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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

ASIAN AMERICAN LIBERATION NETWORK, a California non-profit public benefit association; KHURSHID KHOJA, an individual,

Petitioners,

vs.

SACRAMENTO MUNICIPAL UTILITY DISTRICT; PAUL LAU, in his official capacity as the Chief Executive Officer of the Sacramento Municipal Utility District; CITY OF SACRAMENTO; KATHERINE LESTER, in her official capacity as Chief of Police of the City of Sacramento Police Department,

Respondents.

Case No.: 34-2022-80004019

CITY OF SACRAMENTO AND KATHERINE LESTER'S OPPOSITION TO PETITION FOR WRIT OF MANDATE

Date: October 10, 2025
Time: 10:00 a.m.
Dept: 21
Judge: Hon. Shelleyanne W.L. Chang

Action Filed: September 21, 2022

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I

INTRODUCTION

This is not a case about dragnet surveillance. Nor is this case about the disclosure of granular smart meter data. Rather, Petitioners are challenging a long-standing practice of the City of Sacramento ("City"), by and through the Sacramento Police Department ("SPD"), of merely *requesting* aggregated electrical consumption data from the Sacramento Municipal Utility District ("SMUD"), a publicly-held utility, to proactively investigate potential violations of the Sacramento City Code. Specifically, SPD periodically requests from SMUD lists of high-energy subscribers, filtered to include customers using over a certain threshold of electricity in a given month, and further filtered to only include subscribers consuming electricity in either a 12-hour or 18-hour consumption cycle. These consumption cycles are patterns known to be consistent with unlawful residential cannabis cultivation.

SPD's requests do not seek specific and potentially sensitive smart meter data. Rather, the requests seek the raw, aggregated number of kilowatt hours consumed by the subscriber over the past month. These requests are made for the purpose of SPD's continuous, targeted inquiries into potential illegal cannabis grows in violation of chapter 8.132 of the Sacramento City Code, which regulates cannabis cultivation within the City's jurisdiction.

As an initial matter, a traditional writ of mandate under section 1085 of the Code of Civil Procedure is the wrong vehicle for Petitioners' claims against the City and its Chief of Police, Katherine Lester ("Lester"). Petitioners have not identified any legal authority permitting the issuance of a writ against an agency *requesting* information under a provision of the California Public Records Act ("CPRA"). Nor is the City aware of any such authority.

Additionally, and notwithstanding that the City's requests are not subject to a writ petition under section 1085, Petitioners' claims fail on the merits.

This is because Petitioners cannot show that the City's requests to SMUD violate article I, section 13 of the California Constitution. California law provides that there is no reasonable expectation of privacy in the aggregated quantity of electricity delivered by a utility to a residence. And, even if there was, there is no unreasonable governmental intrusion into any

such reasonable expectation of privacy. The City is entitled to electrical consumption information under Government Code, section 7927.410, under three separate provisions. First, the City's requests are relative to SPD's ongoing investigation for potential violations of the City's cannabis cultivation ordinances. Second, the City's requests are necessary for the performance of the City's official duty to enforce and investigate said ordinances. Illegal residential cannabis cultivation is a public danger to the health and safety of the City's residents, and there is no effective alternative to timely discover these illegal residential cannabis grows. Finally, and even in the absence of these provisions, the City would be entitled to this information upon SMUD's determination that the public interest in disclosure clearly outweighs the public interest in nondisclosure.

Also, Petitioners cannot maintain a claim against the City and Lester for violation of Public Utilities Code, section 8381. Section 8381 only creates a duty for a local publicly owned electric utility to disclose or withhold electrical consumption data under express circumstances. But, there is no provision under section 8381 creating a duty for a *requestor*.

Accordingly, the City and Lester request that the Court deny Petitioners' writ petition in its entirety, as brought against the City and Lester.

II

STATEMENT OF FACTS

A. History.

On November 20, 2012, the City of Sacramento's City Council enacted a series of ordinances, including the addition of chapter 8.132 to Title 8 of the Sacramento City Code, regulating the cultivation and growth of marijuana within the City's limits. The intent and purpose of this chapter is as follows:

> It is the purpose and intent of the city council to implement state law by regulating the cultivation of medical marijuana and requiring that it be cultivated in secured, enclosed, and ventilated structures, so as not be visible to the public; to prevent odors created by marijuana plants from impacting adjacent properties; to protect the health, safety, and welfare of the residents of the City of Sacramento; and to ensure that medical marijuana grown for medical purposes does not result in the diversion of marijuana for nonmedical purposes.

