PARTIES/ATTORNEYS

24CV05549

Plaintiff	Gloria Scozzari	Colin Jones Marcelis Morris Nicholas Rowley
Defendants	City of Santa Maria John D. Perry Laverne Theresa Perry Southern California Gas Company	Steven Dippell Thomas Watson Lisa Collinson Scott Freedman

24CV07094

Plaintiff	Lisa Frederick	Brian Yorke
Defendants	Aclara Technologies LLC Laverne Theresa Perry John D. Perry Southern California Gas Company	Liam Felsen Scott Freedman

PROPOSED TENTATIVE

On October 7, 2024, plaintiff Gloria Scozzari filed a complaint against City of Santa Maria (Santa Maria), Southern California Gas Co. (Gas Co.), Sempra, Aclara Technologies, LLC (Aclara), and Laverne Theresa Perry, as Trustees for the Perry Revocable Trust 9-13-95 (Perry), for negligence (against Santa Maria only); premises liability (against Perry only); negligence (Gas Co. and Sempra only); strict liability (Aclara, Gas Co. and Sempra only); and negligence – products liability (Aclara, Gas Co., and Sempra only). All causes of action stem from a kitchen stove fire at 1219 Jackie Lane, owned by Perry. After the fire was extinguished, according to plaintiff, Santa Maria firefighters dismantled and disconnected the stove, including the "natural gas supply line from the stove, and moving the stove outside." The firefighters "left the valve of the natural gas supply line completely open," creating an "active gas leak," and three weeks later, on August 23, 2023, a "massive natural explosion occurred at" Perry's residence, damaging plaintiff's premises located at 1223 Jackie Lane. Aclara was the entity that manufactured the 3000 Series Aclara Smart Meter at Perry's residence, which regulated the flow of natural gas at the time of the explosion. Plaintiff contends Santa Maria is liable based on the acts of its firefighters; Perry is liable because it violated a duty of reasonable care regarding the stove and the gas supply outlet; and Gas Co. is liable for failing to maintain the gas supply at the residence, which is a wholly owned subsidiary of Sempra. Santa Maria, Aclara, Gas Co., and Perry have answered. Plaintiff substituted John D Perry for the Perry Family Revocable Trust 9-13-95 for Does 21. Sempra was dismissed on December 12, 2024. Aclara was dismissed on December 18, 2024. John Perry joined the answer filed by Laverne Perry (hereafter, collectively, the Perrys).

On December 16, 2024, plaintiff Lisa Frederick filed a complaint against Aclara, Gas Co., Sempra, and Perrys, stemming from the same fire and explosion at issue in the Scozzari complaint. Frederick substituted John D. Perry for the Family Revocable Trust 9-13-95 for Doe 1. Santa Maria is not a defendant to this complaint. Sempra has been dismissed. Frederick alleges 1) in the first cause of action for negligence that Gas Co. breached its duty of care when it failed to monitor, inspect or act upon the gas leak; 2) in the second cause of action that Aclara and Gas Co. are strictly liable for the 3000 Series Aclara Smart Meter that was installed at Perry's residence; 3) in the third cause of action Aclara and Gas Co. were negligent in manufacturing, assembling, and inspecting the 3000 Series Aclara Smart Meter; and 4) in the fourth cause of action for premises liability the Perrys were negligent in the management of her premises, including the condition of the stove and nature of the gas supply outlet. Gas Co. and Aclara have answered. Sempra was dismissed on April 9, 2025.

A notice of related case (relating Scozzari and Frederick complaints) was filed on June 4, 2025. This court ordered the matters transferred and related on June 26, 2025.

There are four motions on calendar – two (2) motions for judgment on the pleading (one in each case) and two (2) motions to consolidate (also one in each case), all filed by defendant Gas Co. Opposition has been filed in each case. The court will first address both motions for judgment on the pleadings, for their resolution (as will be seen) obviates the need for the court address the merits of defendant Gas Co.'s consolidation motions. The court will conclude with a summary of its conclusions.

A) Two (2) Motions for Judgment on the Pleading

The court will first outline the parties' arguments; address all requests for judicial notice; detail the relevant legal principles that frame the issues; and then address the merits of the motions. The court will conclude with a summary of its conclusions.

