request of PGE for judicial notice of PUC Electric Rules 11, 16, and 18 and General Order 95 is GRANTED. The First Amended Complaint filed 6/28/17 asserts seven causes of action against PGE: Second cause of action for negligence, Third cause of action for premises liability; sixth cause of action for public nuisance; seventh cause of action for strict liability; eighth cause of action for survival; ninth cause of action for negligent infliction of emotional distress, and tenth cause of action for intentional infliction of emotional distress. All of these claims except the tenth are based on negligence. PGE asserts that the complaint does not allege facts that support the existence of a duty. Plaintiffs agreed to dismiss, without prejudice, the Fifth Cause of Action for negligent hiring, supervision, training, and/or retention claims to the extent the claim is against PGE. DUTY GENERALLY "All persons are required to use ordinary care to prevent others being injured as the result of their conduct." (Rowland v. Christian (1968) 69 Cal.2d 108, 112.) Legal obligations "may arise not only from the Legislature's enactment of a statutory provision but also, alternatively, under the common law." (Verdugo v. Target Corp. (2014) 59 Cal.4th 312, 326.) Regarding PGE's duty specifically, Lozano v. Pacific Gas & Elec. Co. (1945) 70 Cal.App.2d 415, 421, states: "On the subject of negligence the standard of care is, that one maintaining wires carrying electricity is required to exercise the care that a person of ordinary prudence would exercise under the circumstances. Among the circumstances are the well known dangerous character of electricity and the inherent risk of injury to persons or property if it escapes. Hence, the care used must be commensurate with and proportionate to that danger. THE PUC REGULATIONS DO NOT "OCCUPY THE FIELD" OR OTHERWISE ELIMINATE COMMON LAW DUTY. PGE is not a government entity with duty and liability defined by statute. (Govt Code 815.) PGE is a utility subject to PUC Regulations. In I.E. Associates v. Safeco Title Ins. Co. (1985) 39 Cal.3d 281, 285, the California Supreme Court stated: "The general rule is that statutes do not supplant the common law unless it appears that the Legislature intended to cover the entire subject or, in other words, to 'occupy the field.' [Citations.] '[G]eneral and comprehensive legislation, where course of conduct, parties, things affected, limitations and exceptions are minutely described, indicates a legislative intent that the statute should totally supersede and replace the common law dealing with the subject matter.'" (See also Verdugo v. Target Corp. (2014) 59 Cal.4th 312, 332.) The PUC Regulations are not general and comprehensive. "Compliance with the general orders of the [PUC] does not establish as a matter of law due care by the power company, but merely relieves it "of the charge of negligence per se. It does not affect the question of negligence due to the acts or omissions of the company as related to the particular circumstances of the case." ... Safety regulations prescribe only the minimum care required, 'and it is usually a matter for the jury to determine whether something more than the minimum was required under the evidence in the case." (Mata v. Pacific Gas and Electric Company (2014) 224 Cal.App.4th 309, 313.) (See also Perrine v. Pacific Gas & Elec. Co. (1960) 186

Cal.App.2d 442, 447.) One example of this potential interplay between regulation and common law is PUC Rule 11(H), which permits (but does not mandate) PGE to terminate service when PGE determines that the premise's wiring or electrical equipment is unsafe. While this provision does not itself create a duty (see Rule 11(H)(4)), the Complaint contains allegations that could support a finding that PGE had a duty because it knew or should have known from "smart meters" and sub-meters, that electrical supply and distribution systems were dangerous. (See Par. 101, 104-107, 152-4.)

**DUTY BASED ON VIOLATION OF PUC REGULATIONS** PGE is regulated by the PUC and is subject to a variety of regulations, including Electric Rules 11, 16, and 18 and General Order 95. If PGE breached its obligations under the PUC Rules, then PGE might be presumed to have failed to exercise due care. (Evid Code 669.) PGE might have liability under PUC Rule 16(D)(1)(b), which states that the customer has a duty to design, inspect, maintain, or repair electrical systems beyond PGE's Service Delivery Point. PUC Rule 16(D)(1)(e) states that PGE is not liable for the customer's transmission and delivery of electricity. PUC Rules 16(A)(2) defines PGE Service Facility and Rule 16(H) defines Service Delivery Point. The location of these points is a fact issue. The Complaint contains allegations that could support a finding that PGE's Service Delivery Point was in the Ghost Ship. (See par. 64.) PGE might have liability under PUC Rule 16(B)(3), which suggests that PGE had ability to install or insist on installation of separate meters for each building. PGE might have liability under PUC Rule 18(C)(2), which states that PGE is to separately submeter each individual nonresidential premises. The relevant allegations in the First Amended Complaint filed 6/28/17 are at para 62 (PGE provided electricity), 63 (meters adjacent to ghost ship supplied power), par 64 (sub-meters "throughout the buildings"-unclear where), 101 (PGE installed "smart meters and should have thus known delivery systems defective etc.), 104-109 (sub-metering issues should have led PGE to cancel service); and 153-155 (causation). Paras 194-195 adequately allege a claim for strict liability. The allegations are adequate given that court both assumes them to be true and takes all reasonable inferences in favor of plaintiffs.

**DUTY BASED ON COMMON LAW** PGE has common law duties to members of the public. The court determines the existence of a duty under the multi-element fact specific test set out in *Rowland v. Christian* (1968) 69 Cal.2d 108, 112-113. In determining the existence of a duty, the court is directed to balance a number of considerations. "[T]he major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." The PUC regulations reflect public policy and are relevant to the *Rowland v. Christian* factors of "the moral blame attached to the defendant's conduct; ... and the consequences to the community of imposing a duty to exercise care, with resulting potential liability." The court must, however balance those factors against the other factors. This is a fact specific inquiry and a demurrer is usually not the procedural stage for the court to do the *Rowland v. Christian* multi-element fact specific test. The issue of duty is better addressed in a fact specific context on summary judgment or at trial. (See, e.g., *Johnson v. County of Fresno*

(2003) 111 Cal. App. 4th 1087, 1097 [finding trial court erred in deciding respondeat superior liability on demurrer and stating "The issue is better left to a motion for summary judgment".) Plaintiffs candidly admit they do not know yet all the facts involved in the fatal fire at the Ghost Ship premises. Although defendant chides plaintiffs for this admission, it confuses the duty to discover facts with the obligation to provide notice of claims, which is the function of a pleading. Issues of duty and causation, which may turn on complex facts, are often best left for a full factual presentation either via summary adjudication or trial. This seems particularly true in this case. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS The complaint adequately alleges that PGE acted with reckless disregard of the possibility of causing severe emotional distress. (Cpt, paras 103-107, 223-230.)