(City's Supplemental Record of Evidence ["CR"] 5-6.)

SPD, as the City's law enforcement agency, is responsible for enforcing chapter 8.132, including investigating potential violations of chapter 8.132. (CR 214 [Peletta Decl., ¶ 2].)

In approximately 2014, an SPD captain, in response to a rise in violent crime and hazardous building conditions connected with illegal cannabis grows within the City of Sacramento, coordinated with SMUD to devise a process by which SPD could periodically request residential subscriber electrical consumption from SMUD. The purpose of this process was to proactively identify indicia of illegal cannabis grows. (CR 214 [Peletta Decl., ¶¶ 3-4].) Due to the success of that program, the City continued this practice and created a Marijuana Compliance Team ("MCT"), now known as the Cannabis Compliance and Investigations Unit ("CCIU"), to carry out this practice in furtherance of SPD's ongoing investigation of illegal cannabis grows. (CR 128 [Mendoza Decl., ¶¶ 2-4], 214-15 [Peletta Decl., ¶¶ 4, 6].) This team has comprised of a team of law enforcement officers, a supervising sergeant, and a lieutenant overseeing the unit. (CR 20 [Smith Depo., p. 9:4-16].) Since 2019, the team has also included a non-sworn civilian employee providing administrative support to the unit. (CR 128 [Mendoza Decl., ¶ 2].)

B. <u>Public Dangers of Illegal Residential Cannabis Cultivation.</u>

The City has continued to request electrical consumption information from SMUD as a proactive investigatory tool targeted towards early discovery of illegal cannabis grows. This is because, if SPD only reacted to illegal cannabis grows through traditional policing methods, such as calls for service, citizen complaints, or other similar avenues, the very concerns contemplated in the language of the City's ordinances, such as violent crime, electrical fires, and the release of hazardous substances, would likely have already materialized. (CR 215 [Peletta Decl., ¶¶ 6-7]; see CR 12 [Sacramento City Code, chapter 8.132.060, subdivision (A)].) The City is presently unaware of an alternative effective proactive investigatory tool for discovering illegal residential grow houses. (See CR 215 [Peletta Decl., ¶¶ 6-7], 248 [Meredith Report, p. 25] [indicating nearly 97% of total illegal cannabis grow investigations originate from SMUD-derived data].)

C. Current Request Process.

Below is a summary of the City's most up-to-date process of requesting and receiving electrical consumption information from SMUD.[1] This process has remained substantially unchanged since July 2023.[2] (Petitioners' Record of Evidence ("PR") 1012-13, 1139; CR 128 [Decl. Mendoza, ¶ 4], 220 [Young Decl., ¶ 8].) Approximately every three months, CCIU, through a non-sworn civilian employee, issues a series of requests by zip code to SMUD, requesting a list of SMUD's residential customers and addresses using at least 2,800 kWh[3] per month, inclusive of total electrical consumption use for each high-energy user for the month prior to the request. CCIU also requests that SMUD filter this data by subscribers exhibiting 12-hour or 18-hour consumption patterns. (CR 128, 132-206 [Mendoza Decl., ¶ 5, Exh. A]; see also Petitioners' Brief, pp. 10:23 – 11:4.) This is because indoor marijuana cultivation typically utilizes one of two lighting schedules for plant growth, depending on the maturity of the plant. Immature cannabis plants are commonly grown through 18-hour cycles of constant lighting, followed by six hours away from lighting. Upon maturity, the electrical consumption pattern is typically changed to a 12-hour cycle of constant lighting, followed by 12 hours away from lighting. (CR 26 [Smith Depo., p. 31:10-23]; see CR 234 [Meredith Report, p. 11].)

In response, SMUD initially sends the City's requestor a list of customer names, addresses, and electrical consumption information for the month prior to the request, for all residential subscribers using over 2,800 kWh/month.[4] (CR 38-39 [Mendoza Depo., pp. 37:9

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[1] SPD has not issued such a request to SMUD since November 2024. (CR 130 [Mendoza Decl., ¶¶ 13, 15].)

