No. 21-55269

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Oscar De La Rosa; Alexander Cruz; Leah Alires; Marco Alires,
***Plaintiffs–Appellants*,**

v.

San Diego Gas & Electric Company,
***Defendant–Appellee*.**

Appeal from the United States District Court for the
Southern District of California, San Diego Division
Hon. Cynthia A. Bashant, Presiding Judge

Nos. 3:17-cv-02433-BAS-JLB, 3:18-cv-01389-BAS-JLB,
3:18-cv-01390-BAS-JLB, 3:18-cv-01561-BAS-JLB

APPELLANTS' CORRECTED OPENING BRIEF

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STATEMENT ON ORAL ARGUMENT

Appellants respectfully request oral argument. This case implicates a novel issue of first impression: whether a utility's single tariff acts to completely preempt a plaintiff's claim for negligence. That issue is technical, requiring a nuanced analysis of the California Supreme Court's three-part test in *San Diego Gas & Electric Company v. Superior Court (Covalt)*, 920 P.2d 669 (Cal. 1996). The issue also is important. If allowed to stand, the district court's ruling affects more than the Appellants here, but all Californians who receive gas service from San Diego Gas & Electric Company. Argument will greatly help the Court resolve this complex, novel issue of law.

Although this threshold preemption issue alone warrants argument, so does the district court's alternative merits ruling. Reviewing that ruling requires a highly fact-intensive inquiry. Argument thus will help the Court in sifting through the facts necessary to make that determination.

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JURISDICTIONAL STATEMENT

This is an appeal from a tort lawsuit arising from an incident at a U.S. military base. Because the incident arose at a "federal enclave," the district court had federal-question jurisdiction under 28 U.S.C. § 1331. *E.g.*, *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006). (The defendant unsuccessfully challenged the court's jurisdiction based on the political-question doctrine; that issue will be addressed in the brief.)

The district court entered final judgment on February 23, 2021, giving this Court jurisdiction under 28 U.S.C. § 1291. ER-4. Appellants timely filed their joint notice of appeal on March 22. ER-250-254; *see* Fed. R. App. P. 4(a)(1)(A).

INTRODUCTION

During a training exercise at U.S. Marine Corps Base Camp Pendleton, an Amphibious Assault Vehicle struck and ruptured a gas pipeline. That pipeline was inadequately marked and buried. The rupture caused a massive explosion, injuring all Marines aboard. Three of the Marines (the plaintiffs in this lawsuit) were severely burned.

For decades, San Diego Gas & Electric Company ("SDG&E") had long served as Camp Pendleton's gas supplier. And it had long known of a series of dangerous conditions plaguing the camp's gas-distribution system—ranging from insufficient mapping of the gas lines, to inadequate marking and burial of those lines, to the system's extensive use of horribly outdated PVC pipes. Although SDG&E had a duty to discontinue gas service under these circumstances (until the danger could be remedied), SDG&E did nothing. And that failure catastrophically injured three servicemembers.

Based on SDG&E's negligence, the Marines brought suit in federal court. Yet the district court effectively slammed the courthouse doors to them. It accepted SDG&E's invitation to hide behind a single tariff—SDG&E Tariff Rule 26—that purportedly preempted the Marines' lawsuit.

Make no mistake: SDG&E's expansive, all-encompassing interpretation of Rule 26 (which the court below accepted) is not limited to the Marines here. It will close the judiciary as an avenue for relief to future Californians injured by SDG&E's negligent actions.

Fortunately, that expansive interpretation is wrong. Although Rule 26 may limit SDG&E's liability for negligence under *some* circumstances, it does not do so under *all* circumstances—including the specific ones alleged by the Marines here. The district court thus was wrong to find their claims preempted.

The district court equally erred in concluding that SDG&E was entitled to summary judgment on the merits. Viewing all evidence and reasonable inferences in the light most favorable to the Marines—not ignoring or weighing conflicting evidence, as the court's conclusion required—the record contains ample genuine factual issues establishing SDG&E's knowledge of the dangerous series of conditions alleged by the Marines.

This Court should reverse and allow the Marines their day in court.

ISSUES PRESENTED

I. Whether the district court reversibly erred in granting summary judgment to SDG&E on the ground that the Marines' negligence claims were preempted by a particular SDG&E tariff when that tariff is not an exercise of authority to limit liability under the specific circumstances alleged by the Marines, and when allowing this judicial action would aid (rather than interfere with) the Public Utility Commission's public-safety-focused regulatory policy.

II. Whether the district court reversibly erred in alternatively granting summary judgment on the merits, when the Marines—viewing all evidence and reasonable inferences in the light most favorable to them, rather than weighing conflicting evidence—presented genuine factual issues showing SDG&E's actual knowledge of a series of dangerous conditions plaguing Camp Pendleton's gas lines.

III. Whether the district court properly declined to dismiss this suit under the political-question doctrine when the Marines' lawsuit does not seek to second-guess a military judgment, but merely raises traditional judicial questions of negligence and preemption against a private party.

STATEMENT OF THE CASE

I. Background

The following background is taken from the record, in which all facts and reasonable inferences must be viewed in the light most favorable to the plaintiffs. *See, e.g.*, *Fuller v. Idaho Dep't of Corr.*, 865 F.3d 1154, 1165 (9th Cir. 2017).

A. The Marines are badly burned following a pipeline explosion.

Marco Alires, Alexander Cruz, and Oscar De La Rosa are Marines who were stationed at U.S. Marine Corps Base Camp Pendleton. ER-61. On September 13, 2017, these Marines (along with twelve others) were taking part in a training session involving an Amphibious Assault Vehicle ("AAV"). ER-33. During the session, the AAV fell off of a poorly maintained road and into a ditch. ER-62. As the AAV tried to accelerate out of the ditch, it struck an uncovered, unmarked 6-inch PVC natural-gas line ("Subject Line"). ER-62. The Subject Line ruptured, causing a massive explosion. ER-62.

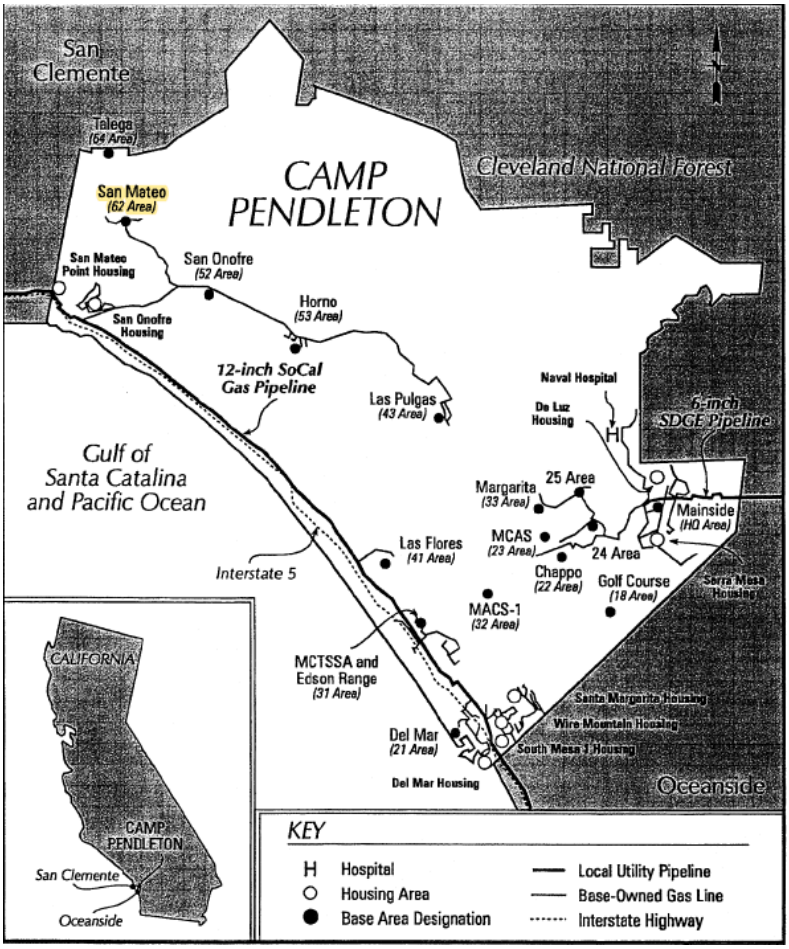
ER-63.

All aboard were injured and medically evacuated. ER-61. Messrs. Alires, Cruz, and De La Rosa were badly burned from the incident. ER-61.

B. The Subject Line was exposed and unprotected.

The incident and explosion occurred on a rural training area of Camp Pendleton, a massive military base serving a population of nearly 40,000 marines, sailors, civilian employees, and families. ER-85. The narrow dirt

road passed through rough terrain to Bravo 3 Combat Town ("Camp San Mateo").



ER-86.

The Subject Line is one of hundreds of gas lines that comprise Camp Pendleton's broader gas-distribution system, which was built incrementally since the base became active in 1943. ER-76. The Government described the Subject Line as follows:

> The natural gas pipeline. . . was laid in 1973. The PVC piping parallels the adjacent gravel training area road where drainage

> and erosion created a natural culvert, reducing cover and partially exposing the line as it ascends the hill toward Bravo Combat Town. Above the site of the accident a portion of the natural gas pipeline (4-5' in length) was exposed at a depth of approximately three feet inside the bottom of the culvert. The signage denoting the location of the pipeline parallels the road, but the original signage has fallen, faded and/or been obscured by overgrowth.

ER-248.

After the incident, the Government noted several "aggravating factors"—including that the Subject Line was "exposed and unprotected." ER-63. Eerily, the Government also revealed that an almost identical accident occurred at the same location less than three months earlier:

> On 26 June 2017, 1130, a similar incident occurred, at the same general location, Grid 49401 96970, about 30 meters north of the AAV fire incident. FMD Roads personnel were transporting Heavy Equipment north on Bivoauc road to conduct firebreak plowing. A D8T dozer (40 ton vehicle) fell into an eroded portion of the road, rupturing the same natural gas line (See photo #7). There was no fire. The operator was able to self recover. Once the dozer was out of the rut, the operator shut the dozer off, heard a hissing sound and cleared all personal from the area.

ER-63.

As part of its "corrective actions," the Government knew that it needed to urgently locate its gas-distribution system to inspect the lines' safety. ER-249 ("Camp Pendleton's immediate priority is the accurate location and inspection of the natural gas lines transiting the installation.").

C. SDG&E has been a constant presence on Camp Pendleton.

Since 1968, SDG&E alone has provided Camp Pendleton's natural gas from its utility-owned line, which runs the length of the base along the coastline. *See* ER39-40. As the camp's exclusive gas supplier, SDG&E was given broad access to Camp Pendleton. It maintained a permanent office at the camp staffed by SDG&E employees. ER-41. Indeed, over the past five decades, SDG&E was a constant presence at Camp Pendleton over the past five decades, interacting often—if not daily—with the Marines and the Marine's maintenance personnel. ER-40.

D. Camp Pendleton's distribution system was unsafe—and SDG&E knew it.

As the decades have passed, the state of Camp Pendleton's gas distribution has been "routinely unfunded, or underfunded, and deferred[.]" ER-249. That has created "negative impacts to health, safety and security" of the Marines. ER-249.

SDG&E, as well as the Government and others, have documented these issues in a series of events beginning as early as 1995 and running up to just months before the incident. Some of the evidence includes:

(1) In 1995, Camp Pendleton retained SDG&E to conduct a study of gas leaks. ("Leak Study").

(2) In 2000, as part of a bid consideration for purchasing Camp Pendleton's-distribution system, SDG&E conducted an extensive technical assessment. ("Technical Assessment").

(3) In 2001, the Government retained an independent engineering firm (Malcolm Pirnie, Inc.) to conduct a utility privatization study. ("Pirnie Report").

(4) Mere months before the current incident, SDG&E was involved in the response to another incident at Camp Pendleton involving a bulldozer that struck *the same* unmarked and unburied gas line. ("Bulldozer Incident").[1]

1. The Leak Study

Long before the current incident, SDG&E knew that Camp Pendleton gas distribution system had "a lot of bandages on the system and it [wouldn't] last forever." ER-163. In 1995, SDG&E performed a leak survey and a cathodic-protection assessment and restoration for Camp Pendleton. ER-158. In that survey, SDG&E discovered *over 170 leaks*. ER-170. SDG&E observed that most of the pipes in Camp Pendleton were made of PVC. ER-161. What

[1] Although these are the primary documents, there is more. In 1999, SDG&E conducted a cross-country inspection of the lines. ER-253-54. In 2010, Camp Pendleton had a Comprehensive Natural Gas Study performed that noted that the gas pipelines on the camp had exceeded their design life, and the PVC pipes installed in the 1970s were no longer an accepted industry standard for gas piping. ER-253-54. In 2016, before the accident, Range Training Area Management launched a plan to repair the road to address erosion and grading issues for trafficability. ER-253-54.

is more, it recognized that the glue used as part of the pipes' installation during the 1970s was substandard because it "hardens up and can crack or blow out from the fitting if moved or disturbed." ER-162.

2. The Technical Assessment

In the late 1990s and early 2000s, SDG&E considered purchasing all components of the natural-gas delivery system and privatizing the system. *See* ER-44-45. As part of its diligence, SDG&E performed its own Technical Assessment of the Camp Pendleton Natural Gas Distribution System. *See* ER-166-78.

The Technical Assessment found that Camp Pendleton's system was largely incompatible with SDG&E's own standard distribution system and existing operations. ER-167. It noted that the Camp Pendleton's system requires special treatment and "presents additional risk to SDG&E employees and MCB [Marine Corp Base]." ER-169. Like the Leak Study, the Technical Assessment warned of that Camp Pendleton's continued use of PVC pipes was dangerous:

> PVC pipe material is subject to leaking at each solvent cement joint and becomes brittle with age. The glue hardens and may crack or blow out if the fitting is disturbed.

ER-169.

Along with several violations of federal pipeline safety codes, SDG&E echoed the Leak Study's concern about marking and mapping. ER-171. SDG&E warned of inaccurate and incomplete mapping because "[a]ccurate records of installed facilities are required by code." ER-171. SDG&E found that the camp had inadequate records of installed facilities because the camp either failed to maintain records or service maps with dimensions for locating the piping. ER-171.

3. The Pirnie Report

Completed in 2001, the Pirnie Report was commissioned by the Government as part of the bidding process for possible privatization. The engineers found that "the Base Gas System is the worst condition of any similar gas distribution system with which the inspection team is familiar." Pg. 13. The Pirnie Report found the same problems as SDG&E had:

- The base's PVC piping was a substandard material to transport natural gas across the base and a "general safety hazard." ER-79.
- The base's gas-distribution system was inadequately mapped and marked, which led to "the exact size, location and condition of Gas System equipment [being] unknown." ER-77.
- Because of "manpower and capital constraints[,]" the base was "operating the Gas System in a reactive mode, where repairs are done exclusively on an emergency basis." ER-81.

