

Law Offices
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
(310) 859-7811 Fax (310) 276-5261
www.gmsr.com

December 30, 2014

Hon. Norman L. Epstein, Presiding Justice
Hon. Thomas L. Willhite, Jr., Associate Justice
Hon. Audrey B. Collins, Associate Justice
Court of Appeal for the State of California
Second District, Division 4
300 S. Spring Street, Floor 2 North Tower
Los Angeles, California 90013-1213

RE: *Simona Wilson v. Southern California Edison Company*
2d Civil No. B249714
Request to file supplemental letter brief

Honorable Justices:

On behalf of respondent Southern California Edison, we ask the Court to accept this letter as a supplemental brief, which we submit to address an issue that arose for the first time in the Court's questioning at oral argument.

The Need For A Supplemental Brief.

The issue presented by the Court's questions is whether the PUC has exclusive jurisdiction over a claim that Edison failed to *remediate* the effects of stray voltage at Simona Wilson's property, as opposed to *completely eliminating* it by changing the design, construction or operation of its electrical distribution system. As we understand the questions, the Court assumed the unavoidable presence of stray voltage, and focused instead on whether Edison had a duty to assist Simona Wilson in mitigating or eliminating its *effects*—that is, reducing or eliminating touch potential. (See AOB 7-8, describing "touch potential" and its mitigation) For example, Justice Collins observed,

“If you look at her complaint, that doesn’t demand elimination of all stray voltage, it seems to focus on Edison’s failure to remediate.” (Recording at 4:29.)¹

Wilson never challenged the PUC’s exclusive jurisdiction on the basis that her real claim is a failure to remediate the effects of stray voltage on her property. Indeed, she never discussed remediation at all in her brief—not even in response to Edison’s demonstration in its opening brief’s merits argument that if Edison owed any duty at all, it was to help Wilson accomplish just such a remediation, and that the undisputed evidence established that Edison fully discharged any such duty. (See AOB II.A.)

Rather, Wilson’s brief argued only that the PUC does not have exclusive jurisdiction over her claims because (a) Edison waived the right to assert the PUC’s exclusive jurisdiction; (b) the PUC does not expressly regulate stray voltage; and (c) the PUC does not regulate Edison’s conduct in “occupying, renting or selling homes” with stray voltage. (See RB 17-39.)

Edison has therefore never had an opportunity to brief the case dispositive issue of whether a claim based on an alleged failure to remediate falls within the PUC’s exclusive jurisdiction. Accordingly, pursuant to Government Code section 68081, Edison asks that the Court consider the argument below, which demonstrates that an alleged failure to *remedy* the effects of stray voltage on her property, just like Wilson’s claims based on the *existence* of stray voltage, is within the PUC’s exclusive jurisdiction.

¹ See also Recording at 12:06 (Justice Willhite: “[I]f your position were adopted, a homeowner such as Ms. Wilson would have no cause of action on the grounds of failing to remediate, failure to take reasonable steps to prevent the inevitable grounding from passing from me essentially completing the circuit by touching my shower? In other words, if Edison doesn’t offer to put in PVC pipe No claim?”); Recording at 13:17 (Justice Willhite: “[W]hy can’t this case be viewed as a failure to remediate case? Failure to timely take the steps that were necessary to remediate the electricity that is causing the completion of the circuit”; Justice Epstein: “Having been put on notice that the steps were necessary”); Recording at 15:09 (Justice Collins: “her complaint I would take more as a remediation . . . asking for remediation or arguing that defendants have failed to eliminate it, and that’s what she says you haven’t eliminated”)

**Settled California Law Establishes That The PUC Has Exclusive Jurisdiction
Over Any Claim That Edison Wrongly Failed To Remediate
The Stray Voltage On Ms. Wilson’s Property.**

A claim for failure to remediate stray voltage easily satisfies the three-prong test articulated in *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893 (*Covalt*): The PUC has authority over the subject; it has exercised its authority; and allowing superior court litigation would hinder and interfere with the PUC’s comprehensive regulation of utilities.

It is beyond any possible dispute that the PUC has authority over every aspect of the design, construction, operation and safety of electrical distribution systems and that it has exercised that authority in the most comprehensive way. (See generally AOB I.B.1.-2.) This power and exercise necessarily extend to both the existence and remediation of stray voltage.