[2] The City's request language prior to July 2023, while worded slightly differently, requested similar data. (Compare PR 864; CR 50-96 [Mendoza Depo., Exh. 6] [indicating the following language as of December 2022: "I am requesting a list of SMUD customers and addresses using 2,800 kWh and above per month for the zip code [zip code number]; please include meter/pattern/usage/consumption information"] with PR 1012-13, 1139 [indicating the following language as of July 2023: "I am requesting a list of SMUD customers and addresses using 2,800 kWh and above per month for the zip code [zip code number]; please include total usage for prior month and any with 12-hr or 18-hr consumption patterns"].)

[3] SPD has lowered the electrical consumption threshold for SPD's requests several times, most recently in 2022. This is because SPD determined that the electrical consumption threshold needed to be modified to adjust to offending cannabis growers utilizing technological advances in electrical efficiency in order to elude detection. (CR 214-15 [Peletta Decl., ¶ 5]; see also CR 21-22 [Smith Depo., pp. 15:13 – 16:25], 234-35, 244 [Meredith Report, pp. 11-12, 21].)

[4] This list also contains the subscriber's assigned meter number, zip code, and a notation indicating whether the customer uses solar power or an electric vehicle network. The City has also, at times, received maximum kilowatt usage per day, average kilowatt usage per hour, and transformer numbers, though this information is typically omitted. (See CR 102-04 [Burkhalter Depo., pp. 44:25 – 46:11].) Aside from the zip code and, up

– 38:5], 128 [Mendoza Decl., ¶ 6].) This list contains all addresses within the requested zip codes. Because some of the subscribers within the given zip codes reside within the County of Sacramento, but outside the City of Sacramento, the City's requestor removes all non-jurisdictional entries from this list, and returns the pared-down list to SMUD. (CR 40-42 [Mendoza Depo., pp. 41:2 – 43:2], 128 [Mendoza Decl., ¶ 6]; see also Petitioners' Brief, p. 11:5-9.)

Once that list is returned to SMUD, SMUD analyzes the remaining entries on this list and identifies high-energy users within the City's jurisdiction exhibiting either a 12-hour or 18-hour pattern cycle of electrical consumption. SMUD will then return a final list to the City of SMUD subscribers meeting all of the following criteria: (1) within the City of Sacramento; (2) using at least 2,800 kWh/month during the relevant period of time; and (3) exhibiting either a 12-hour or 18-hour pattern cycle of electrical consumption. (CR 128 [Mendoza Decl., ¶ 7].) The City neither requests nor receives any of the granular electrical consumption data derived from SMUD's smart meters. (CR 24 [Smith Depo., p. 26:9-18], 130 [Mendoza Decl., ¶ 16].)

Upon receipt of this list, the City's requestor uses this information to create a separate spreadsheet, removing the names of the SMUD subscribers, the property owners, and the property owners' addresses, if different from the subscribers' addresses. The requestor then sends that spreadsheet to the CCIU sergeant. (CR 24-25 [Smith Depo., pp. 26:18 – 27:22], 43-44, 46-47 [Mendoza Depo., pp. 49:3 – 50:19; 155:3 – 156:5], 129, 207-12 [Mendoza Decl., ¶ 8, Exhs. B-D].) The sergeant then disseminates this spreadsheet to the law enforcement officers assigned to CCIU to conduct additional investigation using this data. (CR 27-28 [Smith Depo., pp. 34:10 – 35:9], 129 [Mendoza Decl., ¶ 8].) The City's requestor does not disseminate copies of the SMUD lists to CCIU's law enforcement officers. (CR 23 [Smith Depo., p. 19:12-23], 130 [Mendoza Decl., ¶ 17], 219 [Young Decl., ¶ 4].)

Upon dissemination of the final spreadsheet, CCIU generally takes one of the following actions.

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until approximately July 2023, the meter number, the City does not request any of this information. (See Mendoza Decl., ¶ 5, Exh. A.)