- Dozens of violations of federal and state regulations and safety standards. ER-125-132.

The engineers who compiled the report interviewed key personnel with the "pertinent and direct knowledge of the key operations and financial issues related to the Gas System." ER-133. Those interviews revealed significant safety concerns about the camp's gas system. ER-133.

4. The Bulldozer Incident

Finally, as stated, three months before the Marines' AVV struck and ruptured the Subject Line, a bulldozer did the same thing, in the same location. ER-63.

At the time of the bulldozer incident, the subject line was inadequately buried—so much so, in fact, that it violated state and federal code and contrary to SDG&E's own safety standards. ER-42. Fortunately, there were no injuries, as the bulldozer driver shut off the engine after smelling the gas. ER-55-56.

The Marines' standard procedures during normal digging operations required 811 notification to reach SDG&E. ER-41. The camp maintained an emergency contact list, which included both SDG&E's phone number and 811. ER-165. And as explained, SDG&E had an office on the base. [cite].

When this accident, almost identical to the bulldozer incident occurred, SDG&E was called and responded.

II. Procedural History

In June 2018, the plaintiffs (collectively, "the Marines") filed separate suits: one by Mr. Alires and his wife (Leah Alires), one by Mr. Cruz, and one by Mr. De La Rosa. ER-255-259; ER-260-264; ER-265-269. Their suits uniformly alleged claims of negligence, negligence per se, and gross negligence against SDG&E for breaching its duty of care through the events giving rise to this incident. ER-6-30. The district court (Bashant, J.) consolidated the cases. ER-270-294.

In July 2020, SDG&E moved to dismiss the Marines' suits for lack of subject-matter jurisdiction and, in the alternative, for summary judgment. ER-288. In February 2021, after briefing and oral argument (ER-293) the district court in February 2021 denied SDG&E's motion to dismiss but granted its motion for summary judgment. ER-6-30.

The district court first disagreed with SDG&E that the political-question doctrine barred the Marines' suit. It correctly noted that "governmental operations are a traditional subject of damages actions in the federal courts." *Koohi v. United States*, 976 F.2d 1328, 1331 (9th Cir. 1992) (ER-16). The

court explained that "the only issue relevant to Plaintiffs' claims against SDG&E is whether SDG&E owed a duty to Plaintiffs and, if so, whether SDG&E breached that duty." ER-18. That issue, the court concluded, did not implicate any of the traditional factors for finding a nonjusticiable political question. ER-18.

Even so, the court determined that summary judgment for SDG&E was appropriate for two alternative reasons. First and foremost, it held that California Public Utilities Code § 1759 preempted the Marines' negligence claims based on a single tariff, SDG&E Tariff Rule 26 ("Rule 26"). ER-21. Second, the court held that even if the Marines' claims were not preempted, "no reasonable fact finder could find conclude that SDG&E had knowledge of the condition of the Subject Gas Line such that it was required to discontinue supplying gas to the Marine Corps base." ER-28; *see also* ER-28-29.[2]

Following the entry of final judgment, the Marines timely appealed. ER-250-254.

[2] Having dismissed the Marines' negligence claims, the court found it unnecessary to address their related negligence per se claim. ER-29.

SUMMARY OF ARGUMENT

I. The district court erred in granting summary judgment to SDG&E on the ground that the Marines' negligence claims were preempted by a particular SDG&E tariff, Rule 26. Those claims rest on SDG&E's knowing creation of a dangerous situation on Camp Pendleton by continuing to deliver gas to the base's gas lines, despite knowing about a series of dangerous conditions triggering an obligation to discontinue gas service.

Under the *Covalt* test, a private right of action against a public utility is preempted only when three requirements are met: (1) the Public Utility Commission had the authority to adopt the regulatory policy; (2) the Commission actually exercised that authority; and (3) the court action would hinder or interfere with the commission's exercise of regulatory authority.

The district court here misapplied the *Covalt* test. Although the Commission does have authority to limit SDG&E's liability for simple negligence, it did not actually exercise the authority to do so under the specific circumstances alleged by the Marines. That is so for three reasons. *First*, Rule 26 does not clearly and explicitly express a purpose to limit liability under the specific circumstances alleged by the Marines. *Second*, Rule 26 cannot be read in a vacuum but must be considered alongside other tariffs,

general policies, and California law—all of which reveal a regime in which public safety takes utmost precedence. *Third*, if any doubt in Rule 26's interpretation remains, it must be construed against SDG&E and in favor of allowing the Marines' claims to proceed.

But even if Rule 26 could be construed as the Commission exercising its authority to limit SDG&E's liability for the precise negligence claims here, the district court still was wrong to conclude that allowing the Marines' judicial action would interfere with the Commission's exercise of regulatory authority. Here again, the district court myopically focused on Rule 26. But the proper analysis instead must consider the Commission's broader regulatory policy. And that policy—which arises from not just Rule 26 but the larger regime of rules and general orders, not to mention California statutes and public policy—is one that centers on public safety. Allowing the Marines' negligence claims under the specific circumstances here thus *aids* (not interferes with) the Commission's exercise of regulatory authority.

The district court thus reversibly erred in holding the Marines' negligence claims preempted. But even were this Court inclined to disagree, the proper course is not to reverse. Instead, considering the importance of

these questions of first impression to California law, it should instead certify the issue to the California Supreme Court.

II. The district court alternatively erred in granting summary judgment based on the merits. Considering the evidence and all reasonable inferences in the light most favorable to the Marines, the record contains ample genuine issues of material fact as to SDG&E's actual knowledge of the series of dangerous conditions plaguing Camp Pendleton's gas lines, thus giving rise to a duty to discontinue gas service.

The district court wrongly believed that "the only material fact issue relevant to determining whether SDG&E is liable under *Ambriz* is whether SDG&E knew the Subject Gas Line was inadequately marked or buried." That framework erroneously rewrites the Marines' theory of SDG&E's duty, as set forth above.

And as to the proper framework, the district court largely ignored all of the Marines' evidence. Taken as true, that evidence establishes SDG&E's actual knowledge of the dangerous series of conditions plaguing Camp Pendleton's gas-distribution system: the gas lines were insufficiently mapped; the lines were inadequately marked and buried; and the camp's use of extensive PVC piping was hazardous.

Perhaps a factfinder could weigh the evidence and inferences to find that they do not conclusively prove SDG&E's knowledge of the dangerous condition. But that is not the test on summary judgment. The test is simply whether, viewing all evidence and reasonable inferences in the light most favorable to the Marines, a factfinder could conclude that SDG&E in fact had that knowledge. Because the answer is yes, the district court erred in granting summary judgment.

III. Although the district court erred in granting summary judgment, it correctly denied SDG&E's motion to dismiss based on the political-question doctrine. The gist of this lawsuit is that *SDG&E*—not the Marine Corps—was negligent by knowingly delivering gas to Camp Pendleton despite knowing of a series of conditions that made doing so unreasonably dangerous, to require the discontinuation of gas service. Resolving the Marines' negligence claims do not require a court to reexamine or second-guess a military judgment. It merely requires a court to apply traditional legal analysis to determine whether the Marines' claims are preempted by a particular tariff, and regardless whether the Marines have presented sufficient evidence showing that SDG&E breached a duty of care to avoid summary judgment. There is no nonjusticiable question.

ARGUMENT

I. The district court erred in holding that the Marines' negligence claims were preempted.

As a public-utility company governed by the regulations of the California Public Utility Commission ("PUC" or "Commission"), SDG&E has a duty to "exercise reasonable care in operating its system" to protect its customers from harm—particularly when it has actual knowledge of potential harms. *See generally Langley v. P. Gas & Elec. Co.*, 262 P.2d 846 (Cal. 1953). After all, the "general mission of the PUC [is] *to protect public health and safety* with respect to public utilities[.]" *Kairy v. SuperShuttle Intern.*, 660 F.3d 1146, 1155 (9th Cir. 2011) (emphasis added).

Under long-established California precedent, SDG&E must discontinue service to gas lines when it knows that delivering its gas would be unreasonably dangerous. *See Ambriz v. Petrolane, Ltd.*, 319 P.2d 1, 5–6 (Cal. 1957). This common-law duty applies no matter who owns the gas lines. As the California Supreme Court has explained, "[O]wnership of the pipes or appliances is not an indispensable requisite to liability of a gas company. Where the company knows the customer's line is defective [or] has leaks it must take precautions according to the circumstances." *Id.* at 6.

This case involves U.S. Marines who were horribly burned and permanently deformed after SDG&E negligently refused to stop gas service to Camp Pendleton, when it knew the base's gas-distribution system was grossly out-of-step with its own safety standards, applicable industry standards, and federal and state safety regulations. Viewing the evidence in the light most favorable to the Marines, SDG&E had known this, and more, for decades about Camp Pendleton's distribution system:

- the exact locations of the camp's gas lines were unknown based on inadequate mapping;
- the lines were inadequately marked and buried;
- the camp's use of extensive PVC piping was dangerous because it was prone to cracks, breaks, and leaks—so much so that SDG&E had expressly recommended replacing them (which never happened).

In sum, as alleged by the Marines, SDG&E specifically knew of a series of unsafe conditions that rendered the base's gas lines an unreasonable risk which required the discontinuation of gas service (until the completion of the necessary repairs, mapping, and maintenance).

But in the district court's eyes, none of this mattered. All that mattered instead is a single tariff—Rule 26—that, in the court's view, immunized SDG&E from liability under these circumstances. ER-19-21.

Respectfully, the district court's preemption analysis is wrong. Rule 26 may preempt a plaintiff's negligence claim against SDG&E in some cases. But as explained below, Rule 26 does not preempt the Marines' negligence claims *under the unique circumstances here*.

A. The standard of review is de novo.

This Court reviews a district court's grant of summary judgment de novo. *E.g.*, *Sandoval v. County of Sonoma*, 912 F.3d 509, 515 (9th Cir. 2018). It must determine not only whether "viewing the evidence in the light most favorable to the nonmoving party, [ ] there are any genuine issues of material fact[,]" but also "whether the district court correctly applied the relevant substantive law." *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 832 (9th Cir. 2002).

B. The California Public Utility Code, *Covalt*, and preemption.

The primary question is whether the Marines' negligence claims are preempted by the limitation-of-liability provisions in SDG&E's tariffs.[3] To understand this technical, novel issue of preemption, some background on

[3] A threshold (though much simpler) issue is whether the political-question doctrine bars this suit. As explained later, the district court correctly held that it does not. *See infra* Part III.

the California Public Utility Code and its interpretation by the California courts is necessary.

The district court's preemption conclusion rests on Section 1759(a) of the Public Utility Code. That section states:

> No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

Cal. Pub. Util. Code § 1759(a).

Section 1759 thus "defines and limits the power of the courts to pass judgment on, or interfere with, *what the commission does*." *Cundiff v. GTE California Inc.*, 125 Cal. Rptr. 2d 445, 451 (Cal. Ct. App. 2002) (emphasis added). But as the California Supreme Court has made clear, it "is not intended to, and does not, immunize or insulate a public utility from any and all civil actions brought in superior court." *People ex rel. Orloff v. P. Bell*, 80 P.3d 201, 208 (Cal. 2003).

Indeed, the California Legislature made that lack of intention explicit. In Section 2106, the Legislature *granted* jurisdiction over negligence claims against public utilities. That section provides:

> Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. *An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.*

Cal. Pub. Util. Code § 2106 (emphasis added).

So Section 2106 "confirms the full power of the courts to pass judgment on *what utilities do*." *Cundiff*, 125 Cal. Rptr. 2d at 451. Therein lies the "tension between this statutory remedies provision [of Section 2106] and the jurisdictional limitation set out in § 1759." *Kairy*, 660 F.3d at 1148.

So in situations like this—an injured party turns to a court for redress, but a public utility claims the court cannot grant relief without reviewing, reversing, correcting, or annulling an order or decision of the PUC—the California Supreme Court has established a three-part test to determine whether Section 1759 in fact divests the court of jurisdiction. *See San Diego Gas & Elec. Co. v. Super. Ct. (Covalt)*, 920 P.2d 669 (Cal. 1996). Under the "*Covalt* test," a private right of action against a public utility is *only* preempted when:

(1) the commission had the authority to adopt a regulatory policy;

(2) the commission exercised that authority; and

(3) the court action would hinder or interfere with the commission's exercise of regulatory authority.

E.g., *Kairy*, 660 F.3d at 1150.

All three requirements must be satisfied for a claim to be preempted. *PegaStaff v. P. Gas & Elec. Co*., 192 Cal. Rptr. 3d 614, 621 (Cal. Ct. App. 2015). And critically, whenever possible, Sections 1759 and 2106 must be "construed in a manner which harmonizes their language and avoids unnecessary conflict." *Covalt*, 920 P.2d at 683.

Mostly at issue here is SDG&E Tariff Rule 26.[4] That rule reads as a whole:

> A. The consumer shall, at the Consumer's own risk and expense, furnish, install and keep in good and safe condition all Consumer Equipment as defined in Rule No. 1. Company shall not be responsible for the selection, installation, operation, maintenance, or condition of any Consumer Equipment or for any injuries or damages resulting therefrom, including, without limitation, any injuries or damages resulting from Odorant Fade as defined

[4] A tariff is "a schedule showing all rates, tolls, rentals, charges, and classifications . . . together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service." *Pac. Bell v. Pub. Util. Comm'n*, 93 Cal. Rptr. 2d 910, 912 (Cal. Ct. App. 2000) (quotation marks omitted). Importantly, "[s]uch a tariff, when approved by the PUC, *has the force of law*." *Id.* (emphasis added).

> in Rule No. 1, occurring in the Consumer Equipment, as defined in Rule No. 1. This limitation does not apply to Odorant Fade occurring upstream of Consumer Equipment.
>
> B. In those cases where the gas meter is so set as to require use by the Company of all or a portion of the house line and/or yard pipe belonging to some party other than the Company, then and in any such event such party shall be responsible, and the Company shall not be responsible, for the installation, operation or maintenance of such house line and/or yard pipe so used by the Company or for any injuries or damages resulting therefrom.

ER-247.

Applying *Covalt*, the district court held that Rule 26 preempts the Marines' negligence claims. ER-22-27. That conclusion was incorrect. True, the PUC may be authorized to limit liability for simple negligence. *Waters v. Pac. Tel. Co.*, 523 P.2d 1161, 1163–64 (Cal. 1974). But as explained below, it did not actually exercise the authority to do so under the unique circumstances alleged by the Marines. And allowing the Marines' negligence claims (again under the specific allegations raised by the Marines) does not hinder the PUC's policies. To hold otherwise would grant SDG&E immunity for delivering gas to a military base that it *knows* has a pipeline system riddled with dangers. Such an expansive interpretation of Rule 26 runs contrary to public policy and SDG&E's common law duties, conflicts with principles of

comparative negligence, and contradicts other PUC regulations and California statutes.