1) <u>Parties' Arguments</u>

The two complaints at issue (in Case Nos. 24CV05549 and 24CV07094) are similar, but not exact. Nevertheless, Gas Co. has filed the exact same motion for judgment on the pleadings as to each complaint, making the same arguments with the same authority. Defendant contends in each motion that all negligence and strict liability causes of action as to it (essentially the third, fourth and fifth causes of action in Case No. 24CV05549 and the first, second, and third causes of action in Case No. 24CV07094) are barred pursuant to Public Utilities Code section 1759, which deprives the superior court jurisdiction to act. That provision reads in relevant part as follows: "No court of this state, except the Supreme Court and the court of appeal. . . shall have

jurisdiction to review, reverse, correct or annul any order or decision of the Public Utilities Commission [PUC] or to suspend or delay the execution or operation thereof, or to enjoin, retrain, or interfere with the [PUC] in the performance of its official duties . . . ." (Pub. Util. Code, § 1759, subd. (a).) Under this authority, defendant contends that the PUC-approved tariffs[1] "include two limitations of liability that are pertinent here: one limiting [defendant's] liability for injuries resulting from the installation, operation or maintenance of consumer's equipment," pursuant to Tariff 26; and a second limitation on liability contained in Tariff 31, which provides that defendant is not responsible for the consequences of utilization by the customer or any other party of information or date obtained from the automated reader meter reading device (i.e., the Smart Meter), including "without limitation, any liability for direct, indirect, consequential, punitive, or special damages, in tort or in contract." (Motion, at pp. 4-5.) As a result, according to defendant, the court must grant both motions for judgment on the pleadings as to all causes of action involving it.

Each plaintiff has filed separate oppositions. Plaintiff Scozzari contends the court should deny the motion for judgment on the pleadings because the action "has nothing to do with the regulations in the tariffs and, thus, does not contravene or interfere with the liability limits set forth in the tariffs." According to plaintiff Scozzari, the claims against defendant "solely arise out of Defendant's failure to respond appropriately to the data it received indicating an active leak and an imminent explosion." The use of "meter data by third parties or the customer is not at issue in this case, nor is it alleged." Further, according to plaintiff Scozzari, her claims "are not based on any issue with consumer equipment . . ." namely the stove that exploded. According to plaintiff Scozzari, defendant has not shown preemption is appropriate. However, if the court finds the causes of action are preempted, plaintiff Scozzari asks the court for leave to amend to cure any deficiencies.

Plaintiff Frederick argues that the court should deny the motion for judgment on the pleadings because Tariff Rule 9 seems to "specifically authorize" plaintiff's claims "or at least creates an ambiguity that precludes plaintiff's claims." Plaintiff Frederick in fact argues that because Tariff Rule No. 9 is more specific, it applies over Tariff Rule No. 26. Plaintiff Frederick also argues that "Tariff Rule No. 31 does not eliminate" defendant's potential liability for failure to act in response to information," because it is uncertain whether the language applies to defendant, and the "ambiguity . . . should be construed against [defendant], so the rule does not exculpate [defendant] from liability for its own use (or lack thereof) of the information gained

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[1] " 'Tariffs' refer collectively to the sheets that a utility must file, maintain, and publish as directed by the [PUC], and that set forth the terms and conditions of the utility's services to its customers...." (PUC Gen. Order 96–B, § 3.15, p. 4; Southern Cal. Edison Co. v. Public Utilities Com. (2000) 85 Cal.App.4th 1086, 1097 ["tariff—'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" ' "].)

from the meter." Plaintiff Frederick alternatively asks the court for leave to amend if it finds the causes of action against defendant are preempted as pled.

Defendant has filed a reply (applicable to both oppositions). Defendant reiterates its argument that both complains are barred by Tariffs No. 26 and 31. Defendant reiterates the cases in which courts have found section Public Utilities code section 1759 to be inapplicable are factually distinguishable and thus inapposite. Defendant insists that leave to amend must not be granted.

2) <u>Requests for Judicial Notice by Parties</u>

Defendant asks the court to take judicial notice of Exhibits A through E attached to the request for judicial notice. Exhibit A and E includes the substance of Tariff Rule No. 26, promulgated by the PUC, and which reads in relevant part follows:

> "A. The Consumer shall, at the Consumer's own risk and expense, furnish, install, keep in good and safe condition all Consumer's Equipment, as defined in Rule 1. The Company [i.e., the defendant] shall not be responsible for the selection, installation, operation, maintenance, or condition of any Consumer Equipment or for any injuries or damages resulting therefore including, without limitation, ay injuries of 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."

Defendant also asks the court to take judicial notice of Exhibits B and D, which involves Tariff Rule No. 31, along with PUC's approval, with following the paragraphs relevant for our purposes:

> "1. The Utility, at is sole discretion, may install an automated meter reading device which transmits readings from the meter to the Utility's facility via telephonic connection or other means."
>
> 6. The Utility [i.e., defendant] shall not be liable or responsible for the consequences of any utilization by customer or any other party of information or data obtained from the automated reading device, including without limitation, any liability for direct, indirect, consequential, punitive or special damages, in tort or in contract."

Exhibit C includes revised definitions of Rule No. 01, as well as the approval of Tariff Rule No. 26, as relevant here as follows:

> "Consumer Equipment: All equipment for receiving and utilizing gas from the Company, including, but not limited to, any and all pipes, gas related fixtures, and gas-burning appliances downstream of the Service Delivery Point." The Service Delivery Point is the point "where the Utility's pipe connects to the customer's house line, usually the meter location."

As there is no opposition to this request by plaintiffs, the court grants defendant's request.

