

**POWER ASSOCIATION OF NORTHERN  
CALIFORNIA ANNUAL SPRING  
SEMINAR – WILDFIRE: RISKS AND  
RESPONSE**



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# Typical causes of action brought against utilities for wildfires:

1. negligence
2. wrongful death and survival
3. inverse condemnation
4. public nuisance
5. private nuisance
6. premises liability
7. trespass
8. violation of Pub.Util.Code § 2106
9. violation of Health/ Safety Code § 13007



What utilities want the  
Legislature, Governor and the  
press to pay attention to:

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3. inverse condemnation



What utilities argue to regulators and the courts:

“Inverse condemnation is unfair, so we must be compensated.”

**But what if the utility did wrong?**

**If the CPUC were to allow recovery of liabilities just because of inverse condemnation, the utility would be shielded from accountability.**

# Winning a case

## Elements of Inverse Condemnation

- causation
- while providing a public service

## Elements of Negligence

- duty of care
- breach of the duty
- causation
- proximate cause
- actual damages

# Reasonableness v. Negligence

## Reasonableness Review

Utility must prove that all costs are reasonable

## Negligence in Civil Court

The plaintiff must prove that the utility was negligent

“Contributory negligence” means that liabilities can be shared

# The criticisms of reasonableness reviews:

- Standard of perfection
- 20/20 hindsight
- Unpredictability

# The problem with abandoning reasonableness reviews:

- There is no substitute for good judgment at the time
- Those who can avoid a problem must bear the risk
- There must be a standard for good management



# Why SDG&E's U.S. Supreme Court case is on shaky ground:

- There was never a court decision imposing inverse condemnation
- The place to object to inverse condemnation is on the basis of a court decision applying it
- Nothing about inverse condemnation changes the CPUC's obligation to ensure that all costs are reasonable
- The CPUC's decision is supported with facts and courts usually defer



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