In short, the Marines' negligence claims are not preempted. The district court wrongly concluded otherwise.

C. Rule 26 is not an exercise of authority to limit liability for negligence when the utility has actual knowledge of the danger and has an affirmative duty to discontinue service.

Under *Covalt*'s second factor, the PUC must have actually exercised its authority to limit SDG&E's liability for negligence under these specific circumstances. *See Kairy*, 660 F.3d at 1150. "[E]valuating the interaction of a utility company's tariff with a negligence claim requires a case-by-case evaluation of the facts underlying the cause of action." *Busalacchi v. Arizona Pub. Serv. Co.*, 12-CV-00298-H-RBB, 2012 WL 3069948, at *3 (S.D. Cal. July 27, 2012) (emphasis added).

In this case, the district court barely addressed this requirement. Rather, almost in passing, it held that this factor was satisfied because the PUC "exercised its authority to regulate the rates and the attendant scope of liability of the public utilities service." ER-25.

But that frames the question at an impermissibly general level. Considering that Sections 1759 and 2106 must be construed in a manner that

promotes harmony rather than conflict (*Covalt*, 920 P.2d at 683), the question instead must be more specific: Did the PUC exercise the authority to limit the plaintiffs' claims under the specific circumstances alleged? Applied here, if the Marines' claims (again considering the particular circumstances alleged) do not fall within the scope of Rule 26, then the PUC has not exercised its authority to limit liability under these circumstances, thus meaning that the Marines' claims may proceed.

For three reasons, Rule 26 does not limit SDG&E's liability for the sort of negligence at issue under these specific facts—*i.e.*, knowingly creating a dangerous situation on Camp Pendleton by continuing to deliver gas to the base's gas lines, despite knowing of a series of dangerous conditions triggering an obligation under SDG&E's own rules to discontinue gas service. *First*, Rule 26 does not *clearly and explicitly* express a purpose to limit liability under these specific circumstances. *Second*, Rule 26 cannot be read in a vacuum but must be considered along with other tariffs, general policies, and California law. *Third*, if any doubt in Rule 26's interpretation remains, it must be construed against SDG&E and in favor of the Marines.

1. Rule 26 does not clearly and explicitly express a purpose to limit liability for the Marines' specific negligence claims here.

"Although tariff rules approved by the CPUC have the force of law, California courts also construe them as contracts and apply principles of contract interpretation to resolve any ambiguity." *Tesoro Ref. & Mktg. Co. v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d 1170, 1181 (N.D. Cal. 2015) (citing *Pink Dot, Inc. v. Teleport Commc'ns Grp.*, 107 Cal. Rptr. 2d 392, 397 (Cal. Ct. App. 2001); *Transmix Corp. v. S. Pac. Co.*, 9 Cal. Rptr. 714, 721 (Cal. Ct. App. 1960)). The rule "thus has been stated many times that if there is an ambiguity in a tariff any doubt in its interpretation is to be resolved in favor of the nondrafter and against the utility." *Pink Dot*, 107 Cal. Rptr. 2d at 415 (citing Cal. Civil Code § 1654) (quotation marks and alterations omitted).

A limitation of "liability for negligence must clearly and explicitly express that purpose[.]" *Waters v. Pacific Tel. Co.*, 523 P.2d 1161, 1166 (Cal. 1974). A court—not the utility (or the PUC)—"determine[s] whether or not the provision possesses the requisite precision and clarity." *Id.*

So when evaluating whether Rule 26 creates a relevant limitation of liability—*i.e.*, whether the PUC exercised its authority—this Court must ask whether Rule 26 clearly and explicitly expresses a purpose of shielding

SDG&E from liability for its conduct related to knowingly delivering gas with knowledge of a series of dangerous conditions that require discontinuation of service. The answer is no.

In this regard, the Northern District of California's opinion in *Tesoro Refining & Marketing Company v. Pacific Gas & Electric Company* ("*Tesoro I*") is on point. There, a refinery owner brought a negligence action against PG&E because of a disruption to PG&E's transmission lines, which caused an unplanned loss of power that damaged the refinery. *See* 146 F. Supp. 3d at 1174–76. Like SDG&E here, PG&E moved for summary judgment on the ground that the following language in Tariff Rule 14 barred liability:

> PG&E shall not be liable to any customer, or electric service provider, for damages or losses resulting from interruption due to transmission constraint, allocation of transmission or intertie capacity, or other transmission related outage, planned or unplanned.

Id. at 1176 (emphasis omitted).

The district court disagreed. It agreed "that, read in isolation, Tariff Rule 14 is amenable to the reading PG&E proposes." *Id.* at 1184. But it declined to find that reading conclusive.

The court instead held that the rule was ambiguous. It explained that "[i]t is not clear from the face of the Rule what constitutes an 'other

transmission related outage.'" *Id.* at 1183. So the court turned to the "context beyond the face of the Rule[.]" *Id.* at 1184 (citing *Morey v. Vannuci*, 75 Cal. Rptr. 2d 573, 578 (Cal. Ct. App. 1998)). Among other things, it noted indications that Rule 14 was "submitted in response to a CPUC decision that addressed deregulation and did not address negligent operation of transmission lines by PG&E[.]" *Id.* at 1186. The rule may "have been intended to ensure at the very least that PG&E would not be held liable for consequences outside of its control[.]" *Id.* But "[t]here is no indication that the CPUC intended to preclude all liability for every outage at a transmission-grade voltage." *Id.*

Thus, having considered "the context as a whole," the court determined that the PUC "did not intend to shield PG&E *from the sort of negligence that allegedly occurred here*." *Id.* at 1184 (emphasis added). That is because the text of Rule 14 did not clearly and explicitly limit liability under the particular circumstances alleged. *See id.* at 1187.

In another instructive opinion from the same case, the Northern District of California also was asked to consider whether the language of Tariff Rule 2 limited PG&E's liability. *See Tesoro Refining & Mktg. Co. LLC v. P. Gas and*

Elec. Co., 14-CV-00930-JCS, 2016 WL 192593, at *2 (N.D. Cal. Jan. 15, 2016) ("*Tesoro II*"). The relevant portion of that rule reads:

> It shall be the applicant's responsibility to furnish, install, inspect and keep in good and safe condition at his own risk and expense, all appropriate protective devices of any kind or character, which may be required to properly protect the applicant's facilities.
>
> PG&E shall not be responsible for any loss or damage occasioned or caused by the negligence, or wrongful act of the applicant or of any of his agents, employees or licensees in omitting, installing, maintaining, using, operating or interfering with any such protective devices.

Id.

Here too, the court held that Rule 2 did not constitute an absolute limitation of liability "to recovery where damages are caused in part by PG&Es negligence." *Id.* at *4. Rather, the court determined, it limited liability "only for the portion of damages attributed to the applicant's negligence." *Id.*

The court's interpretation was like that for Rule 14. It agreed that PG&E's absolutist rule "might be plausible in a vacuum[.]" *Id.* But the law required the court to resolve any interpretive ambiguity in favor of the nondrafter. *Id.* Even more, the court explained, accepting PG&E's argument "would represent a stark departure from California's background principle of comparative negligence[.]" *Id.* (citing *Li v. Yellow Cab Co.*, 532 P.2d 1226,

1230 (Cal. 1975)). The court thus properly construed Rule 2 as merely "describ[ing] a form of comparative negligence." *Id.*

Analytically, Rule 26 is no different from the rules at issue in *Tesoro*. Nothing in Rule 26 clearly and explicitly limits the Marines' claims that SDG&E failed to exercise reasonable care in knowingly delivering gas to Camp Pendleton with knowledge of a series of dangerous conditions plaguing the gas lines that require discontinuation of service.

Looking to Rule 26's own text, its first sentence fixes responsibility on "consumers," at their "own risk and expense," to "furnish, install, and keep in good and safe condition" their own equipment. ER-247. The second sentence says the same thing in another way: "[SDG&E] shall not be responsible for the selection, installation, operation, maintenance, or condition of any Consumer Equipment or for any injuries or damages resulting therefrom[.]" ER-247.

But like Rule 2 from *Tesoro*, Rule 26 merely "describes a form of comparative negligence." *Tesoro II*, 2016 WL 192593, at *4. It limits SDG&E's responsibility—without stating to whom—for the portion of damages that should be attributed to consumers and their selection and installation of equipment. *See id.* But Rule 26 does not reach SDG&E's *own* negligent

operations—at least not clearly and explicitly so. *See Tesoro I*, 146 F. Supp. 3d at 1187. It does not limit SDG&E's duty to exercise reasonable care in knowingly delivering flammable gas with knowledge of dangerous conditions that requires discontinuing services.

What is more, Rule 26 imagines negligence claims from the "Consumer." The "Consumer" here would be Camp Pendleton, not the Marines. The Marines are nonparties to any contract between the Marine Corps and SDG&E. *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002) (explaining the well-established principle that contracts cannot bind third parties). Perhaps Rule 26 might bar the *Marine Corps,* the purchaser of gas from SDG&E, for suing SDG&E based on what occurred at Camp Pendleton. But it cannot preclude the suit of the Marines, who were not parties to that contract.

In sum, to accept the district court's expansive interpretation of Rule 26, one must construe all ambiguities *against* the Marines' negligence claims. Like PG&E in *Tesoro I*, SDG&E "offers no evidence or authority that the CPUC, any court, or even [SDG&E] itself has ever construed Rule [26] as the broad limitation of liability that it now asserts." 146 F. Supp. 3d at 1186. As the plain language of Rule 26 does not clearly and explicitly limit SDG&E's

liability under the facts here, the district court was wrong to find *Covalt*'s second requirement satisfied.

2. When read in context of other relevant rules and statutes, Rule 26 does not encompass the Marines' claims.

Though no more is necessary, the district court's cursory analysis also impermissibly ignores the broader universe of rules, general orders, and statutes. To determine Rule 26's reach, California law mandates such a broader analysis. *See, e.g.*, *Golden Sedan Serv., Inc. v. Airport Limousine Serv.*, 175 Cal. Rptr. 317, 320–21 (Cal. Ct. App. 1981); *Masonite Corp. v. Pac. Gas & Elec. Co.*, 135 Cal. Rptr. 170, 175–76 (Cal. Ct. App. 1976). And that broader analysis reveals a regime in which public safety takes utmost precedence—a regime consistent with the public-safety objectives of the California Civil Code more generally.

a. PUC General Order No. 58A

The district court's analysis ignores PUC General Order No. 58A.[5] The California Public Utilities Code empowers the Commission to enact general

[5] Indeed, the district court's opinion effectively admitted as such. It declined to review these general orders based on waiver, because the Marines purportedly raised them for the first time at oral argument. ER-21. But General Order No. 58A has the force of law. *Pac. Bell*, 93 Cal. Rptr. 2d at 912.

orders as part of its statutory authorization to "supervise and regulate every public utility in the State[.]" Cal. Pub. Util. Code § 701; *see generally, e.g.*, *Mata v. Pac. Gas & Elec. Co.*, 168 Cal. Rptr. 3, 571–72 (Cal. Ct. App. 2014).

These general orders are relevant to a utility's duty of care. As the California Supreme Court has stated:

> Compliance with the general orders of the Public Utilities Commission 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.

Nevis v. Pac. Gas & Elec. Co., 275 P.2d 761, 763 (Cal. 1954).

As important, a general order may trump any tariff rule submitted by a provider. The general order here is explicit on this point: "The rules herein established shall take precedence over all rules filed or to be filed by gas utilities insofar as inconsistent therewith." *See* Addendum 2; *see also Golden Sedan Serv.*, 175 Cal. Rptr. at 321 ("Where provisions of the Public Utilities Code and rules of the P.U.C. are in apparent conflict, the wider code provisions take precedence over commission rules.").

Even if the court believed that the Marines should have brought the general orders to its attention earlier, it could not simply ignore relevant law to the analysis.

General Order No. 58A recognizes SDG&E's duty to use reasonable care in its operations.[6] The order instructs:

> Each gas utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper condition all of the facilities and instrumentalities[.]

See Addendum 3.

In concert with this directive, General Order 58A.22(b) authorizes utilities to discontinue service to promote public safety:

> b. The gas utility may refuse to serve or may discontinue service to a customer:
>
> 1. If any part of the facilities, appliances or other equipment for receiving or using service, or the use of that service, shall be determined by the utility to be unsafe.

See Addendum 3.

General Order No. 58A.22(c) also recognizes that sometimes a utility will inspect the customer's equipment. The order then *mandates* that the utility discontinue services when it recognizes an unsafe condition:

> *Where it is recognized that unsafe or hazardous conditions exist, service shall be discontinued and the customer notified.* Service shall not be restored until hazardous conditions have been corrected as provided by Section 22.b.

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[6] The Marines have simultaneously moved to take judicial notice of General Order No. 58A, as well as Rule 11 (discussed in the next subsection).

See Addendum 3 (emphasis added).

General Order No. 58A thus contradicts the district court's sweeping interpretation that the Commission intended to relieve SDG&E of its obligation to exercise reasonable care to avoid causing harm to others, even when it knows it is delivering gas under a series of dangerous conditions. And even if Rule 26 could be fairly construed as immunizing SDG&E for its negligent actions under the circumstances of this case (and it cannot), it would be trumped by these orders.

b. Rule 11

The district court's Rule 26 analysis largely ignores another SDG&E tariff, Rule 11.[7] Like General Order No. 58A, Rule 11 authorizes SDG&E to discontinue service to any customer in the name of public safety. It states in relevant part:

> The Utility may deny or discontinue service to a customer when:
>
> a. the Utility determines that the premises' facilities, appliances or other gas equipment, or the use of either, is unsafe.

[7] Paradoxically, the court earlier suggested in its opinion that the Marines also waived any reliance on Rule 11. ER-21. Yet it later analyzed the Marines' claims under Rule 11, thus suggesting it did not find that argument waived. ER-27-28. In any event, as with the General Order No. 58A, a party cannot waive the law.

See Addendum 2. Once service is discontinued, SDG&E must not restore service until "the Utility determines the customers facilities, appliances, or other gas equipment, or the use of either, has been made safe." *See* Addendum 2. Implicit in the PUC's grant of broad authority to SDG&E under Rule 11 to stop delivering its gas to unsafe equipment is the *expectation* that SDG&E *use* that authority when faced with a known danger. *See In re Southern California Edison Co.*, 2004 WL 1150966 (Cal. P.U.C. 2004) ("Simply complying with the minimum intervals set by [a General Order by the PUC] will not be sufficient to deal with [all] situation[s] and the utility should be presumed to know that."). In this sense, Rule 11 informs and complements the preexisting common-law duty of care.