Plaintiff Frederick in opposition has also filed a request for judicial notice, including Exhibit A, which is Tariff Rule No. 9. While it is lengthy, the relevant part for our purposes appears to be as follows:

"D. UNSAFE APPARATUS

1. Whenever the Utility determines that any part of a customer's services, appliances, or apparatus are at any time unsafe, or that the utilization of gas by means thereof is prohibited or forbidden under authority of any law or municipal ordinance or regulation (until such law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction), the Utility may refuse to serve, or may cease serving, such a customer until the customer shall put such part in good and safe condition and comply with all laws, ordinances, and regulations applicable thereto."

H. NONCOMPLIANCE WITH UTILITY"S TARIFFS

Except as otherwise specially 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 a least 15 calendar days for residential customers and seven calendar days for non-residential customers, 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 bona fide 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."

I. USAGE OF SERVICE DETRIMENTAL TO OTHER CUSTOMERS

The Utility will not provide service to gas equipment 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."

As defendant does not object to the request for judicial notice request, it is also granted.

3) Legal Background

The PUC has "broad powers to regulate the operations of public utilities," with "ratemaking as a core function . . ." The PUC, as part of this power, may limit the liability of the utility to the public, which can be accomplished through a tariff schedule that may also include a limitation of liability. "Limitations on liability are properly included in tariffs as a subject clearly within the PUC's regulatory powers. [Citation.] As our courts have long recognized, it is an equitable trade-off—the power to regulate rates and to set them below the

amount an unregulated provider might otherwise charge requires a concomitant limitation on liability." (*Los Angeles Cellular Telephone Co. v. Superior Court* 65 Cal.App.4th at pp. 1017-1018; see *Colich & Sons v. Pacific Bell* (1988) 198 Cal.App.3d 1225, 1234 [holding limitation of liability provisions in PUC-approved tariff " 'are binding on the public generally' because they 'are an inherent part of the established rates and have the force and effect of law' "]; see also *Waters v. Pacific Tel. Co.* (1974) 12 Cal.3d 1, 3-4.)

Despite this limitation on the jurisdiction of trial courts to review commission rules and decisions through rules of preemption, the Legislature has also provided for a private right of action against utilities for unlawful activities and conduct. Specifically, PUC section 2106 provides for an action to recover loss, damage, or injury in any court of competent jurisdiction by any corporation or any person against "[a]ny 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 of the commission." (§ 2106). Recognizing a potential conflict between sections 2106 and 1759, the California Supreme Court has held section 2106 must be construed as limited to those situations in which an award of damages would not hinder or frustrate the commission's declared supervisory and regulatory practices. (*Kopanen v. Pactiv Gas & Elect*. (2008) 165 Cal.App.4th 345, 351.) The Supreme Court has accordingly developed a three-part test to determine whether PUC section 1759 bars or preempts an action for damages – often referred to as the *Covalt* test, after the case in which it was first established. (*San Diego Gas & Electric v. Superior Cour*t (1996) 13 Cal.4th 893, 916 [called the *Covalt* test].)

Pursuant to the *Covalt* test, "[s]ection 1759 bars an action when three requirements are met: (1) the PUC had the authority to adopt certain regulations or policies; (2) the PUC actually exercised that authority; and (3) the action would interfere with the PUC's exercise of that authority." (*Gantner v. PG& E Corp* (2023) 15 Cal.5th 396, 405.) When these three requirements are established, the PUC has "exclusive jurisdiction" over the matter, and superior courts, conversely, lack jurisdiction. (See *Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, [" ' "[t]he PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be *hampered*, interfered with, or *second-guessed* by a concurrent superior court action addressing the same issue" ' "]; *Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 231 [certain issues "lie within the exclusive jurisdiction of the [PUC] to decide"].) "In short, an award of damages is barred by section 1759 if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities." (*Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, 275) In order to apply the *Covalt* test, courts first identity the "subject matter of the claim, and determine whether the PUC is authorized to regulate that subject matter. (*PegaStaff v. Pacific Gas & Electric Co.* (2015) 239 Cal.App.4th 1303, 1322.) If the answer is yes, courts next consider whether the PUC has exercised that authority. If it has, the final question is whether the superior court action against the PUC will interfere with or frustrate the PUC's exercise of regulatory authority."

(*Ibid*.) Trial court jurisdiction "is precluded only if all three prongs of the *Covalt* test are answered affirmatively." (*PegaStaff v. Pacific Gas & Electric Co.* (2015) 239 Cal.App.4th 1303, 1315; *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66, 79.)

4) Merits

a) Allegations in the Complaints

With this background, it critical at the outset to determine exactly what plaintiffs are alleging as the basis of defendant's liability for each cause of action in each complaint (as a necessary predicate for resolution).