For subscribers using more than 2,800 kWh but less than 8,000 kWh for the prior month, the City generally sends that subscriber a warning letter. (CR 129 [Decl. Mendoza, ¶¶ 10, 12], 219 [Decl. Young, ¶ 5].) This warning letter notifies the subscriber of SPD's concern that the property *might* have been used for indoor cultivation of marijuana in a manner inconsistent with the Sacramento City Code, provides the subscriber 30 days to voluntarily correct any violations, and requests that the subscriber contact the CCIU sergeant once the violations have been corrected, or if the subscriber has any questions. (PR 1183-84; see CR 129 [Decl. Mendoza, ¶ 10], 219-20 [Decl. Young, ¶ 6].) If the subscriber fails to contact CCIU, the City typically requests updated electrical consumption data from SMUD, in order to determine if the high-energy pattern usage persists. If it does, the City will investigate further. (CR 129 [Decl. Mendoza, ¶ 11], 220 [Decl. Young, ¶ 7].)

For subscribers using more than 8,000 kWh for the prior month, or for property owners or tenants on the final spreadsheet for whom CCIU had some prior contact, CCIU generally does not send a warning letter. Rather, CCIU will investigate further to determine whether there are facts supporting probable cause of an illegal cannabis grow at the subject address. (CR 129 [Decl. Mendoza, ¶ 12], 219 [Decl. Young, ¶ 5].) This includes, but is not limited to, reviewing records for any calls for service at this address, performing a "drive-by" plain-view inspection of the residence, and using publicly-available tools, such as Google Maps. (CR 219 [Decl. Young, ¶ 5]; see also CR 113-14 [Dyson Depo., pp. 31:8 – 32:20].) If CCIU develops probable cause for that residence, CCIU will seek a search warrant. (See generally CR 248 [Meredith Report, p. 25].)

III

ARGUMENT

A. A Petition for Writ of Mandate is the Improper Vehicle Against the City and Lester.

A writ of mandate may be issued against a public body or public officer "'to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station' in cases 'where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.'" (*Flores v. Dep't of Corr. & Rehab.* (2014) 224 Cal.App.4th 199, 205 [citing Code

Civ. Proc., §§ 1085, 1086].) Because Petitioners have not made either showing as to the City and Lester, writ relief under Code of Civil Procedure, section 1085 is improper.

1. Petitioners Fail to Identify a Clear and Present Duty under Section 1085 Upon the Part of the City or Lester.

Two basic requirements are essential to the issuance of a writ of mandate under Code of Civil Procedure, section 1085. First, there must be a "clear, present and usually ministerial duty upon the part of the respondent; and (2) [there must be] a clear, present and beneficial right in the petitioner to the performance of that duty . . . ." (*Flores, supra*, 224 Cal.App.4th at p. 205.) "A ministerial duty is one generally imposed upon a person in public office who, by virtue of that position, is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Ibid.* [internal quotation marks omitted].)

Petitioners' writ petition requests the Court to order "Respondents City of Sacramento and Lester to respect the confidentiality of SMUD's customer information and discontinue requesting names, addresses, or electricity consumption (and any opinions derived therefrom) from SMUD, including lists of the same (such as zip code lists), absent a prior showing by law enforcement of individualized suspicion of wrongdoing." (Petitioners' Brief, p. 34:12-17.) However, Petitioners do not show how this request, as directed to the City and Lester, seeks to "compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station." (Code Civ. Proc., § 1085, subd. (a).)

Critically, Petitioners do not explain how the mere *request* of information, made under an exception to an exemption under the CPRA, can be remedied by a traditional writ of mandate under section 1085. Writ proceedings challenging an agency's decision to release confidential documents under the CPRA are commonly brought in reverse-CPRA actions against the agency disclosing said records. (See, e.g., *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1265.) But the City is not aware of *any* published cases permitting the issuance of a writ against a *requesting* agency, or finding a clear, present, ministerial duty for a public agency to refrain from making a CPRA request. Nor is the City aware of any legal authority in which a *request* (rather than disclosure or withholding) under

the CPRA was found to violate the law.

2. Because Petitioners Could Have Sought Injunctive Relief as to the City and Lester, Writ Relief Is Improper.

"[I]t has long been established as a general rule that the writ will not be issued if another such remedy was available to the petitioner." (*Flores, supra*, 224 Cal.App.4th at p. 205.) Petitioners bear the burden of showing that no such remedy exists. (*Ibid.*)

Petitioners' operative underlying pleading is a complaint for declaratory and injunctive relief *and* a petition for writ of mandate. Petitioners have since pursued this matter as a writ petition under Code of Procedure, section 1085 only. But Petitioners have not shown why an injunction, assuming they could prevail on the merits, would not have been a plain, speedy, and adequate remedy as to their claims against the City and Lester.