Rule 11 applies to the situation here. As the Marines argued, SDG&E knew of the dangerous conditions plaguing Camp Pendleton's gas lines. It knew that those conditions rendered continued delivery of gas unsafe, such that Rule 11 called on SDG&E to cease delivering gas. So in determining whether Rule 26 limits liability under these specific facts, Rule 11 cannot be ignored.

The district court brushed aside Rule 11, concluding that it too preempted the Marines' negligence claims. ER27-ER28. But its conclusion

misunderstands the rule. True, Rule 11 relieves SDG&E's "responsibility of inspecting or repairing the customer's facilities or other equipment or any part thereof and assumes no liability therefore." *See* Addendum 2.

But this language is inapplicable under the circumstances here. That language makes clear that SDG&E need not *affirmatively search* for every defect in gas equipment (and the Marines do not quibble with that). But it does not apply to the situation when SDG&E *already knows* of dangerous conditions. Indeed, in that situation, the rule itself implies that SDG&E *must discontinue service*—which it failed to do.

The court thus was wrong to believe that Rule 11 served as another measure of preemption against the Marines' negligence claims. Far from it: it directly supports why their claims are not preempted under Rule 26.

c. California Legislature

Finally, the California Legislature has emphasized a utility's overarching responsibility for public safety. Section 451 instructs:

> Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Cal. Pub. Util. Code § 451.

And beyond the Public Utility Code, the Civil Code itself envisions construing Rule 26 as simply setting forth principles of comparative negligence (as earlier explained). Section 1668 states:

> All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Cal. Civil Code § 1668. Construing SDG&E's tariffs as contracts (*e.g.*, *Tesoro I*, 146 F. Supp. 3d at 1181), it would be unlawful under the Civil Code for SDG&E to contract away its own negligent actions. As in *Tesoro II*, this clear public policy of the California Legislature against limiting liability under all circumstances for negligence supports reading Rule 26 not as a wholesale abrogation of liability, but merely as supporting a comparative-negligence regime. *See* 2016 WL 192593, at *4–5.

* * *

In sum, Rule 26 cannot be read in a vacuum. *See Tesoro II*, 2016 WL 192593, at *4. Instead, it must be construed alongside the General Order No. 58A, Rule 11, California statutes, and California public policy. And construing all of them together to create harmony—rather than conflict—between Sections 1759 and 2106, Rule 26 cannot be interpreted as limiting SDG&E's liability under these particular circumstances.

3. Any interpretive doubt must be construed in favor of allowing the Marines' negligence claims.

At this point, Rule 26 is not an exercise of authority to immunize SDG&E from the Marines' specific negligence claims here. Rule 26 does not clearly and explicitly address such a purpose, and certainly not when construed considering the broader public-safety-focused regime of rules, orders, and statutes.

Yet this Court need not "determine the precise contours of Rule [26] to resolve" this issue. *Tesoro I*, 146 F. Supp. 3d at 1187. California law is clear that any doubts must be construed against the drafter. *E.g.*, *id.* And for all the reasons set forth above, there is ample reason to doubt that the *clear and express* purpose of Rule 26 is to effect a wholesale limitation of liability—or at least a limitation of liability under the particular circumstances raised by the Marines here. For all these reasons, the district court erred in concluding that *Covalt*'s second requirement was satisfied.

D. Allowing the Marines' negligence claims will aid, not hinder, the PUC's public-safety-focused exercise of regulatory authority.

Even if Rule 26 could be construed as the PUC's exercise of authority to limit SDG&E's liability for the precise negligence claims brought by the Marines here, the district court still erred in holding that allowing the

Marines' claims to go forward would hinder the PUC's exercise of authority. ER26-ER27.

Under the third *Covalt* factor, a court must consider whether the judicial action "would hinder or interfere with the PUC's exercise of regulatory authority." *Kairy*, 660 F.3d at 1150. A rule's mere existence does not automatically mean that a court action interferes with the PUC's exercise of authority. Rather, "the third prong requires a careful assessment of the scope of the PUC's regulatory authority and evaluation of whether the suit would thwart or advance enforcement of the PUC regulation." *PegaStaff*, 192 Cal. Rptr. 3d at 623. An award of damages is barred by Section 1759 only "if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities." *Hartwell Corp. v. Super. Ct.*, 38 P.3d 1098, 1112 (Cal. 2002).

In *Covalt*, the California Supreme Court generally recognized that *challenges* to broad regulatory programs approved by the commission are those preempted by Section 1759:

> When the bar raised against a private damages action has been a ruling of the commission on a single matter such as its approval of a tariff or a merger, 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.

920 P.2d at 918–19.

Carefully assessing the scope of the Commission's regulatory authority alongside the broad regime of statutes, rules, and general orders, allowing the Marines' negligence claims to proceed does not interfere with any broad supervisory or regulatory program of the Commission. The exact opposite is true: allowing the Marines' negligence claims *will aid* the Commission's regulatory efforts, which center on public safety.

As with much of its analysis, the district court myopically focused on Rule 26, which seeks to limit SDG&E's liability for "the selection, installation, operation, maintenance, or condition of any Consumer Equipment or for any injuries or damages resulting therefrom[.]" ER-247. The Marines acknowledge that this rule speaks of absolving SDG&E's liability for negligence *under some circumstances*—yet, as just shown, not clearly or explicitly under *all* circumstances.

But again, Rule 26 cannot be viewed in a vacuum. *See Tesoro II*, 2016 WL 192593, at *4. It must be viewed alongside General Order No. 58A, Rule 11, Section 451 of the California Public Utilities Code, Section 1668 of the

California Civil Code, and the broader legislative and public-policy objectives of California law generally and the Commission specifically. And, as already discussed, that universe confirms that the Commission does *not* have a broad supervisory and regulatory program of limiting the liability of a utility for its own negligence under the particular facts here: claims relying on SDG&E's *actual knowledge* of a series of dangerous conditions plaguing Camp Pendleton's gas lines, and indeed its affirmative duty to discontinue service based on that knowledge. Rather, to the extent that the Commission has a broad supervisory and regulatory program, it is one focused not on the limitation of liability. It is one focused on ensuring public safety.

California cases confirm why this Court must focus on the broader regulatory program at issue. Begin with *Mata v. Pacific Gas & Electric Company*. There, the heirs of a man electrocuted by a high-voltage power line while trimming a redwood tree sued PG&E on a premises-liability theory. 168 Cal. Rptr. 3d at 570. The plaintiffs alleged PG&E failed to inspect the power lines and trees and to maintain an adequate clearance between them. *Id.* The trial court dismissed the action as barred by Section 1759. *Id.*

The appellate court reversed. It emphasized that none of the Commission's rules could be read as relieving a utility "of its obligation to

exercise reasonable care to avoid causing harms to others, or [ ] of its responsibility for failing to do so." *Id.* at 574. To the contrary, the utility's failure subjects it to "liability in judicial proceedings for damages to those harmed by its negligence." *Id.* The court held that "the PUC has made unmistakably clear that in some cases safety or other considerations require more than minimum clearances[.]" *Id.* at 576. What is more, the court expressly stated that the PUC had equally made clear "*that the utility should use its judgment to go beyond the minimum when necessary* to ensure service reliability *or to promote public safety*." *Id.* (emphasis added). In this regard, the court held, permitting the judicial action for damages aided—not interfered with the PUC's jurisdiction. *Id.*; *accord generally Hartwell*, 38 P.3d at 1113–14 (reaching similar conclusion for judicial action seeking monetary damages for past violations of water-quality standards).

As in *Mata* (and *Hartwell*), permitting a jury award based on a finding that SDG&E violated the Commission's own standards (as well as Rule 11) would aid, rather than interfere with, the Commission's broader regulatory objectives of promoting public safety. The Marines here do not seek damages by challenging the adequacy of SDG&E's standards. *See Hartwell*, 38 P.3d at 1112–13. They do not seek prospective relief, such as an injunction. *See id.* at

1114. Nor do they seek to impose liability upon SDG&E "for not doing what the commission has repeatedly determined that it and all similarly situated utilities were not required to do." *Id.* at 1113 (quotation marks omitted). All they seek are damages for *past* violations—relief that the Commission cannot provide. *Id.*

In sum, given the unique circumstances of the Marines' claims here, this is not a case in which allowing the Marines' action would hinder the Commission's exercise of regulatory authority. Rather, considering the Commission's broad regulatory focus on public safety, allowing this action *supports*, not interferes with, that regulatory regime.

E. Alternatively, this Court should consider certifying this novel question of preemption to the California Supreme Court.

For the reasons just stated, the district court erred in holding the Marines' negligence claims to be preempted under Rule 26. But the Marines acknowledge that this case presents at least two questions of first impression:

1. Does Rule 26 express a clear and explicit purpose to limit SDG&E's liability for negligence when SDG&E had actual knowledge of the dangerous conditions, and when other rules require it to discontinue gas service?

2. Does allowing the type of negligence claims brought by the Marines here aid (or hinder) the Commission's public-safety-focused exercise of regulatory authority?

If this Court is inclined to disagree as to the conclusiveness of the answers to these questions under California law, the proper resolution is not to affirm the decision below. Rather, under California Rule of Court 8.548, it should certify these questions to the California Supreme Court.

This Court has held that certification is proper for questions presenting "significant issues, including those with important public policy ramifications, and that have not yet been resolved by the state courts." *Kremen v. Cohen*, 325 F.3d 1035, 1037 (9th Cir. 2003). These questions (which this Court may rewrite as it sees fit) satisfy this criterion. As detailed above, how much public utilities may be relieved of liability under the facts presented here directly bears on the ability of the PUC to execute on its "general mission . . . to protect public health and safety with respect to public utilities[.]" *Kairy*, 660 F.3d at 1155. The issue thus has "significant public policy ramifications for California, extending far beyond the two parties to this case." *Allied Premier Ins. v. United Fin. Cas. Co.*, 991 F.3d 1070, 1076 (9th Cir. 2021) (*id.*): And no California courts have opined on these specific questions. *Kremen*, 325 F.3d at 1037; *see also Marinelarena v. Garland*, 6 F.4th 975, 976 (9th Cir. 2021) (declining to certify question when "the California Supreme Court has provided clear direction").

In short, "considerations of comity and federalism" favor this Court "seek[ing] guidance from the California Supreme Court, which remains the primary expositor of California law[.]" *Allied Premier Ins.*, 991 F.3d at 1076 (quotation marks and alterations omitted). So even if this Court has any doubt about the answers to these important questions, it should certify the questions to the California Supreme Court.

II. The district court erred in alternatively holding that there were no genuine issues of material fact showing SDG&E's actual knowledge of the series of dangerous conditions.

The district court alternatively erred in granting summary judgment to SDG&E on the merits. Whether based on *Ambriz*, General Order No. 58A, or Rule 11, SDG&E's actual knowledge of the series of dangerous conditions gave rise to a duty to discontinue service.

As to this alternative holding, the court adopted SDG&E's framework that "*the only* material fact issue relevant to determining whether SDG&E is liable under *Ambriz* is whether SDG&E knew *the Subject Gas Line* was inadequately *marked or buried*." ER-28 (emphasis added). But that framework erroneously rewrites the Marines' theory of SDG&E's duty, which is based on SDG&E's knowledge of a *series* of dangerous conditions that would have required a reasonable utility company to discontinue service. The court

disregarded almost all the Marines' evidence on this broader question—much of which was also relevant to whether SDG&E knew the Subject Line was improperly marked and buried. This evidence alone is enough to send the Marines' claims to the jury. And the Bulldozer incident only adds to it. Summary judgment thus was improper.

A. The standard of review is de novo, viewing all facts and reasonable inferences in the light most favorable to the Marines.

Again, this Court reviews a grant of summary judgment de novo. "Summary judgment is appropriate only if, taking the evidence and all reasonable inferences in the light most favorable to the non-moving party, there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law." *Lopez v. Catalina Channel Express, Inc.*, 974 F.3d 1030, 1033 (9th Cir. 2020) (citing Fed. R. Civ. P. 56(a)). Critically, it is not the "judge's function . . . to weigh the evidence and determine the truth of the matter[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]" *Id.* at 255. "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* So if "the evidence is

susceptible of different interpretations or inferences by the trier of fact[,]" summary judgment is improper. *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999).

As discussed below, the district court spun the summary-judgment standard on its head. Besides wrongly accepting SDG&E's narrow framework of the Marines' claim, it weighed conflicting evidence and disregarded relevant evidence favoring the Marines.

B. The record contains sufficient evidence that SDG&E knew of a series of dangerous conditions.

Properly framed, the summary-judgment record contains ample evidence that—when viewed in the light most favorable to the Marines—SDG&E *knew* of a dangerous series of conditions plaguing Camp Pendleton's gas-distribution system: the gas lines were insufficiently mapped; the lines were inadequately marked and buried (as the Bulldozer Incident confirmed); and the camp's use of extensive PVC piping was hazardous. SDG&E's knowledge of this series of conditions required it to discontinue gas service until sufficient repairs and maintenance could be completed. The district court's contrary conclusion rests not only on its erroneously narrow framing of this issue, but also on its failure to view all relevant evidence and reasonable inferences in the light most favorable to the Marines.

1. SDG&E knew Camp Pendleton's gas lines were inadequately mapped.

For decades, SDG&E knew that Camp Pendleton's gas system was in "poor condition." See ER-170; ER-136 (Q. "Are there any current safety hazards that are present?" . . . A. "Many Leaks, old equipment that has not been maintained."). SDG&E knew that the law required "[a]ccurate records of installed facilities[.]" ER-171. But as early as 1995, SDG&E—by its own admission—knew the camp's inaccurate and incomplete mapping of its gas lines was problematic. ER-157-163. In its Technical Assessment and work on Camp Pendleton, it noted that "[a]pproximately 15% of the gas system cannot be located with instruments." ER-171.

SDG&E well understood the safety risks associated with inadequate mapping. It said as much multiple times. Its technical assessment admitted that poor mapping presents an "increased safety risk to all parties and exposes SDG&E to additional liability." ER-171.[8] The Pirnie Report similarly flagged the camp's "lack of. . . accurate maps" as a serious safety concern. ER-80; *see also* ER-129 (citing violation 192.707 to note "Inadequate marking of buried

[8] That admission also cuts against SDG&E's threshold preemption argument. If Rule 26 preempted any claim for negligence based on inadequate maintenance at Camp Pendleton, why would SDG&E believe that the inadequate mapping exposed it to additional (or any) liability?

pipelines"). SDG&E minimized the failure to update maps as part of "routine and preventive maintenance" as something that simply "slip[ped] through the cracks." ER-77.