In Case No. 24CV05549, plaintiff Scozzari claims defendant Gas Co. is liable for common law negligence in the third cause of action, for strict products liability in the fourth cause of action, and for common law products liability negligence in the fifth cause of action. As to the third cause of action, plaintiff claims that defendant is liable because it knew or should have known that there were defects "in the pipes" or that the pipes were otherwise leaking or unsafe for transportation of gas, meaning defendant was required to ascertain their safety (¶ 50), and defendant breached that duty of care by failing to take steps to prevent, detect, or mitigate the gas leak (requiring an inspection of the gas lines), which lead to the explosion. (¶ 53.) Alternatively, plaintiff Scozzari claims that defendant was negligent in failing to maintain, in working order, the "Smart Meter" installed at Perrys' residence, which was used to control the flow or natural gas, and which resulted in the Smart Meter not working properly.

As to the fourth cause of action in Case No. 24CV05549, involving strict products liability, plaintiff Scozzari predicates liability on the claimed defective nature of a "Smart Meter," as it was defectively designed developed and tested. According to paragraph 7 of the operative pleading, the Smart Meter was installed in Perrys' residence "for the purpose of remotely monitoring and/or regulating the flow or natural gas" at the premises, including the natural gas line that supplied the stove involved in the explosion. According to plaintiff, the "Smart Meter was defective and failed to perform safely."

As for the fifth cause of action in Case No. 24CV05549, involving products liability based on negligence, liability is also predicated on the defective Smart Meter, claiming defendants knew or reasonably should have known that the device was defective regarding the regulation and flow of the gas in the premises.

In Case No. 24CV07094, plaintiff Frederick alleges in the first cause of action that defendant is liable for common law negligence, in the second cause of action for strict products liability, and in the third for products liability on negligence theory. As to the first cause of action, plaintiff alleges defendant failed to maintain the "natural gas utility systems, including the infrastructure and equipment at" Perrys' residence, based on monitoring gas usage,

monitoring abnormal gas conditions, and ensuring proper functionality "of all equipment," including the Smart Meter. According to plaintiff, defendants "had actual or constructive knowledge of the natural gas leak" transmitted through the Smart Meter.

As to the second cause of action for strict products liability, plaintiff predicates defendant's liability on the defective Smart Meter, based on design, testing, development, manufacture, fabrication, assembly, distribution, inspection, service, repair, maintenance, marking, and/or modification, for the Smart Meter was not able to "utilize data to detect natural gas leaks." As for the third cause of action for negligence products liability, liability is also predicated on the defective Smart Meter.

b) Impact of Tariff Rule No. 26

The court rejects both plaintiffs' argument that the gravamen of this lawsuit does not implicate Tariff Rule No. 26, which is entitled "Consumer Responsibilities for Equipment for Receiving and Utilizing Gas[.]" It provides (as noted above) that defendant "shall not be responsible for the selection, installation, ***operation***, ***maintenance, or condition*** of ***any*** Consumer Equipment or for any injuries or damages resulting therefore . . . " (Emphasis added.) "Consumer Equipment" in turn is defined as "[***all***] equipment for receiving and utilizing gas from the Company, including, but not limited to, any and all pipes, gas-related fixtures, and gas0burning appliances downstream of the Service Delivery Point."

Plaintiff Scozzari's third cause of action for negligence is clearly predicated on gas leaking from pipes in the Perrys' residence. Additionally, as an alternative basis, plaintiff Scozzari predicates defendant's negligence liability on defendant's failure to "maintain in complete working order the Smart Meter" installed in the Perrys' residence, a meter (equipment) that is used to receive and utilize gas from defendant. The same is true for the fourth cause and fifth causes of action involving strict products liability and negligence products liability, respectively. Both are expressly predicated on the defects in the "Smart Meter," including failure to operate, install, and maintain the condition of this "consumer equipment" utilized for the receiving and utilizing gas from the defendant. **All three** causes of action fall squarely within the confines of Tariff Rule 26.

The same conclusions apply to plaintiff Frederick's causes of action. The first cause of action for negligence is described in the operative pleading as defendant's failure to "***maintain***" their "natural gas utility system, including infrastructure and ***equipment***," and failure to ensure the proper functionality of all "***equipment"*** under their control, including the failure to ***maintain***, inspect, and ensure the proper function of the Smart Meter. The second and third causes of action for strict products liability and negligence products liability, respectively, are also predicated on the defective Smart Meter, again used to utilize and monitor gas flow as "consumer equipment." Liability involves use of the Smart Meter. (¶ 25.) According to plaintiff, the "Smart Meter was marketed as being capable of sending hourly gas usage readings digitally to a central computerized hub. . . Upon information and belief, the Smart Meter was defective,

unsafe, and not fit to perform" these functions, which then "caused the Gas Explosion incident." (¶ 25.) Plaintiff Frederick contends the Smart Meter was negligently "designed, tested, developed, fabricated, assembled, distributed, bought, sold inspected, serviced, repaired, maintained, marketed, warranted, supplied, modified and/or provided in a reasonable manner . . ." Essentially, the Smart Meter, as equipment used to utilize and monitor gas flows into Perrys' residence, negligently failed to work as it should have.