As our Supreme Court said in *Covalt, supra*, 13 Cal.4th 893, “the commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations.” (*Id.* at p. 924.) As part of this jurisdiction, “the commission is . . . empowered to prescribe the installation and use of ‘appropriate safety or other devices,’ and to require every utility to do ‘any other act which the health or safety of its employees, . . . customers, or the public may demand.’” (*Ibid.*, quoting Pub. Util. Code § 768; emphasis and ellipsis in original.)² To carry out its authority and to ensure the safety of utility operations, “the commission has broad authority to determine *whether* the service or equipment of any public utility poses any danger to the health or safety of the public, *and if so, to prescribe corrective measures and order them into effect.*” (*Id.* at pp. 923-924, emphasis added.)

Thus, the PUC unquestionably has jurisdiction to regulate the safety of Edison’s (and other public electric utilities’) operations and to determine what steps, if any, Edison should have been required to take to remedy the presence of stray voltage on Wilson’s property.

This is the same conclusion that the PUC sets out in its *Richmond/Barber* amicus brief of which this Court has taken judicial notice. The PUC states that “[i]n *Covalt*, the

² All further statutory citations are to the Public Utilities Code.

Court also noted that the Commission's authority includes determining whether a danger is posed by any utility equipment, operations, or services, *and prescribing corrective measures.*" (PUC Brief, pp. 10-11, emphasis added.) The PUC explains: "In *Covalt* the Court found it within the Commission's authority to adopt a policy on whether EMFs arising from utility power lines pose a public health risk, and *determine what action, if any, utilities should take to minimize that risk.*" (*Id.*, p. 11, fn. 13, emphasis added.) Likewise here, the PUC has exclusive jurisdiction to determine whether stray voltage on Wilson's property "pose[s] a public health risk, and determine what action, if any, [Edison] should take to minimize that risk." (*Ibid.*) As the PUC explains, "the Public Utilities Code contemplates that the Commission will first adopt, interpret, and implement its own rules and regulations governing public utilities. For example, section 1708.5 allows parties to request that the Commission adopt new rules and regulations, or seek changes to existing ones." (*Id.*, p. 14.)

It does not matter to this analysis that the PUC has not promulgated regulations that expressly address what, if any, steps a utility must take to remediate effects of stray voltage. That the PUC has not yet expressly addressed and decided this issue of "remedy" is only because Wilson has not presented it to the PUC; it does not authorize a court or jury to decide the issue. (*San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 802 ["That the PUC 'may' supervise and regulate every public utility in the state in a manner that is 'necessary and convenient' (§ 701) does not mean that if it does not expressly do so, a local entity may fill the breach with legislation that places a burden on the operation of utility facilities"].) If Wilson believes that Edison should have taken additional steps to remedy the effects of stray voltage on her property, she must present that claim to the PUC by requesting new or different regulations pursuant to section 1708.5 or by filing a complaint with the PUC under section 1702.

Since stray voltage exists *because of* Edison's compliance with the PUC's grounding and other regulations, a superior court judgment imposing liability for complying with those regulations necessarily interferes with the PUC's jurisdiction. (See AOB I.B.3.) There would be just as much interference by a judgment that imposed liability for failing to remediate the effects of stray voltage. The only reason posited for remediation is safety, and whether a given electrical distribution system is sufficiently "safe" for the public lies at the very core of the PUC's jurisdiction. Any superior court

judgment would necessarily interfere with safety-related judgments that the PUC is charged with making. In the PUC's words, a court determination would "second-guess what conclusion the Commission might reach based on the same facts. It is also possible that a Court determination would unintentionally result in new or inconsistent requirements regarding the design, construction, operation, maintenance, and safety of utility equipment and facilities." (PUC Brief, pp. 15-16.)

As with the trimming regulations at issue in *Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, the question of what additional steps, if any, Edison could or should have taken to remedy the effects of stray voltage on Wilson's property "is a factual issue that is within the exclusive jurisdiction of the commission to decide." (*Id.* at p. 243.) For example, must a utility eliminate *all* touch potential? Or is it, instead, sufficient to reduce stray voltage to a certain minimum level that the PUC determines is safe (which, according to the undisputed evidence, was true at Wilson's property)? What weight should be given to the extent and cost of the work required to eliminate all touch potential—what if it would require replacing every piece of conductive plumbing in a house, or in multiple houses in the same area? To what extent, and under what conditions, may the utility employ alternative remedies, like bonding? (See AOB 7-8.) Can the utility simply address stray voltage when and where it arises, or must the utility anticipate its presence, even when no one in the area feels current? Under what conditions, if any, should a utility notify a customer of the presence of stray voltage? And what power, if any, will the utility have to impose particular remediation solutions on property it doesn't own?