But these failures exacerbated the already anemic maintenance program:

> Moreover, base personnel work with an incomplete Gas System information database. As-built maps have not been maintained or updated, and the exact size, location and condition of Gas System equipment is unknown.

ER-77. In the Pirnie Report, Camp Pendleton personnel brought up these concerns with Pirnie's investigators, describing the lack of "manpower available to keep maps and GIS current" as a "significant problem[.]" ER-135; *see also* ER-136 ("Drawings are not accurate.").

Yet despite all of this, SDG&E took no action. *See* ER-176-177.

2. SDG&E knew Camp Pendleton's gas lines were inadequately marked and buried.

Making matters worse, the gas lines on Camp Pendleton also were not properly marked or buried. Again, in the Pirnie Report, Camp Pendleton personnel repeatedly noted that the camp's gas lines were "not marked to allow for location." ER-135; *see also* ER-136 ("no surface labeling of pipeline, tracer wire used intermittently."); ER-137 (Q. How would you improve the

facilities? A. "Provide appropriate markers for line pipe."); ER-144 ("Valve boxes not marked. gas lines not marked.").

Because much of the system remained unmarked and inadequately mapped, nobody knew whether pipelines were properly buried, which is itself a dangerous condition given the size of the base and activity the Marines' conducted on it. ER-89 (stating base personnel must estimate the depth of pipeline burial because "the available drawings do not provide this information").

Additionally, the trial court impermissibly weighed and disregarded evidence that SDG&E knew the subject line was not buried from the Bulldozer Incident. It stated that "[no] reasonable factfinder [could] conclude, without engaging in speculation, that SDG&E was placed on notice of an inadequate marking, burying, or any other condition of the Subject Gas Line such that it was required to discontinue supplying gas to the Marine Corps base." ER-29.

But to reach that conclusion, the district ignored swaths of evidence—and contrary to the court's belief, reasonable inferences are not speculation. To this end, *Stephens v. Union Pacific Railroad Company*—which the district court relied on (ER-29)—is distinguishable. 935 F.3d 852, 856 (9th Cir. 2019). That case arose in the context of expert witnesses. And this Court

contrasted assumptions and speculations with "facts or data in the case that the expert has been made aware of or personally observed." *Id.* Here, the Marines have pointed to evidence beyond simply expert-witness "speculation."

The district court was wrong to find that the "Bulldozer Incident" did not create any genuine issues of material fact as to SDG&E's knowledge of the dangerous conditions, including as to the Subject Gas Line. According to the court, "[t]he evidence, read in the light most favorable to Plaintiffs, would at best show that someone called the 811 number about the bulldozer incident, and that SDG&E was present in a gas station in '52 area' at the day of the incident." ER-29.

Far from considering the evidence and reasonable inferences in the light most favorable to the Marines, that interpretation places a thumb on the scale. A reasonable factfinder instead must consider *all* the circumstances:

- SDG&E maintains an office on Camp Pendleton. ER-41.
- SDG&E often interacts with Camp Pendleton maintenance personnel. ER-40-41.
- SDG&E is the emergency contact for Camp Pendleton. ER-41.
- SDG&E responds to 811 calls from the Camp Pendleton. ER-41.

- SDG&E was contacted and responded to an almost identical incident only a couple of months after. ER-248.

- In 2016, before the accident, Range Training Area Management launched a plan to repair the road to address erosion and grading issues for trafficability. ER-248.

Against this, what does SDG&E rely on? A self-serving affidavit. ER-17-21. Perhaps a jury might believe that affidavit at trial. But for purposes of summary judgment, the court was wrong to weigh the conflicting evidence. At most "the evidence is susceptible of different interpretations or inferences by the trier of fact." *Hunt*, 526 U.S. at 553. But making that determination is a job for the factfinder, not the court. *See Anderson*, 477 U.S. at 255. Thus the Bulldozer Incident was but one more in a series of events that should be weighed by the jury in decided whether SDG&E knew the gas distribution system was unsafe, and whether SDG&E acted reasonably under the circumstances.

3. SDG&E knew Camp Pendleton's PVC lines were brittle and prone to cracking and breaking and needed replacement.

And beyond these issues, another major concern was Camp Pendleton's extensive use of outdated PVC piping. As early as 1995, SDG&E knew that PVC comprised "the majority of pipe and services in Camp Pendleton[.]" ER-161. Yet SDG&E also understood that the lines were brittle and prone to

cracking and breaking: "the glue used during the 1970's [when the pipe was first installed] is now substandard. The glue hardens up and can crack or blow out from the fitting if removed or disturbed." ER-161-162.

SDG&E understood that a PVC system presents "additional risk to SDG&E employees and [military personnel]." ER-169. The Field Investigation Report left no doubt as to the hazard created by the system:

> Based on observed field conditions, leaks identified in the 1995 Leak study, other recurring leaks, lack of preventative maintenance, lack of upkeep of the cathodic protection system, and age of the system, we believe the PVC and steel line pipe are believed to be *a general safety hazard*.

ER-79.

Repeatedly, SDG&E recommended "the replacement of the entire PVC piping." ER-175. It called this recommendation "a high priority" that should occur "as soon as reasonably possible." [Ex. 7 at p. 11, 13.]

But despite all of this, SDG&E knew that Camp Pendleton never replaced its PVC pipe systems. ER-45.

* * *

Considering all facts and reasonable inferences in the light most favorable to the Marines, the record contains ample evidence creating genuine issues of material fact as to SDG&E's knowledge of this collective

series of dangerous conditions that would have required a reasonable utility company to discontinue service. Whether because the district court wrongly accepted SDG&E's framework disregarding relevant evidence of the issue or it impermissibly weighed evidence to find that no reasonable factfinder could conclude that SDG&E knew of these conditions, summary judgment was improper.

III. The district court correctly held that this lawsuit for damages did not present a nonjusticiable political question.

Although the district court erred in granting SDG&E's motion for summary judgment, it correctly denied SDG&E's motion to dismiss under the political-question doctrine. This Court reviews that jurisdictional determination de novo. *See, e.g.*, *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 982 (9th Cir. 2007).[9]

"In general, the Judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012) (quotation marks omitted). "[A] narrow

[9] If SDG&E no longer challenges the district court's political-question ruling on appeal, this Court might not need to consider it. *See Agua Caliente Tribe of Cupeño Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207, 1223 (9th Cir. 2019) (summarily sidestepping the political-question doctrine, despite being cited by the district court, when the governmental party "does not argue that it applies").

exception to that rule" is the political-question doctrine. *Id.* at 195. Courts typically look to six factors to determine whether a case presents a nonjusticiable political question:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Ctr. for Biological Diversity v. Mattis, 868 F.3d 803, 821–22 (9th Cir. 2017) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962). "[T]he Supreme Court recently has placed more weight on the first two factors[.]" *Id.* at 822 (citing *Zivotofsky*, 566 U.S. at 195).

The district court correctly held that none of the *Baker* factors apply.

First, this case does not involve an issue committed to a coordinate political department. The gist of this lawsuit is that *SDG&E*—not the Marine Corps—was negligent by knowingly delivering gas to Camp Pendleton despite knowing of a series of conditions that made doing so unreasonably dangerous, so as to require the discontinuation of service. The issues require a court to apply traditional legal standards, "not pass judgment on the

wisdom of the Executive's ultimate . . . military decisions." *Ctr. For Biological Diversity*, 868 F.3d at 823 (quotation marks omitted). As the district court rightly put it, "resolving the negligence claims at issue would not require [it] to reexamine a military judgment" but *SDG&E's* judgment. ER-17; *see also McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1359–60 (11th Cir. 2007) (describing the "double burden" a private contractor has in invoking the first factor).

Second, this case equally does not present judicially unmanageable standards. As the district court rightly explained, "the mere fact that the underlying events took place as part of an authorized military operation does not make the action judicially manageable." ER-17-18 (citing *Koohi v. United States*, 976 F.2d 1328, 1331 (9th Cir. 1992)). Rather, the issues before the court are whether the Marines' claims are preempted by a particular tariff, and whether the Marines have presented sufficient evidence showing that SDG&E breached a duty of care to survive summary judgment. Resolving these claims are "a familiar judicial exercise." *Zivotosfky*, 566 U.S. at 196.

Even if this Court needs to review the remaining *Baker* factors (*but see Ctr. for Biological Diversity v. Mattis*, 868 F.3d at 822), the district court was right to conclude that "SDG&E has not demonstrated that the remaining

Baker formulations apply to this case." ER-18. For the reasons just discussed, this case does not: (3) call upon a court to make a "policy determination" committed to the military; (4) require the court to second-guess a military decision, which might express a lack of respect due to the Executive Branch; (5) present any previously made political question; or (6) raise any potential for embarrassment by second-guessing a military decision. *See Baker*, 369 U.S. at 217. In short, the district court was right to conclude that this case did not present any nonjusticiable political question.

CONCLUSION

For these reasons, this Court should reverse the district court's order granting summary judgment and remand for further proceedings. Alternatively, the Court should certify questions to the California Supreme Court for resolution.

Respectfully submitted,

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ADDENDUM OF PUC REGULATIONS

1. SDG&E Tariff Rule 26, *see* ER-247.

2. SDG&E Tariff Rule 11, *found at:* http://regarchive.sdge.com/tm2/pdf/GAS_GAS-RULES_GRULE11.pdf (last visited August 30, 2021).

3. PUC General Order No. 58A, *found at:* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M185/K569/185569235.pdf (last visited August 30, 2021)

Addendum 1

San Diego Gas & Electric Company
San Diego, California

Original Cal. P.U.C. Sheet No. 18114-G

Canceling _____ Cal. P.U.C. Sheet No. _____

RULE 26

N

CONSUMER REPONSIBLE FOR EQUIPMENT FOR RECEIVING AND UTILIZING GAS

N

A. The consumer shall, at the Consumer's own risk and expense, furnish, install and keep in good and safe condition all Consumer Equipment as defined in Rule No. 1. Company shall not be responsible for the selection, installation, operation, maintenance, or condition of any Consumer Equipment or for any injuries or damages resulting therefrom, including, without limitation, any injuries or damages resulting from Odorant Fade as defined in Rule No. 1, occurring in the Consumer Equipment, as defined in Rule No. 1. This limitation does not apply to Odorant Fade occurring upstream of Consumer Equipment.

N

B. In those cases where the gas meter is so set as to require use by the Company of all or a portion of the house line and/or yard pipe belonging to some party other than the Company, then and in any such event such party shall be responsible, and the Company shall not be responsible, for the installation, operation or maintenance of such house line and/or yard pipe so used by the Company or for any injuries or damages resulting therefrom.

N

Addendum 2

San Diego Gas & Electric Company
San Diego, California

Revised Cal. P.U.C. Sheet No. 24726-G
Canceling Revised Cal. P.U.C. Sheet No. 24602-G

RULE 11

DISCONTINUANCE OF SERVICE

A. Non-Payment of Bills

1. Past Due Date. Bills for gas service are due and payable upon presentation. Such bills are the first notice to the customer that the amount shown is due and payable. Residential bills will become past due if not paid within 19 days of the date mailed; non-residential bills will become past due if not paid within 15 calendar days from the date mailed. Payment shall be received at the office of the Utility, or by an authorized agent of the Utility.

2. Past Due Notice[1]

   a. Residential.[1] The Utility may mail to any residential customer a notice that a bill is past due after the expiration of the applicable period specified in paragraph A.1. The notice that a bill is past due shall state that if the customer is unable to pay the bill by the final date (15 calendar days after the date of mailing of said notice), the customer should contact the Utility to discuss payment arrangements to avoid discontinuance of service. If the bill is not paid, or payment arrangements have not been made by the final date, service may be discontinued for non-payment. A customer's deposit to establish credit will not be used as payment to avoid discontinuance of service. A minimum of 34 days shall elapse between the date of billing and the date of discontinuance.

   b. Non-Residential.[1] A non-residential customer's gas service may be discontinued for non-payment of a past due bill provided that a written notice of discontinuance has been issued and the past due amount has not been paid within seven calendar days of the issuance of the past due notice.

3. Reasonable Attempt to Contact Customers. For residential service, the Utility shall make a reasonable attempt to contact an adult person residing at the customer's residence either by telephone or by personal contact at least 24 hours prior to termination of service, except that, whenever telephone or personal contact cannot be accomplished, the Utility shall give, either by mail, email or in person, a notice of termination of service at least 48 hours prior to termination.

   For elderly (age *65* and over) and handicapped[2] residential customers, the Utility shall provide at least 48-hour notice by telephone, email or visit; however, if personal contact cannot be made by telephone, email or visit, notice shall be posted in a conspicuous location at the service address at least 48 hours prior to termination. Disconnection notices will notify the customer that there may be financial programs available to assist them.

   a. Pursuant to D.14-06-036 effective until December 31, 2016, for vulnerable customers[3], the Utility shall provide in-person visits within five business days prior to disconnection; however, if personal contact cannot be made, notice shall be posted in a conspicuous location at the service address. The utility shall not require any vulnerable customer who receives a field visit pursuant to Rule 11.A.3.a to pay a fee associated with that field visit.

   Utility field workers shall be trained to communicate with people having language disabilities about the availability of relay services for required communications between the aforementioned customers and the Utility.

[1] Per SDG&E Advice Letter 3516-E-C/2854-G-C, submitted pursuant to Resolution M-4842, condition will be waived for current customers effective March 4, 2020 through April 16, 2021, or as otherwise extended.
[2] Certification from a licensed physician, public health nurse, or a social worker may be required by the Utility.
[3] Vulnerable customers include elderly (age *65* and over), handicapped, and special needs profiled residential customers, including Medical Baseline, Life Support, and customers who self-certify that they have a serious illness.

(Continued)

RULE 11

DISCONTINUANCE OF SERVICE

A. Non-Payment of Bills - (Continued)
Pursuant to D.20-06-003 and D.19-05-042, the utility shall include with the notice of termination multiple language[4] large print inserts and/or leave behind documents (if a customer is not home during a field visit) to provide customers with the direction and contact information on how to seek help. T

The Utility shall provide notices of termination in Braille upon the request of the customer. Customers may request such format through a call center agent. Braille notices of termination shall also be mailed to customers who have requested bills in Braille. The Braille-translated notice will be in conjunction with the system-generated, non-Braille notice they receive and may not be received the same day. The collection cycle will be adjusted in the customers' favor to accommodate the timing difference of the Braille notice and non-Braille notice.

4. Third Party Notification. The Utility shall allow elderly (age *65* and over) and handicapped[2] customers, at their option, to designate a friend, family member, or public or private agency as a third party representative to receive a copy of the notice. The Utility shall establish procedures to ensure that third parties consent to receive such notice, and that a copy of the notice is sent directly to a third party. The Utility shall inform all customers at least once annually of the availability of this service.