c) *Covalt* Analysis

As all causes of action ***as alleged*** in the both complaints fall within the ambit of Tariff Rule No. 26, for the reasons discussed above, the issue is whether PUC section 1759 preempts the causes of action under the three-step *Covalt* test, which asks: 1) whether the PUC had the authority to adopt the regulatory policy on the subject matter of the litigation; (2) whether the PUC had exercised that authority; and 3) whether action in the case before the court would hinder or interfere with PUC's exercise of regulatory authority. On the first *Covalt* factor, the PUC clearly had the authority to limit defendant's liability. (*Waters, supra,* 12 Cal.3d at p. 6-7 ["Limitations upon liability . . . has long been considered to be proper subject for commission regulation and supervision"].) As to the second factor, the PUC exercised authority when it approved Tariff Rule No. 26. (See *Davis v. S. California Edison Co., supra,* 236 Cal.App.4th at p. 642.) The central question is the third step, i.e., whether plaintiffs' actions would hinder or interfere with the PUC's exercise of regulatory authority. (*Hartwell, supra,* 27 Cal.4th at p. 266.) Both actions would do so. Permitting plaintiffs to recover would interfere with the PUC policy as expressed in Tariff Rule 26.

In re SDG&E Consolidated Cases. (S.D. Cal., Feb. 19, 2021, No. 17-CV-02433-BAS-JLB) 2021 WL 662259, is instructive.[2] There, the court was asked to determine whether the gas tariff rules, which were approved by the PUC, absolved defendant utility of tort liability over an exploded gas line, and, if so, whether the lawsuit was preempted. Plaintiff brought negligence actions against the defendant utility when a military vehicle encountered a natural gas line, causing a leak and an explosion. As relevant for our purposes, defendant argued that the lawsuit was preempted under PUC section 1759 pursuant to Tariff Rule No. 26. The court agreed preemption applied, concluding that "Rule 26 of SDG&E's tariffs relieves SDG&E of tort liability. The Court found the action was preempted because allowing Plaintiffs' suit for damages would hinder the California Public Utilities Commission's regulatory authority . . ." (at p. 1.) More specifically, the court found all three *Covalt* factors had been satisfied and allowing

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[2] Although the court may not rely on unpublished California cases, the California Rules of Court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive, although not binding, authority. (Cal. Rules of Court, rule 8.1115*; In re Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18; *Pacific Shore Funding v. Lozo* (2006) 138 Cal.App.4th 1342, 1352, fn.6.)

Plaintiffs' action for damages tied to SDG&E's alleged negligence concerning the Subject Gas Line would directly contradict Rule 26, which became a part of the PUC's policy setting the rates for the natural gas utility upon the PUC's approval of Rule 26. The court noted that Rule 26 excludes SDG&E from liability for personal injury that stems from any Consumer Equipment. The evidence established that the Subject Gas Line was owned by the military and Rule 26 waived SDG&E's liability over such Consumer Equipment. (*Id.* at p. 12.) The same rationale applies in this case.

The court finds *De La Rosa v. San Diego Gas & Electric Company* (9th Cir., May 27, 2022, No. 21-55269) 2022 WL 1714285, at *1, not cited by either party, even more compelling. Plaintiffs, a group of Marines, were severely injured when a gas line exploded during a training exercise at Camp Pendleton. Plaintiffs argued that SDG&E had a duty to shut off Camp Pendleton's gas supply because it had known for many years that the base's gas lines were poorly mapped and made with brittle, leak-prone materials, and because, just three months earlier, a bulldozer had struck the gas line at issue here, thereby putting SDG&E on notice that the gas line was inadequately buried. The Ninth Circuit found the lawsuit was barred pursuant to PUC section 1759, as implemented through Tariff Rule No. 26. The court noted that California courts determine whether section 1759 preempts a cause of action by applying the three-step *Covalt* test. (*De La Rosa v. San Diego Gas & Electric Company* (9th Cir., May 27, 2022, No. 21-55269) 2022 WL 1714285, at *2.) The court found that even if SDG&E was fully aware of these dangerous conditions, and its decision to supply Camp Pendleton with gas breached its common law duty of care, Plaintiffs' theory of recovery would make SDG&E broadly responsible for injuries resulting from the "operation, maintenance, or condition" of Consumer Equipment. Liability under these circumstances would hinder the policy of Rule 26, meaning that Plaintiffs' claims are preempted. (*De La Rosa v. San Diego Gas & Electric Company* (9th Cir., May 27, 2022, No. 21-55269) 2022 WL 1714285, at *2.) The same logic applies here.