These questions—which involve deciding not only the extent of any remediation required and the resulting cost, but also whether a utility's ratepayers must bear the cost—classically call for the PUC's oversight and expertise and for the uniformity of regulation that the PUC's exclusive jurisdiction is designed to secure. Allowing different juries to impose liability on utilities for failing to take steps that juries believe were appropriate to remedy the existence of stray voltage—or for that matter to remedy any other result of a utility's operations that the particular plaintiff does not like, notwithstanding the utility's compliance with PUC regulations—would create the risk of imposing on utilities a patchwork of different remedial requirements throughout the State. It would create the "regulatory nightmare" that concerned the court in *Sarale v. Pacific Gas & Electric Co.*, *supra*, 189 Cal.App.4th at p. 242 ("Allowing owners of land

containing overhead power lines to seek individualized judicial determinations of what might be ‘necessary’ or ‘proper’ vegetation would cause a regulatory nightmare for the commission that section 1759 was intended to prevent.”)

A holding that the PUC does not have exclusive jurisdiction over remediation claims would have far-reaching effects, going well beyond issues peculiar to stray voltage. Given that the PUC unquestionably does have exclusive jurisdiction over Edison’s electrical distribution system and it was Edison’s compliance with PUC regulations that caused the stray voltage, a holding that the PUC lacks jurisdiction over questions of remediation would eviscerate the rule that the PUC “has comprehensive jurisdiction over questions of public health and safety arising from utility operations.” (*Covalt, supra*, 13 Cal.4th at p. 924.) A plaintiff could avoid exclusive jurisdiction simply by alleging that she does not seek relief because of the *existence* of an allegedly unsafe condition resulting from a utility’s fully-compliant operations, but rather because of utility’s *failure to remedy* that condition. If that were the rule of law, the plaintiffs in *Hartwell Corporation v. Superior Court* (2002) 27 Cal.4th 256 could have sought to avoid the PUC’s exclusive jurisdiction by alleging that their claims weren’t based on the *existence* of unsafe drinking water (since the water complied with governing regulations, the utilities were in a “safe harbor” from that claim, *id.* at p. 276), but rather on the utilities’ failure to *remedy* the allegedly unsafe water (for example, by installing water filters in customers’ homes). The distinction does not represent a substantive difference, and it cannot justify eroding the uniformity of PUC regulation that both the Constitution and Public Utilities Code decree. Nothing in *Hartwell* suggests that the Supreme Court would have found otherwise.

In sum, a plaintiff cannot maintain an action in court simply by asserting a utility’s failure to “remedy” for the same reason that a plaintiff cannot avoid exclusive PUC jurisdiction simply by alleging that a utility is not operating “safely” under Rule 31.1 of G.O. 95. In both cases, allowing a plaintiff to maintain the action would swallow the rule that establishes the PUC’s exclusive jurisdiction. That is the result the plaintiffs sought in *Covalt, Hartwell, Sarale, and Ford v. Pacific Gas & Electric Co.* (1997) 60 Cal.App.4th 696, where they alleged personal injury, death and property damage because of the alleged lack of “safety” of the utility’s operations—but the appellate courts nevertheless held that the superior courts lacked jurisdiction over the plaintiffs’ claims. So, too, allowing a superior court to determine whether Edison wrongly failed to

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remedy a condition caused by its fully-compliant electrical distribution system would conflict with settled law governing the PUC's exclusive jurisdiction.

For these reasons, the issue of whether Edison took proper steps to remedy the stray voltage on Wilson's property falls squarely within the PUC's exclusive jurisdiction PUC—and outside the jurisdiction of the superior court.

Respectfully submitted,

SOUTHERN CALIFORNIA
EDISON COMPANY

Patricia A. Cirucci
Brian A. Cardoza
Carla M. Blanc

LIM, RUGER & KIM, LLP

Christopher Kim
Sandra Sakamoto
Arnold Barba
Julie Kwun

GREINES, MARTIN STEIN &
RICHLAND LLP

Robin Meadow
Timothy T. Coates

By

Robin Meadow

Attorneys for Defendant and
Appellant
SOUTHERN CALIFORNIA
EDISON COMPANY

cc: see attached service list

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On December 30, 2014, I served the foregoing document described as:
APPELLANT'S SUPPLEMENTAL LETTER BRIEF on the parties in this action by serving:

GRASSINI & WRINKLE
Lawrence P. Grassini
Lars C. Johnson
Roland Wrinkle
Brian Hong
20750 Ventura Boulevard, Suite 221
Woodland Hills, CA 91364-6235
Attorneys for Plaintiff and Respondent
SIMONA WILSON

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Executed on December 30, 2014, at Los Angeles, California.

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

Charice L. Lawrie