5. Payment Agreement. Per D.20-06-003, for residential customers, the Utility shall extend 12-month payment arrangements to a customer who alleges an inability to pay. The Utility shall not disconnect any customer if they are enrolled in a 12-month payment plan and are current on both monthly bills and the 12-month payment plan. N D

When onsite to perform a disconnection of the gas service due to non-payment, the gas field representative shall allow the customer to make a minimum payment of 20% of the past due balance and will either suspend gas service disconnection or allow the customer to be reconnected if the customer has made the minimum 20% payment and also agrees to go on a payment plan. In addition, reconnections following payment and payment arrangement agreement, and consistent with safety protocols, will be completed within 24 hours. The customer will not be required to call another person to have their gas service reconnected once they make a payment. N

6. Termination Dispute for Residential Customers.
   a. Customer Contacts Utility. If the customer is temporarily unable to pay its bill, the customer may be eligible for payment arrangements. The customer must contact the Utility prior to the expiration date of any delinquency notice before termination of service to be eligible for payment arrangements. If arrangements are granted, the customer must comply with the agreement and pay all future bills on time in order to continue service. The Utility shall furnish information on the availability of various financial assistance programs to those customers who demonstrate an inability to pay their bill. D
   b. Dispute/Service Complaints: If you believe there is an error on your bill or have a question about your service, please call SDG&E customer support at 1-800-411-SDGE (7343). If you are not satisfied with SDG&E's response, submit a complaint to the California Public Utilities Commission (CPUC) at www.cpuc.ca.gov/complaints/. Billing and service complaints are handled by the CPUC's Consumer Affairs Branch (CAB), 505 Van Ness Ave, Room 2003, San Francisco, CA 94102, phone: 1-800-649-7570.

[4] The languages provided will be consistent with SB 12 and notices of de-energization events, which includes English, Spanish, Chinese, Tagalog, Vietnamese, Korean and Russian, where appropriate. T T

(Continued)

RULE 11

DISCONTINUANCE OF SERVICE

A. Non-Payment of Bills (Continued)

6. Termination Dispute for Residential Customers (Continued)

If you have limitations hearing or speaking, dial 711 to reach the California Relay Service, which is for those needing assistance relaying telephone conversations. Dial one of the numbers below to be routed to a California Relay Service provider in your preferred mode of communication. L L L

California Relay Service Phone Numbers:

Type of Call	Toll-Free Number
TTY/VCO/HCO to Voice	1-800-735-2929 English 1-800-855-3000 Spanish
Voice to TTY/VCO/HCO	1-800-735-2922 English 1-800-855-3000 Spanish
Speech to speech	1-800-854-7784

To avoid having service turned off while waiting for the outcome of a complaint to the CPUC specifically regarding the accuracy of your bill, please contact CAB for assistance. If your case meets the eligibility criteria, CAB will provide you instructions on how to mail a check or money order to be impounded pending resolution of your case. You must continue to pay your current charges while your complaint is under review to keep your service turned on.

This must be done prior to any delinquent notice expiration date to avoid interruption of service. The customer is not required to place a deposit with the Commission in a termination dispute.

c. CAB Proposed Resolution. Within ten business days after receiving the informal complaint, the CAB will report its proposed resolution by letter both to the customer and the Utility.

d. Formal Complaint. If the customer is not satisfied with the proposed resolution of the CAB, the customer may file no later than ten business days after the date of the CAB letter, a formal complaint with the Commission at the same addresses as listed above in A.6.b.

e. Time Limits. If the customer fails to observe these time limits, the Utility will be entitled to payment, or, if the bill is not paid, to discontinue service.

f. Service Not Discontinued. No customer's service may be discontinued while the Utility is investigating a complaint, or while the customer is complying with a payment arrangement, provided the customer also keeps the account current as charges accrue in each subsequent billing period.

7. Individually-Metered Residential Tenant. Discontinuance of service to a residential tenant in a multiunit residential structure who is individually metered by the Utility and it is known to the Utility that service is in the name of the owner, manager, or operator.

a. A 10-day notice of discontinuance, as provided for in Rule 8.A., Notices, shall inform the tenant of his right to become a customer, to whom the service will then be billed without being required to pay any amount which may be due on the delinquent account.

b. The tenant must establish credit to the satisfaction of the Utility. However, where a tenant is establishing service under the provisions of this section and prior service for a period of time is a condition for establishing credit with the Utility, residence and proof of prompt payment of rent or other credit obligation acceptable to the Utility for that period of time is a satisfactory equivalent.

(Continued)

SDGE
San Diego Gas & Electric Company
San Diego, California

Revised Cal. P.U.C. Sheet No. 23634-G
Canceling Revised Cal. P.U.C. Sheet No. 15921-G

RULE 11

DISCONTINUANCE OF SERVICE

A. Non-Payment of Bills (Continued)

8. Master Meter. When the Utility is aware that discontinuance of service to a master meter may deprive residential tenants of gas service, the Utility shall comply with the provisions of paragraph A.1., A.2. and A.8. In addition, the Utility shall give the tenants not less than 15 calendar days prior to the date of discontinuance, notice of their right to become customers without obligation for the bills which have accrued on the master meter. The Utility may satisfy the notice required under this paragraph by posting two such notices at each access point and common areas on the premises when it is not practicable to post a notice on each tenant's door. The notice will be in both English and Spanish and shall specify:

   a. The date on which service will be discontinued.

   b. That the occupants have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account.

   c. What the occupants are required to do in order to prevent the termination of service or to reestablish service.

   d. The estimated monthly cost of service.

   e. The title, address, and telephone number of a representative of the Utility who can assist the occupants in continuing service.

   f. The address and telephone number of a legal service project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association

   The Utility is not required to make service available to the occupants unless each occupant or a "representative of the residential occupants" agrees to the terms and conditions of service and meets the requirements of law and the Utility's rules and tariffs. However, if one or more of the occupants or the representatives of the occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the Utility, or if there are physical means, legally available to the Utility, of selectively terminating service to those occupants who have not met the requirements of the Utility's rules and tariffs or for whom the representative of the occupants is not responsible, the Utility shall make service available to those occupants who have met those requirements or on whose behalf those requirements have been met. As used herein, "representative of the residential occupants" does not include a tenants' association.

   Credit must be established to the satisfaction of the Utility. Where prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the Utility, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the Utility is a satisfactory equivalent.

   Where the Utility furnishes services under a Domestic rate schedule to a multiunit residential structure through a master meter, the Utility may not discontinue service in any of the following situations:

Issued by
Dan Skopec
Vice President
Regulatory Affairs

Submitted Feb 8, 2019
Effective
Resolution No.

Advice Ltr. No. 2739-G
Decision No. 8/2/18 CAB Letter

San Diego Gas & Electric Company
San Diego, California

Revised Cal. P.U.C. Sheet No. 24728-G
Canceling Revised Cal. P.U.C. Sheet No. 23724-G

RULE 11

DISCONTINUANCE OF SERVICE

A. Non-Payment of Bills - (Continued)

g. During the pendency of an investigation by the Utility of a customer dispute or complaint.

h. When the customer has been granted an extension of the period for payment of a bill.

i. For an indebtedness owed by the customer to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the gas Utility demanding payment therefore.

j. When a delinquent account relates to another property owned, managed, or operated by the customer.

k. When a public health or building officer certifies that disconnection would result in a significant threat to the health and safety of the occupants or the public.

9. Unpaid Bill at a Previous Location. A customer's gas service may be discontinued for nonpayment of a bill for service of the same class rendered to the customer at a previous location served by the Utility and provided that the Utility has followed the notice requirements of paragraphs A.2. and A.9. at the current location for the bill incurred at the previous location.

10. Service to Multiple Locations. Any individual, firm or corporation failing to pay bills due for gas service rendered at one or more locations, within the time limits and subject to the procedures specified in this Rule, shall be subject without further notice to discontinuance of gas service at any or all locations where the Utility provides gas to such individual, firm or corporation, until such bills are paid and credit is re-established. Residential service, however, may not be discontinued because of nonpayment of bills for other classes of service.

11. Weekends and Holidays. The Utility shall not, by reason of delinquency in payment for gas service, cause cessation of service on any Saturday, Sunday, legal holiday, or at any time during which the business offices of the Utility are not open to the public.

12. Termination in Error. Service terminated in error shall be restored without charge and a notification thereof shall be mailed to the customer at the billing address.

13. Payments collected at the customer's home may be made using the following options: cash, check, or money order.

14. Temperature-Related Limitations. The Utility shall not, by any reason of delinquency in payment cause cessation of service when temperatures are above 100 degrees or below 32 degrees Fahrenheit when forecasted by the Utility based on a 72-hour look ahead period.

15. Low-Income Home Energy Assistance Program (LIHEAP): Residential customers shall not be disconnected if there is a LIHEAP pledge pending. N

16. Residential customers shall not be disconnected for nonpayment until the utility offers to enroll eligible customers in all applicable benefit programs administered by the utility. The utility is not required to make affirmative inquiry of every residential household of every residential household as to whether they are enrolled in applicable benefit programs. If SDG&E is in contact with a customer prior to disconnection, SDG&E shall inquire if the customer is interested in hearing about applicable benefit programs. Residential customers must enroll in the applicable benefit program within two billing cycles of being made aware of the applicable program. N

(Continued)

RULE 11

DISCONTINUANCE OF SERVICE

B. Unsafe Equipment

1. The Utility may deny or discontinue service to a customer when:

   a. the Utility determines that the premises' facilities, appliances or other gas equipment, or the use of either, is unsafe, or
   b. any governmental agency, authorized to enforce laws, ordinances, or regulations involving gas facilities and/or the use of gas, notifies the Utility in writing that the customer's gas facilities and/or use of gas is unsafe or not in compliance with such laws, ordinances, or regulations.

2. At the time of denial or discontinuance of service, as stated in B.1. above, the Utility will:

   a. post a written notice, stating the reason for denial or discontinuance and referring to this rule, at or near the metering equipment, or
   b. give the written notice to the occupant of the premises, and
   c. within 24 hours of service termination or denial of service, send a copy of the written notice by certified mail to the customer at the address to which billing is made 3.

3. The Utility will not connect or restore service until:

   a. the Utility determines the customer's facilities, appliances or other gas equipment, or the use of either, has been made safe, or
   b. the Utility has received written notice from the appropriate governmental agency that the premises meet applicable laws, ordinances or regulations.

4. When service is denied or discontinued solely under B.1.a. above, the customer may seek remedies before the Public Utilities Commission.

5. When service is denied or discontinued under B.1.b. above, it is the customer's responsibility to resolve the matter with the governmental agency.

6. The Utility does not assume any responsibility of inspecting or repairing the customer's facilities or other equipment or any part thereof and assumes no liability therefore.

C. Unauthorized Use

The Utility may discontinue service if the acts of the customer or the conditions upon the premises indicate an intent to deny the Utility full compensation for services rendered, including, but not limited to, tampering or unauthorized use. Discontinuance of service for nonpayment of a bill for unauthorized use shall be in accordance with the provisions of A. above.

D. Fraud - Refusal or Discontinuance of Service

The Utility shall have the right to refuse to provide gas to, or on, any premises and at any time to discontinue service if found necessary to do so in order to protect itself against abuse or fraud.

The Utility may refuse or discontinue gas service if the acts of the applicant or the customer indicate an intent to evade the credit practices of the utility or if the acts of the customer or conditions on the customer's premises indicate an intent to evade payment of a Utility bill or the credit practices of the Utility. If an applicant or customer knowingly furnishes false, incomplete, misleading or inaccurate information or refuses to provide required information to the Utility, it shall be deemed to be an intent to evade the credit practices of the Utility. Upon written request of the applicant or customer, the Utility shall provide a written statement of the reason for such refusal or discontinuance.

(Continued)

SDGE
San Diego Gas & Electric Company
San Diego, California

Revised Cal. P.U.C. Sheet No. 23637-G
Canceling Revised Cal. P.U.C. Sheet No. 15924-G

RULE 11

DISCONTINUANCE OF SERVICE

E. Non-Compliance with the Utility's Tariffs

Except as otherwise specifically provided in this rule, the Utility may discontinue service to a customer for non-compliance with any of the utility's effective tariffs, if, after written notice of at least seven calendar days, the customer has not complied with the notice.

This notice may be waived when, in the opinion of the Utility, either a dangerous condition has been discovered or a bonafide emergency is found to exist on a customer's premises, or in the case of a customer utilizing the service in such a manner as to make it dangerous for occupants of the premises, thus rendering the immediate discontinuance of service to the premises imperative.

F. Unsafe Environment

If a customer or anyone on the premises inflicts violence, as defined in Rule 1, or threatens with present ability to inflict violence upon a Utility employee, the Utility may discontinue service to a customer after written notice of at least 5 days. Prior to issuing a notice of discontinuance of service, the Utility will seek to arrange a meeting with the customer, Utility management and/or law enforcement to discuss the situation and explain the alternatives available to the customer so that discontinuance of service may be avoided. If such efforts fail to result in the customer agreeing to cease from any act of violence, the Utility shall at its discretion, issue a notice of discontinuance of service under the provisions of the following Sections of Rule 11: Section A, Non-Payment of Bills, Section B, Unsafe Equipment, and Section H, Usage of Service Detrimental to Other Customers.

G. Multilingual Service.

The Utility shall provide a reasonable number of multilingual individuals to advise customers of termination policy where a substantial portion of the customers in the Utility's service area do not speak English.

H. Customer's Request for Service Discontinuance

1. A customer who wants gas service discontinued shall give the Utility notice at least two business days prior to the date service is desired to be discontinued.

2. The Utility shall not be required to terminate service earlier than two business days after notice of discontinuance is received. A customer will be held responsible for payment of charges for all services furnished at the premises until the requested date of termination or until the expiration of the required period of notice, whichever date is later.

I. Usage of Service Detrimental to Other Customers

The Utility will not provide service to gas equipment, the operation of which will be detrimental to other gas service, and will discontinue gas service to any customer who continues to operate such equipment after being notified by the Utility to discontinue the operation.

J. Residential Customer Notification Prior to Discontinuance of Service

The Utility shall provide a customer with the reason for service discontinuance prior to the scheduled termination date.

RULE 11

DISCONTINUANCE OF SERVICE

K. Serious Illness - Residential Customers

Serious illness is a condition which could become life-threatening if service is discontinued.