Both plaintiffs try to escape the impact of Tariff Rule No. 26, and preemption, by attempting to reframe the allegations in the lawsuit. For example, plaintiff Scozzari contends first that defendant's arguments rest on its contention that the stove is "Consumer Equipment," and plaintiff's lawsuit has nothing to do with the stove. Plaintiff Scozzari maintains all three of her claims "are based on Defendant's failure to utilize the information and data provided to it from the Smart Meter, which indicated an ongoing massive gas leak . . ." (Scozzari, Opp., at p 9.) She reinforces her position by arguing the negligence claim against defendant "has nothing to do with the Smart Meter but rather the failure of Defendant to act when it was in possession of information and data that identified an ongoing significant natural gas leak at the Perry[s] residence." While Plaintiff Scozzari acknowledges that this theory implicates the import of Tariff Rule No. 31(A)(6), which provides that defendant "shall not be liable or responsible for the consequences of any utilization by customer or any other party of information or data obtained from the from the automated meter reading device . . . ." she insists that "any other party" as used in Tariff Rule No. 31 does not include defendant utility.

Plaintiff Frederick makes similar arguments. She contends that Tariff Rule No. 26 does not apply because all three causes of action are predicated on a failure to discontinue service in response to information showing the existence of a potential gas leak, which falls outside the definition of "Consumer Product." Plaintiff in essence claims all three causes of action involve negligence in failing to cut service, not with regard to the installation, maintenance or condition of "Consumer Equipment" (i.e., failure to act in response to information indicating the existence of a danger). According to plaintiff Frederick, Tariff Rule No. 9 permits liability on failure to discontinue service, although there is no liability for failure to inspect. Plaintiff then turns to Tariff Rule No. 31, recognizing this rule provides that "the Utility shall not be liable or responsible for the consequences of any utilization by customer or any other party or information or date obtained from the automated meter device . . ."

Plaintiffs' arguments are unpersuasive. First, a close examination of both operative pleadings reveals that ***all*** causes of action for negligence (or strict product liability for that matter) are not predicated on plaintiff's failure to discontinue service following information provided by the Smart Meter. They rest instead on defendant's use of "Consumer Equipment," not the negligent use of information from that "Consumer Equipment." Tellingly, plaintiffs fail to explain how the machine at issue (the Smart Meter) can at the same time be fundamentally defective and yet simultaneously allow actionable information that would support a negligence cause of action based on failure to discontinue service. The points are antithetical, not complimentary, and plaintiffs offer no explanation as to how they can coexist at the same time in this lawsuit.[3]

More fundamental problems exist. Although no party has cited any authority interpreting Tariff Rule No. 9 (as relied upon by plaintiffs to support their theory of discontinued service), even if the court assumes that plaintiffs' theory is viable when defendant utility is aware of an unsafe condition, the court is not convinced that it would not be barred by Tariff Rule No. 31, as both plaintiffs insist. Tariff Rule No. 31 reads in relevant part as follows: "The Utility shall not be liable or responsible for the consequences of any utilization by consumer or any other party of information or data obtained from the automated meter reading device, including, without limitation, any liability for direct, indirect consequential, punitive, or special damages, in tort or

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[3] "The well-established rule is that a proposed amendment which contradicts allegations in an earlier pleading will not be allowed in the absence of 'very satisfactory evidence' upon which it is 'clearly shown that the earlier pleading is the result of mistake or inadvertence.' " (*American Advertising & Sales Co. v. Mid–Western Transport* (1984) 152 Cal.App.3d 875, 879; see *Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 836 [" 'Where a verified complaint contains allegations destructive of a cause of action, the defect cannot be cured in subsequently filed pleadings by simply omitting such allegations without explanation.' [Citations.] 'In such a case the original defect infects the subsequent pleading so as to render it vulnerable to a demurrer.' [Citation.] However, we have also made it clear that 'a party should be allowed to correct a pleading by omitting an allegation which, it appears, was made as the result of mistake or inadvertence.' "].) This is the situation presented by plaintiffs' arguments in opposition.

contract." Plaintiffs contend "any other party" does not include the defendant. But the court is not convinced this interpretation is correct, for the term "party" is not defined; it could mean a "party" to the lawsuit, which (of course) defendant is, or alternatively, as defendant argues in reply, it could mean a "party responsible for the collection of such data," of which defendant is.

Plaintiffs' narrowed definition creates anomalous results. For example, if a customer or some other "party" (not defendant) informs defendant about the information from an automatic meter (such as that from a Smart Meter), and defendant does not act, there is no liability. But if defendant comes upon the information from a meter outside the confines of a customer or outside plaintiff's narrowly defined definition of "party," liability would exist. The court has serious concerns that plaintiff's interpretation would hinder the scope of Tariff Rule No. 31 and create liability when liability was not intended. Indeed, our high court has made it clear that preemption under PUC section 1759 is not limited to actions that would directly contravene a specific or order of the PUC; an action is also barred if it would simply have the effect of undermining a generally supervisory or regulatory policy, and arguably plaintiffs' interpretation does just that. (*Gantner, supra,* 15 Cal.5th at p. 405.)