Because the City's requests to SMUD for electrical consumption information are not the proper subject of a traditional writ of mandate, the Court should deny the writ as to the City of Sacramento and Lester on that ground alone.

B. <u>Any Challenge to the City's Discontinued Practices for Requesting SMUD Subscriber Data is Moot.</u>

The City's process in requesting electrical consumption information from SMUD has remained substantially unchanged since July 2023. (Decl. Mendoza, ¶ 4; PR 1012-13, 1139; Young Decl., ¶ 8.) To the extent Petitioners challenge any of the City's past practices in requesting electrical consumption data that have since been discontinued, that challenge is moot. (See *State Bd. of Educ. v. Honig* (1993) 13 Cal.App.4th 720, 748 [declining to address merits of claim because they were moot, due to the superintendent's efforts to comply with some of the Board's policies, and approvingly citing prior cases declining to address matters mooted by an agency's post-petition actions to perform the official duty sought].)

C. <u>The City's Requests for SMUD Subscriber Data Do Not Violate Art. I, Sec. 13 of the California Constitution.</u>

Article I, section 13 of the California Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures

and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized." In determining whether an illegal warrantless search had occurred pursuant to article I, section 13 of the California Constitution, a court must determine (1) whether an individual had exhibited a reasonable expectation of privacy; and (2) assuming there is a reasonable expectation of privacy, whether that expectation had been violated by unreasonable government intrusion. (*Burrows v. Superior Court* (1974) 13 Cal.3d 238, 242-43.)

Because Petitioners' claims as to the City and Lester fail on both issues, the City's requests to SMUD do not constitute an illegal search under the California Constitution. First, California does not recognize a constitutionally protected reasonable expectation of privacy in a person's electrical consumption data. And, even if it did, the City is entitled to this information under certain express exemptions for disclosure under the CPRA.

1. There Is No Reasonable Expectation of Privacy in the Data Requested.

Petitioners argue that "SMUD's sharing of lists, opinions, and tips with law enforcement constitutes a 'search.'" (Petitioner's Brief, p. 24:8-9.) This is because they claim "SMUD's customers have a reasonable expectation of privacy in their electrical consumption data gathered by smart meters . . . ." (Petitioner's Brief, p. 23:17-18.) However, this misapprehends the type of data the City actually requests from SMUD – there is nothing in the record indicating that the City has *ever* requested or received granular smart meter data from SMUD. Nor does the City request or receive "tips" or "opinions" under its current requesting language and process,[5] which has remained substantially the same since July 2023. (See Section II.C, *supra*.)

Rather, the City's requests from SMUD are confined to: (1) SMUD's high-energy residential subscribers' names;[6] (2) the corresponding addresses; (3) each subscribers' total

[5] Nor should any request practice of a law enforcement agency other than the Sacramento Police Department apply as to the claims against the City and Lester. (See Petitioners' Brief, p. 26:7-12 [referencing incidents arising from requests made by the County of Sacramento's Sheriff's Office to SMUD].)

[6] The names of the subscribers and property owners (if different) are removed by the City's civilian requestor before the final spreadsheet is provided to the City's law enforcement officers. (CR 129-30 [Mendoza Decl., ¶¶ 8, 17].)

electrical usage at the corresponding address for the prior month; and (4) a filter returning only high-energy residential subscribers exhibiting a 12-hour or 18-hour consumption pattern at the listed address. (Compare PR 1269-71 [showing granular smart meter data, which the City neither requests nor receives] with PR 1131-35, 1137-81; CR 128, 132-206 [Decl. Mendoza, ¶ 5, Exh. A] [showing City's current request language].)