The Utility shall postpone a scheduled discontinuance of residential service, or restore service if already discontinued, when a seriously ill person resides in the household. D

Verification from a licensed physician, public health nurse and/or social worker may be required. The initial contact may be by telephone. Written certification within ten days may be required. The verification shall be valid for the duration of the illness or 25 calendar days, whichever is less. D

L. Failure to Establish or Re-Establish Credit After Institution of Service

1. If, at the request or convenience of a customer, the Utility institutes gas service to a customer prior to his having established credit (as provided in Rule 6) and if, within seven calendar days from such institution of service, said customer has not established credit, the Utility shall have the right, after giving due notice, and upon the customer's failure to establish credit within such notice period, to discontinue further service of gas. Exceptions to discontinuance of service are as limited by paragraphs A.3., 6., 7., 11., and J.

2. If a non-residential customer does not provide information satisfactory to the Utility to re-establish credit, or fails to provide security as provided in Rule 6, the Utility shall have the right to discontinue service to that customer, after giving due notice.

M. Termination of Service for Fumigations

1. Every person planning to conduct any fumigation, where a fumigator places a tent over any portion of a structure served with natural gas, shall contact the Utility to request a termination of gas service at least two (2) business days prior to commencing the tenting of a structure. In cases where the Utility is unable to terminate the service on the date requested, the Utility shall contact the fumigator to arrange another date.

2. When the fumigation is complete and the structure is posted as suitable for occupancy (Certificate for Re-Entry), the Utility shall restore the gas service. The customer or their authorized agent is required to provide proof of Certificate for Re-Entry as a condition for reinstating gas service. The Utility shall offer a four-hour service appointment for restoring the gas service.

3. Where the fumigator tents the structure without contacting the Utility to request a termination of the gas service, or where the fumigator performs the tenting prior to the Utility terminating the service, and the Utility discovers this condition, the Utility may immediately and without notice, terminate the gas service as an unsafe condition pursuant to Rule 11.B.1. Thereafter, the Utility may restore service pursuant to Rule 11.B.3; however, Utility may, at its sole discretion, charge and collect from the fumigator any costs incidental to the termination or restoration of service, where the fumigator has tented the structure without notifying the Utility to terminate gas service or tented before service had been terminated.

(Continued)

RULE 11

DISCONTINUANCE OF SERVICE

M. Termination of Service for Fumigations (Continued)

4. If the fumigator violates any of the provisions of Rule 11.K, the Utility shall submit written notice of the alleged violation directly to the violating Branch 1 registered company (pest control operator), with a copy to the Executive Officer of the Structural Pest Control Board and the Director of the Consumer Protection and Safety Division of the California Public Utilities Commission.

5. In compliance with D.08-07-046 which approved the Memorandum of Understanding between SDG&E and the Pest Control Operators of California (PCOC), SDG&E commits to the following: N

   a) Offer gas shut-off service on holidays during which the Utility is already operating under a standard work day.

   b) If a Utility representative arrives at a PCOC work site to perform a gas shut-off and is unable to perform the shut-off, the Utility representative will immediately contact the Utility scheduling function, or if possible, the PCOC business associated with the shut-off, to attempt to accomplish the shut-off as scheduled.

   c) Endeavor to address PCOC service issues on an ongoing basis, which shall include, at a minimum, holding in-person meetings with PCOC on no less than an annual basis.

   d) Reserve the right to modify or discontinue any or all of the services described above; however, the Utility will meet and discuss the planned actions with PCOC prior to making any such changes. N

Addendum 3

STATE OF CALIFORNIA

STANDARDS FOR GAS SERVICE

IN THE STATE OF CALIFORNIA

Prescribed by the

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

GENERAL ORDER No. 58A

November 10, 2016

GENERAL ORDER 58-A

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STANDARDS FOR GAS SERVICE IN THE STATE OF CALIFORNIA

(37 C.R.C. 589)
(Original Order Approved August 1, 1919
Effective September 1, 1919) (Revised
Order Approved March 1, 1923
Effective April 1, 1923)
(Revised Order Approved May 31, 1932
Effective July 1, 1932) (Decision No.
24827, Case No. 3181) [Revised April 12,
1989 Effective April 12, 1989] [Resolution G-
2870]
Revised December 16, 1992, Effective December 16, 1992
Decision No. 92-12-062
Revised November 10, 2016, Effective November 10, 2016
Decision No. 16-11-008

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1. Application of Rules

The following rules shall apply to any person, firm or corporation now or hereafter engaged as a public utility in the business of furnishing gas (fuel gas) for domestic, commercial, industrial or other purposes within the State of California where gas service is subject to the jurisdiction of the Public Utilities Commission of the State of California. In no case shall any public utility deviate from these rules except with specific written authorization from the Commission.

2. Definitions

a. Biogas

Biogas is created when organic waste decomposes anaerobically (without oxygen). Biogas may be obtained from landfills, dairies, sewage treatment plants, and other organic sources.

b. Biomethane

Biomethane is produced by processing or upgrading biogas to increase the percentage of methane in the gas by removing carbon dioxide and other trace components to meet the standards for injection into a common carrier pipeline. Biomethane does not include biogas collected from a hazardous waste landfill, as defined in Health & Safety Code § 25117.1.

c. British Thermal Unit (Btu)

The quantity of heat that must be added to one avoirdupois pound of pure water to raise its temperature from 58.5°F. to 59.5°F. under standard pressure.

d. Commission

The word "Commission" as used in these rules shall mean the Public Utilities Commission of the State of California.

e. Customer

The word "customer" as used in these rules shall mean any person, group of persons, firm, corporation, institution, municipality, or other civic body supplied directly with gas by any gas utility, or which may be entitled or permitted to use for compensation any of the facilities of any gas utility.

f. Gas (Fuel Gas)

Gas or Fuel Gas, as used in these rules, shall mean any combustible gas or vapor, or combustible mixture of gaseous constituents, used to produce heat by burning. It shall include, but shall not be limited to, natural gas, gas manufactured from coal or oil, biomethane, or a mixture of any or all of the above.

g. LPG (Liquefied Petroleum Gas)

A gas containing certain specific hydrocarbons which are gaseous under ambient atmospheric conditions, but can be liquefied under moderate pressure at normal temperatures. Propane and butane are the principal examples.

h. Pressure Recording Device

As used in these rules, pressure recording device shall mean a mechanical or electronic device that automatically records gas pressure on an analog chart, or an electronic device which provides a printed log of the pressure or records it on storage media.

i. Standard Pressure

A pressure of 14.73 psia.

j. Standard Cubic Foot of Gas
The amount of gas that occupies one cubic foot at standard temperature under standard pressure and saturated with water vapor, or free of water vapor (dry) as specified.

k. Standard Temperature
60°F., based on the international temperature scale.

l. Heating Value
The term "heating value" as used in these rules shall mean the total heating value of the gas measured on a dry basis, which is defined as the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air and products of combustion being 60°F. and all of the water formed by the combustion reaction being condensed to the liquid state.

m. Utility
The word "utility" and the term "gas utility" as used in these rules shall mean any person, firm or corporation engaged as a public utility in producing, transmitting, distributing or furnishing fuel gas for domestic, commercial, industrial or other purposes.

3. System Maps and Records

a. Each gas utility shall keep on file with the Commission up-to-date maps of the general territory, which it holds itself in readiness to serve, outlining operating districts and showing major transmission lines.

b. A suitable map or maps shall be kept on file in the principal office of each division or district. Maps shall at all times show the size, character and location of each street main, district regulator, operating valve and drip, and when practicable, each service connection in the corresponding territory served. In lieu of showing service locations on maps, a card record, a computerized system, or other suitable means may be used.

c. In each division or district office there shall be available such information relative to the distribution system which will enable the local representatives at all times, to furnish necessary information regarding the rendering of service to existing and prospective customers.

d. Each major gas control station and each compressor and holder station shall have available an accurate ground plan drawn to a suitable scale, showing the entire layout of the plant or station, the location, size and character of plant equipment, major pipelines, connections, valves and other facilities used for the control and delivery of gas, all properly identified.

4. Station and Other Records

a. Each gas utility shall keep and preserve, for a period of at least three years, transmission line pressures from each compressor station and receiving station.

b. Each gas utility shall keep and preserve for a period of three years, an accurate record of the operation of each compressor station, as follows:

1. The amount of fuel gas used each month for compression purposes.
2. The amount of electricity or any other energy used each month for compression purposes.

c. Each gas utility serving liquefied petroleum gas, or a liquefied petroleum gas—air mix, shall keep and preserve, for a period of at least three (3) years, an accurate record of the operation of each vaporizing plant, as follows:
1. The quantity of liquefied petroleum gas vaporized each month, recorded in Mcf.
2. The quantity of liquefied petroleum gas, or liquefied petroleum gas—air mix, sent out each month, recorded in Mcf.
3. The amount of liquefied petroleum gas used each month, recorded in gallons.
4. The amount of fuel used each month for plant operations, in Mcf.
5. The amount of electricity used each month.
6. The heating value per gallon of each new supply of liquefied petroleum gas received.

d. Each gas utility serving fuel gas shall keep and preserve for a period of at least three years an accurate record of the volume of gas handled in Mcf as follows:
System
(1) Receipts (Daily)
Total volume of fuel gas purchased or received from major producers and at major supply points:
a. From producers (charts or flow computer readouts).
b. From transporting companies or utilities.
c. From owned supplies or sources.
d. From underground storage.
e. Holder variations.
(2) Disbursements (Monthly)
Total Volume of gas sent to:
a. Resale sales.
b. Storage.
c. Domestic and commercial use.
d. Industrial use.
e. Company use.
f. Transport for others.
g. Losses and unaccounted for.

5. Testing Equipment and Facilities

a. Each gas utility shall provide, or make arrangements for, meter testing equipment and facilities and other testing equipment and facilities as needed to perform the tests required of the gas utility by these rules or other orders of the Commission. The apparatus and equipment used shall be state-of-the-art, meeting industry standards, and shall be available at all times for inspection by any authorized representative of the Commission. The equipment shall be of a type and form approved by the Commission.

b. Each gas utility shall make such tests as are prescribed under these rules with such frequency and in such manner, and at such

places as herein provided, or as may be approved or ordered by the Commission.

c. Each gas utility shall file with the Commission a detailed statement showing the location of each meter testing shop and testing station owned, controlled or operated by the utility, and used to make the tests required by these rules, together with a full and complete description of each major testing or standardizing instrument or apparatus maintained therein. Any major change or addition to these facilities, or abandonment of facilities, shall be reported to the Commission within 10 days after the change has become effective.

d. Where gas utilities do not maintain their own testing and meter repair facilities, they shall provide the Commission with a statement indicating the location and organization by whom such testing and meter repair work is performed. The proof settings and tolerances of new and repaired meters shall also be stated.

6. Heating Value of Fuel Gas

a. Each gas utility supplying fuel gas for domestic, commercial or industrial purposes shall develop and maintain a plan establishing the heating value of the gas being supplied. This plan shall provide for the following requirements:

1. Establish distinct distribution system areas in which a uniform quality of gas will be supplied.
2. Identify a heating value range for each such area. Provide for verification of the average heating value of the gas supplied to each area, at intervals frequent enough to assure that the heating value is being maintained within the heating value range established for the area, and to assure adequate accuracy for customer billing.
3. Provide for establishing, and maintaining for three years, records of the heating value of the gas provided in each area.

b. Each gas utility shall establish and maintain, as outlined in General Order 58-B, Heating Value Measurement Standard For Gaseous Fuels, heating value measurement stations, and shall develop and implement the procedures necessary to determine the heating value of the fuel gas being supplied in each area, to meet the requirements of Section 6.a. If heating value determination of the same gas is satisfactorily made by another utility, supplier or qualified laboratory, it may be used for the purpose of the above record upon written approval of the Commission. Such utility, supplier, or qualified laboratory shall use a heating value measurement device of a type that has been approved by the Commission.

c. Each gas utility supplying a liquefied petroleum gas—air mix, shall establish and maintain, with the approval of the Commission, a standard heating value for its product. The maximum daily variation shall not exceed twenty-five (25) Btu per standard cubic foot above or below the standard heating value.

d. Each gas utility supplying fuel gas, including liquefied petroleum gas and a liquefied petroleum gas—air mix, shall file with the

Commission as a part of its schedule of rates, rules and regulations, the average total heating value of such gas together with the maximum fluctuation above and below the average total heating value which may be expected.

e. The monthly average total heating value at any given test station shall be the average of all total heating value tests made during each month.

f. As an alternative to establishing a heating value measurement station, samples may be taken near the center of a distribution system area. Where this is done, at least one determination per week shall be made of the total heating value of gas delivered to customers in distribution system areas identified as in Section 6.a.1. which have annual sales in excess of one hundred million (100,000,000) cubic feet of gas. Where a number of distribution system areas are so interconnected as to be certain of receiving gas from the same source, there may be established a testing or sampling station at a location where the gas tested will be representative of that served in all such distribution system areas.

7. Purity of Gas

a. Hydrogen Sulfide

No gas supplied by any gas utility for domestic, commercial or industrial purposes in this state shall contain more than one-fourth (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet (4 parts per million by volume of hydrogen sulfide).

b. Total Sulfur

No gas supplied by any gas utility for domestic, commercial or industrial purposes shall contain more than five (5) grains of total sulfur per one hundred (100) standard cubic feet (no greater than 85 parts per million by volume of total sulfur).

c. Test procedures used to determine the amounts of hydrogen sulfide and total sulfur shall be in accordance with accepted gas industry standards and practices.

d. When hydrogen sulfide, or total sulfur, exceeds the limits set forth in Section 7.a. and Section 7.b., the gas utility shall notify the Commission and commence remedial action immediately. The Commission shall be notified when the level of hydrogen sulfide, or total sulfur, has been reduced to allowable limits.

e. In order for biomethane to be transported in a utility's gas pipeline system, the biomethane must meet the existing gas quality requirements and the incremental biomethane constituent specifications in the utility's tariff and consistent with Health and Safety Code § 25421.

f. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southwest Gas Corporation, either individually or collectively, shall file an application every five years, or earlier if new information becomes available, or as directed by the Commission in the future, commencing no later than January 22, 2019, for the Commission to review and update the standards for the protection of human health and pipeline integrity and safety, including considering proposals to amend the list of constituents of concern and concentration limits found in biomethane.

g. If the Office of Environmental Health Hazard Assessment (OEHHA) or the California Air Resources Board (CARB) believes that an update proceeding should occur before the five year period, OEHHA

or the CARB may notify the Commission's Executive Director and the Energy Division Director that an update proceeding should be conducted.