Finally, and even more fatally, plaintiffs' theory of liability involving failure to discontinue gas service to the Perrys seems to collapse under the weight of Tariff Rule No. 26 itself. That is, even if plaintiff can explain how a defective Smart Meter can nevertheless provide actionable knowledge giving rise to defendant's common law duty to discontinue gas service, plaintiffs cannot escape the essential gravamen of this lawsuit and broad reach of Tariff Rule No. 26 – defendant's liability still rests ultimately on the fact the gas leak and concomitant explosion results from the "operation, maintenance, or condition" of "Consumer Equipment," effectively hindering the policy of Tariff Rule No. 26 itself. Plaintiffs cannot divorce themselves from the real basis of liability – the fact the gas pipes and equipment associated with the utilization and monitoring of gases (i.e., "Consumer Equipment") on the Perrys' residence were responsible for the explosion, and thus still falling within the ambit of Tariff Rule No. 26. Permitting plaintiffs to recover under their new, articulated theory, given the interwoven nature of the claim with "Consumer Equipment" would fundamentally hinder the policy of Tariff Rule No. Rule 26. In the court's view, to allow liability as plaintiffs claim would be the exception to Tariff Rule No. 26 that would ultimately swallow the rule in whole. (*De La Rosa v. San Diego Gas & Electric Company, supra,* at p. 2.)[4] Any opportunity for leave to amend thus seems pointless.

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[4] This is the essential point made by the *De La Rosa* court, a rationale this court finds persuasive. As noted, *De La Rosa* involved a negligence claim based on a gas explosion. Plaintiff in that matter argued that defendant had a duty ***to shut off the gas supply*** because it knew that the gas lines on the military base were poorly mapped and made with poor materials. The *De La Rosa* rejected plaintiff's argument as follows: "Assuming [defendant utility] was fully aware of these dangerous conditions, and that its decision to supply Camp Pendleton with gas despite this knowledge breached its common law duty of care, Plaintiff's theory of recovery would make

d) Cases Cited by Plaintiffs are Distinguishable

The case at hand is distinguishable from the cases cited by plaintiffs in which preemption was found inapplicable. For example, in *Wilson v. Southern California Edison Co.* (2015) 234 Cal.App.4th 123, plaintiff sued defendant utility based on the latter's failure to supervise, secure, operate, maintain or control the electrical substation next too plaintiff's house, allowing uncontrolled stray electrical current to enter the home. Defendant argued the claims fell under the exclusive jurisdiction of the PUC, and thus were preempted by PUC section 1759. The *Wilson* court initially rejected plaintiff's argument that section 1759 only applies "if the PUC has issued a specific regulation on stray voltage." At the same time, however, the *Wilson* court disagreed with defendant's argument that PUC's adoption of "various polices governing the design, construction, maintenance, operation, and safety of electrical distribution facilities is sufficient to establish the PUC's exclusive jurisdiction over the claims in this case . . ." General safety regulations alone are insufficient to support preemption. (*Id*. at p. 149.) They are dispositive when a liability determination "contravenes" the general regulations because the defendant "cannot comply with those regulations while also satisfying" the claims for liability; if so, preemption would exist. (*Ibid*.)

According to the *Wilson* court, its review of the general orders cited by Edison and the cases in which the PUC exclusive jurisdiction was found led to the conclusion that preemption did not apply. The *Wilson* court indicated, first, that Edison could comply with the general safety regulations and still mitigate the stray voltage that results from grounding. Second, the court could not say "with any certainty that litigation of [plaintiff's] claims would hinder or interfere with the PUC's regulatory policy." Finally, "in light of the absence of any indication that the PUC has investigated or regulated the issue of stray voltage, and without any evidence that stray voltage cannot be mitigated without violating the PUC's regulation requiring grounding, we cannot say that Wilson's lawsuit would interfere with or hinder any supervisory or regulatory policy of the PUC. Therefore, we hold that Wilson's claims are not within the exclusive authority of the PUC under section 1759." The language in Tariff Rule No. 26 is far more developed than the language at issue in *Wilson,* offering a clear picture as to why liability is precluded, and preemption is appropriate.

[defendant] broadly responsible for injuries resulting from the 'operation, maintenance, or condition" of Consumer Equipment. . . ." (*Id.* at p. 2.) ***The same rationale applies here***. Even if plaintiffs here can establish a common law breach of duty based on defendant's failure to shut off the gas supply to the Perrys' residence based on knowledge of a dangerous condition, plaintiffs' theory (as did plaintiff's theory in *De La Rosa*) would make defendant still "broadly responsible for injuries from the operation, maintenance or condition" of "Consumer Equipment." Plaintiffs attempt to distinguish "Consumer Equipment" from the data derived therefrom follows the same trajectory as did plaintiff's theory in *De La Rosa*, given the similarities between the arguments. Tariff Rule No 26 remained dispositive in *De La Rosa* despite claims of negligence predicated on failure to discontinue the gas supply; it remains dispositive here for the same reasons.

In *Pierce v. Pacific Gas & Electric Co*. (1985) 166 Cal.App.3d 68, plaintiff was injured when a mechanical failure in an electric utility transformer sent 7,000 volts of electricity into her home, and she sued for negligence and strict liability in tort for defective products. (*Id.* at p. 74.) Defendant utility claimed that any cause of action in strict liability was preempted by an order of the PUC pursuant to section 1759. (*Id.* at p. 77.) Defendant relied on Rule 31.1 of General Order 95. The *Pierce* court rejected the argument. "Although the PUC is empowered to limit utilities' liability, we conclude it has not done so in rule 31.1." Rule 31.1 provides that electrical supply and communications systems shall be maintained in safe condition and specifically imposes a duty of care to minimize hazards involved with overhead utility wires. (*Id*. at pp. 77-79.) "Manifestly, the rule *imposes* a duty of care and does not withdraw or limit liability. Moreover, the rule is inapposite to the factual situation before us. This is not a case . . . where the plaintiff accidentally encountered the utility's overhead wires; rather, in this case a transformer which simply happened to be on an overhead pole . . . malfunctioned and sent extraordinarily high voltage directly into the electric system of plaintiff's home. Even if we were to read rule 31.1's command 'to be careful' with overhead wires to preclude liability without fault for overhead-wire accidents, we would not be justified in extending the rule's reach to the facts of this case. We conclude rule 31.1 does not bar imposition of strict liability in tort when electricity actually received by a consumer at her residence is dangerously in excess of her reasonable expectations and the utility's intentions." (*Id.* at p. 78.) The facts here – including the strict liability claim – more clearly implicate the substance of Tariff Rule No. 26 than was the case in *Pierce* (where the facts and allegations clearly did not implicate the substance of Tariff Rule No. 31.1).

In *Matta v. Pacific Gas & Electric Co*. (2014) 224 Cal.App.4th 309, the appellate court found the trial court had jurisdiction over plaintiff's claim that defendant negligently failed to inspect the power lines and trees and failed to maintain an adequate clearance of the power lines. (*Id.* at p. 312.) The issue was the impact of Rule 35, and the minimum clearances contemplated by the rule. According to the *Matta* court, "the PUC rules and prior orders repeatedly make clear that while a utility normally must maintain specified minimum clearness between its overhead electric lines and adjacent trees, the commission leaves to the determination" of the utility whether "greater clearances are necessary at particular locations to accomplish the purpose of rule 35, including to 'secure safety. . . to the public in general.' Nowhere in the rules or orders does the commission suggest that in making such determinations, the utility is relieved of its obligation to exercise reasonable care to avoid causing harm to others, or relieved of its responsibility for failing to do so . . ." (*Id.* at p. 318.) Defendant had a duty of care, and nothing in the rules above suggest it was relieved of that duty. (*Ibid.*) Tariff Rule No. 26 does what Tariff Rule No. 35 did not do– expressly relieves defendant of liability for damages caused by a gas explosion stemming from leaks in gas pipes and/or equipment that monitors gas flows – the gravamen of this lawsuit.

And in *Cundiff v. GTE California Inc*, (2002) 101 Cal.App.4th 1395, plaintiffs alleged defendants were required to deregulate, allowing customers to purchase telephone equipment

from other sources. Defendant allegedly continued to bill their customers for "equipment rental," and allegedly deceived customers that the rental had value, unjustly enriching defendant. Plaintiff sued for unfair competition, false or misleading advertising, amongst other causes of action. (*Id*. at p. 1402.) The *Cundiff* court concluded the claims were not preempted by PUC section 1759, holding that "[s]ection 1759 defines and limits the power of courts to pass judgment on, or interfere with, what the [PUC] does." (*Id.* at p. 1405.) However, the court found that the plaintiffs were not challenging the companies' rates, but only their billing practices, and thus "would not have the effect of reversing, correcting or annulling any decision or order of the commission . . ." (*Id*. at p. 1411.) Nothing here comes close to the rules articulated in *Cundiff*.

For these reasons, the court grants both motions for judgment on the pleadings, without leave to amend. Judgment will be entered in favor of Gas Co., meaning it no longer remains a defendant in either complaint. The causes of actions against all other remaining defendants can proceed forward. Defendant Gas Co. is directed to provide a proposed order and judgment for signature. Resolution of the motions for judgment on the pleadings obviates the need for the court to assess Gas Co.'s motion to consolidate.

Summary:

The court grants all requests for judicial notice associated with the motions for judgment on the pleading.

The court grants both motions for judgment on the pleadings filed by Southern California Gas Company (in Case Nos. 24CV05549 and 24CV0704), without leave to amend. The causes of action are preempted pursuant to Public Utilities Code section 1759. Resolution of this matter obviates the need to determine the merits of Southern California Gas Company's motion to consolidate both matters. Southern California Gas Company is directed to provide a proposed order and judgment for signature.

The remaining defendants in both lawsuits should be prepared to discuss trial at the Case Management Conference.