8. Standard Gas Delivery Pressure

a. Each gas utility supplying gas for domestic, commercial or industrial purposes shall, subject to the approval of the Commission, adopt and maintain a standard gas delivery pressure measured at the outlet of any customer's meter. In adopting such a standard gas delivery pressure, each utility may divide its distribution system into sections and establish a separate standard gas delivery pressure for each section, or the utility may establish a single standard gas delivery pressure for its distribution system as a whole.

b. The standard gas delivery pressure supplied by any gas utility to domestic, commercial, or industrial customers, as measured at the outlet of any such customer meter, shall not be less than two inches nor more than twelve inches of water column pressure.

c. The standard gas delivery pressure adopted shall be filed with the Commission as a part of each gas utility's tariff schedules. These tariff schedules shall be open to public inspection at each office or location where applications for gas service are received.

d. No change shall be made by any gas utility in the standard gas delivery pressure adopted by it for any section or system without the approval of the Commission.

e. In the case of customers who require higher pressure than the standard established for domestic, commercial, or industrial service, the gas utility may supply gas at the desired pressure, and the volume of such gas shall be adjusted to standard pressure for accounting and billing purposes.

f. The pressure of gas supplied at low pressure to domestic and commercial customers shall not vary more than fifty percent (50%) above or below the standard pressure which the utility has adopted for a section or system and no such variation in pressure shall be more than that equivalent to four inches of water column above or below the standard. No variation in pressure from the standard pressure of two inches or more of water column shall occur in a time less than fifteen (15) minutes, excepting momentary fluctuations on individual services caused by the operations of customer's appliances or fluctuations caused by reasonable regulator buildups.

9. Pressure Testing Equipment and Tests

a. Each gas utility shall own and maintain at least one recording pressure device on each principal distribution main leaving each major control facility such as a compressor station, holder station or transmission terminal. No utility shall maintain less than two such devices unless specifically relieved in writing by the Commission. Official pressure data taken from such devices shall be preserved as a continuous record for a period of at least one (1) year.

b. Each gas utility shall own and maintain at least one low pressure, portable pressure recording device for each one hundred (100) miles or fraction thereof of low pressure main in any separate distribution system.

c. On low pressure distribution systems each gas utility shall during the six months of the peak season of the year make at least one 24-hour record of pressure each week at the outlet of customer's meters for each one hundred (100) miles or less of distribution main in each district or separate distribution system. Such record shall bear the address of the customer where the pressure is taken and the dates, together with such other information as the Commission may from time to time direct and shall be filed and retained for a period of at least two calendar years in the principal office of each district or division. In lieu of fifty percent (50%) of the above required number of records from portable pressure recording devices at customer's premises there may be substituted an equal number of twenty-four (24) hour records from recording pressure devices permanently located at critical points on the distribution system.

d. On high pressure distribution systems, gas utilities shall maintain permanently located pressure recording devices at critical points and shall preserve in the district or division offices the data from these devices for a period of at least one (1) year.

e. Pressure conditions on a customer's premises served from a high pressure distribution system shall be determined by a test made with a water column manometer or other suitable test device, during service calls in answer to pressure complaints. A report on such tests shall be made on the complaint order, which report shall state the pressure observed when appliances were on and when all appliances (excepting pilot lights) were off. It shall state whether the test was made at the outlet of the meter or at the customer's appliance. A test shall be made for each pressure complaint received.

10. Meters and Regulators

a. In the service of gas to domestic, commercial and industrial customers, each gas utility shall provide, and, unless otherwise specified, install at its own expense and shall continue to own, maintain and operate all equipment for the regulation and measurement of gas to the outlet of the meter set. Temperature correction is required where the average monthly use of gas is greater than one million (1,000,000) cubic feet per active month.

b. Where an applicant for gas service requests installation of special facilities and the utility agrees to make such installation, the additional cost of the special facilities shall conform to the special facilities provisions set forth in the utilities' filed tariffs.

11. Service and Meter Installations

a. Each utility shall install service lines and meters of adequate capacity to provide satisfactory service and to assure accurate meter registration under the load conditions imposed.

b. Rules governing specific locations of service and meter installations, and relocations or replacements of service pipe, shall conform to the applicable provisions of the latest revision of General Order 112-F, and revisions thereto, and the utilities' applicable currently effective filed gas tariff rules.

12. Gas Meter Accuracy

a. All tests to determine the accuracy of registration of any diaphragm gas meter shall be made with a suitable meter prover.

b. Every diaphragm gas meter, when installed for the use of any customer, shall be in good order and shall have been adjusted to register within one percent (1%) over or two percent (2%) under the prover registration when passing gas at a rate which will cause a pressure drop across the meter not to exceed one-half inch of water column (1/2" W.C.). The meter shall be adjusted so that the open flow test agrees with the check flow test within one percent (1%), provided, however, that no meter shall be put in service which on any test registers in excess of one percent (1%) over the prover registration.

c. All gas meters other than diaphragm meters shall be tested for accuracy in accordance with accepted industry standards and practices. Any such test results shall not register less than minus two percent (2%) error or more than plus one percent (1%) error. In order to obtain the accuracy range set forth in this section, orifice meters shall be manufactured and installed in accordance with all guidelines specified in the current edition of ANSI/API 2530 (AGA Report No. 3), Orifice Metering of Natural Gas.

13. Periodic and Other Required Tests of Gas Meters

a. No gas meters hereafter installed shall be allowed to remain in service more than ten (10) years from the time when last tested without being retested in the manner herein provided, and if found inaccurate, each such meter shall, at the time of each test, be readjusted to be correct within the prescribed limits before being installed.

b. If during an inspection or the servicing of appliances or equipment on a customer's premises, a residential or small commercial meter is observed or is suspected to be out of calibration, it should be removed promptly, transported to a meter testing facility without alteration of its condition, and tested. If the meter is a large commercial or industrial meter, and suitable transfer prover equipment is available, the meter may be tested in place.

c. Under certain conditions utilities may be authorized to deviate from Section 13.a. and use a statistical meter control program based on meter performance as demonstrated by sample testing in lieu of periodic testing of each meter. Applications to deviate shall be based on accepted principles of statistical sampling.

14. Standard Methods of Testing Gas Meters

Each gas utility shall adopt and maintain standard methods of testing gas meters. These methods and the facilities used shall be reported to the Commission for approval.

15. Meter Testing Equipment

a. Unless otherwise specifically authorized by the Commission, each gas utility shall own at least one meter prover for diaphragm type meters, of a type approved by the Commission and shall maintain such equipment in proper adjustment and so calibrated that the error of indication shall not exceed one-half

percent (1/2%). No meter prover not having temperature compensation, shall be so placed as to be subject to excessive temperature variation and each meter prover shall be equipped with suitable thermometers and other necessary accessories.

b. Each utility using orifice meters or other large volume meters shall determine meter accuracy in accordance with accepted industry standards and practices.

c. The accuracy of all provers and methods of operation will be established from time to time by a representative of the Commission. Any alterations, accidents, or repairs which might affect the accuracy of any meter prover, or the method of operating same, shall be promptly reported in writing to the Commission.

d. Proving and calibration devices used for the requirements specified in these rules shall be traceable to the National Institute of Standards and Technology.

e. This section is applicable to those utilities authorized to use recognized meter test and repair shops, other than their own, for testing and/or repairing all or a portion of meters removed from service. Results of such tests, together with relevant data, shall be furnished the Commission with the utility's statement including:

1. The name of the organization making such meter tests and/or repairs.
2. The type and characteristics of meters used by the utility and showing the number of meters by types.
3. Certification of meter testing equipment by a recognized governing agency.
4. A copy of the sheet titled "Gas Meter Performance Record During the Year" as furnished in the utilities' annual report to the Commission.

16. Records of Meters and Meter Tests

a. A complete record of the tests made under these rules shall be kept by each gas utility. The record so kept shall contain complete information concerning each test, including the date when, and the place where the test was made, the name of the inspector conducting the test, the result of the test, and such other information as may be required by these rules, or as the Commission may from time to time direct, and such additional information as the utility making the test may deem desirable.

b. Whenever any meter is tested, the test information shall be retained including the information necessary for identifying the meter, the reason for the test, the reading of the meter upon removal from service, together with all data taken at the time of the test in sufficiently complete form to permit the convenient checking of the methods employed and the results obtained. These records shall be retained for a period of not less than two (2) years.

c. A record shall be kept, numerically arranged by meter number, indicating for each meter owned or used by a gas utility, its type, size and date purchased, together with the dates and locations

of each installation, the date and result of each test, and the date and character of all repairs made. Where, because of the large number of meters involved, or for other valid operating reasons, the utility desires to adopt other methods for meter records, it shall present such proposal in detail to this Commission for approval. When the utility adopts a different method for meter records, no duplicate system need be maintained. These records shall be retained for a period of one year after the meter is sold, dismantled or destroyed.

17. Meter Testing at Request of A Customer

a. Each gas utility shall at any time when requested by a customer upon not less than five (5) working days' notice, test the accuracy of any meter used to serve that customer. Conditions under which a gas utility will make meter tests at the request of its customers, charges for, and bill adjustments resulting from such requests shall be set forth by each utility in its filed tariff schedules. However, no charge will be made to the customer where a meter test is requested by this Commission. When a meter has been tested at the request of a customer, a retest for a meter at the same location within six months will not be made unless specifically requested by the Commission.

b. A customer shall have the right to require the utility to conduct the test on the meter in his or her presence, if the customer so desires. The test may be observed by a representative, other than from the utility or the Commission, appointed by the customer.

c. A report giving the name of the customer requesting the test, the date of the request, the location of the premises where the meter was installed, the meter statement at time of removal, the date tested, and the result of the test at the check flow rate, the type, make, size and identification number of the meter, the date of removal and deductions drawn therefrom shall be supplied to such customer within a reasonable time after completion of the test.

18. Calculation of Gas Volumes

The procedures used by each utility to determine gas volumes used for billing purposes shall be in accordance with accepted industry standards and practices. Each utility shall include the procedures and gas measurement standards used in its applicable currently effective filed gas tariff rules.

19. Meter Readings and Bill Forms

a. Each meter shall indicate clearly the cubic feet or other unit of gas registered by such meter. In cases where the dial readings of a meter must be multiplied by a constant to obtain the cubic feet or other unit consumed, the proper constant to be applied shall be clearly marked on the consumer's bill. Where gas is metered under high pressure or where the quantity is determined by calculations from recording devices, the company shall, upon application from the customer, supply the customer with such

information as will cover the conditions under which the quantity is determined.

b. Bills rendered to customers shall show the reading of the meters at the beginning and end of a period for which the bill is rendered, the number of cubic feet or other units of gas supplied and the date of the meter readings. Each bill shall bear upon its face the date when the bill was mailed to or left upon the premises of the customer. On all bills which are computed on any other basis than a definite charge per unit of service, the other factors used in computing the bill shall be clearly stated thereon or submitted to the customer upon request so that the amount of the bill may be readily recomputed.

c. Copies of all forms of bills, bill stubs and notices appertaining to the payment of bills shall be filed with the Commission as a part of the schedule of rates, rules and regulations then in force. No change shall be made in any such bill, bill stub or notice, without the approval of the Commission.

20. Information for Customers

a. Each gas utility, upon request, shall give its customers such information and assistance as is reasonable in order that customers may secure service at the most economical rate.

b. Each gas utility shall inform its customers of any change made, or proposed to be made, in the character of the service supplied as would affect the safety of operation of the appliances or equipment which may be in use by said customer.

c. Each gas utility shall adopt some means of informing its customers as to the methods of reading meters, either by printing on its bills a description of the method of reading meters, or by a notice to the effect that the method will be explained upon request at any office where requests for service are received.

21. Customers' Deposits

Each utility receiving deposits from customers for the establishment of credit shall keep a record showing the name of the customer making the deposit, the premises occupied by the customer, the date deposit was made, the amount of the deposit and the interest accrued, paid or credited. The record shall be kept for one year after the deposit has been refunded.

22. Maintenance and Operation of Facilities

a. Each gas utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper condition all of the facilities and instrumentalities used in connection with the furnishing, regulation, measurement and delivery of gas to any customer up to and including the point of delivery, which point, for the purpose of these rules, shall be deemed to be the outlet fitting of the meter installed by the utility, or the point where the pipe owned and installed by the utility connects to the customer owned piping, whichever is further downstream.

b. The gas utility may refuse to serve or may discontinue service to a customer:

1. If any part of the facilities, appliances or other equipment for receiving or using service, or the use of that service, shall be determined by the utility to be unsafe, or

2. If any condition existing upon the customer's premises shall be determined by the utility to endanger the utility's service facilities.

Service shall not be connected or restored until the utility determines that the customer's facilities, appliances or other gas equipment have been made safe, or; the utility has written notice from an appropriate governmental agency that the premises meet applicable laws, ordinances or regulations.

c. Each gas utility, unless specifically relieved in any case by the Commission from such obligation, upon request of any customer and without extra charge, shall make an inspection of appliances in use by that customer, in accordance with the rules and regulations of such utility filed with the Commission. Inspection of appliances does not include making repairs, without charge, other than those commonly referred to as adjustments to insure safe and efficient use of the gas service. Where it is recognized that unsafe or hazardous conditions exist, service shall be discontinued and the customer notified. Service shall not be restored until hazardous conditions have been corrected as provided by Section 22.b.

23. Complaints

a. Each gas utility shall make a full and prompt investigation of all complaints made to it by its customers, either directly or through the Commission.

b. Each gas utility shall keep a record of all complaints received which shall show in each case the name and address of the complainant, the date of receiving a complaint, its general nature, the date and method of disposal, and the name of service person responding to the complaint. The record shall be kept for a period of at least two (2) calendar years after the complaint has been resolved.

24. Reports to the Commission

Each gas utility shall at such time and in such form as the Commission shall prescribe, report to the Commission the result of all tests required to be made or the information contained in any record required to be kept by the utility.

25. General Provisions

a. The adoption of these rules shall in no way preclude the Commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facilities, standard or practice, either upon complaint or upon its own motion, or upon the application of any utility or customer.

b. In any case where any gas utility is supplying gas to customers under conditions more favorable or advantageous to such customers than are provided in these rules, either as to quality or character of service, no change shall be made in such service conditions without further approval of the Commission.

26. Modification of Rules

a. Any gas utility may of its own accord establish uniform, nondiscriminatory rules more favorable to its customers than the rules herein established. The rules herein established shall take precedence over all orders, general or special heretofore made by the Commission, insofar as said orders may be inconsistent with these rules.

b. The rules herein established shall take precedence over all rules filed or to be filed by gas utilities insofar as inconsistent therewith. Rules now on file and inconsistent with the rules herein established shall be properly revised and refiled within thirty (30) days from the effective date of this order.

c. If hardship would occur from the application of any rule herein prescribed because of special facts, application may be made to the Commission for a modification of such rule provided that no utility shall submit any rule or regulation for the approval of the Commission which is contrary to any section of this order without submitting therewith a full and complete justification of such rule.

Approved and dated at San Francisco, November 10, 2016.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

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9th Cir. Case Number(s) 21-55269

I am the attorney or self-represented party.

This brief contains 12,257 **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

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