This distinction is significant because there is no reasonable expectation of privacy in the mere quantity of electricity delivered by a utility to a customer's residence. (*People v. Stanley* (1999) 72 Cal.App.4th 1547, 1554.) In *Stanley*, law enforcement officers, without a search warrant, asked a local utility company to install a surveillance meter on a utility pole on Stanley's property[7] to determine if electricity was being stolen and diverted into the home, in order to illegally grow marijuana. The utility company obliged. (*Id.* at pp. 1550-51.) The surveillance meter indicated a large discrepancy between the electricity delivered to the home and the electricity usage actually billed. After obtaining a search warrant based upon, among other things, "[the] opinion that excessive consumption of electricity was consistent with a marijuana-growing operation"[,] officers seized evidence of marijuana grow from the house. (*Id.* at p. 1551.) After unsuccessfully moving to suppress evidence, Stanley appealed, arguing, *inter alia*, that he "had a reasonable expectation of privacy in the quantity of electricity delivered by the utility." (*Id.* at p. 1553.)

The court rejected this argument, finding there was no reasonable expectation of privacy in the quantity of electricity delivered by the utility to the home. This is because the information obtained did not reveal anything about the intimate details of activities within the house. It did not inform law enforcement "what electrical devices are inside the house or what activities the power supports." Rather, "[i]t only tells officers how much electricity is being delivered by the utility . . . ." Accordingly, the court found that "[n]one of the interests which are the bases for the protection of personal privacy and intimacy associated with a home are

[7] The United States Supreme Court's ruling in *U.S. v. Jones* (2012) 565 U.S. 400 calls into question *Stanley's* holding that the appellants had no reasonable expectation of privacy in the utility pole within the curtilage of Stanley's house. However, *Jones* has no effect on *Stanley's* other holding, that there is no reasonable expectation of privacy in the quantity of electricity delivered by a utility to a home.

threatened" here. (*Id.* at p. 1554.)

Like the officers in *Stanley*, the City requests only the aggregated electrical consumption data for high-energy residential subscribers over the past month, without a breakdown of when energy was consumed within that month. (See PR 1012-14; see also Petitioners' Brief, pp. 10:23 – 11:4.) Therefore, the privacy concerns Petitioners raise do not apply here. (See Petitioners' Brief, p. 21:16-24.) This information does not reveal what electrical appliances are being used within the home. (CR 122 [Wicker Depo., p. 23:18-25].) Nor does it provide information from which inferences may be drawn as to the day-to-day lives of the home's residents, such as their movements or activities within the home. At best, such data provides minimal insight into the occupancy of a residence, such as whether the house was vacant for some duration of time, and whether a subscriber was using an unusually large quantity of electricity (without indicating why), compared to neighboring residences. (CR 123-25 [Wicker Depo., pp. 24:1 – 26:1].) The limited nature of this data does not meaningfully implicate any of the interests which are the bases for the protection of personal privacy and intimacy associated with a home. Accordingly, SMUD's subscribers do not have a reasonable expectation of privacy in how much electricity they use, in the aggregate, over a given month.

Nor does the City's requests to filter this data for pattern cycles change this analysis. The City requests SMUD to simply filter out subscribers not exhibiting either a 12-hour or 18-hour electrical consumption pattern at the subject address. (PR 873, 1131-35; CR 45 [Mendoza Depo., p. 117:17-22], 128, 132-206 [Mendoza Decl., ¶ 5, Exh. A].) There are no meaningful pattern-of-life inferences to be drawn from this pattern data filter – rather, these conclusions merely inform law enforcement that the identified subscribers are using electricity in either a 12-hour or 18-hour pattern cycle, each of which are consistent with illegal residential cannabis grow. There is no reasonable expectation of privacy in a conclusion that a residential subscriber is using electricity in either a 12-hour or 18-hour pattern cycle.

Petitioners point out that the City's requests and receipt of electrical consumption information, filtered for high-energy users with pattern cycles, sometimes returns results of subscribers not growing cannabis. But this illustrates why this information does not implicate

a reasonable expectation of privacy. As Petitioners note, "[h]igh energy usage could include a large home, electric heat, air conditioning, Christmas lights, a heated swimming pool, cryptocurrency mining, growing vegetables in a hoop tent, three kitchen islands and an elevator, a man cave, a large fish tank, exotic plants, and a tiny home compound." (Petitioners' Brief, p. 14:20-23.) But this is one of the reasons why the court in *Stanley* held that there was no reasonable expectation of privacy in the quantity of electricity delivered by a utility to a residence. (See *Stanley, supra*, 72 Cal.App.4th at p. 1554 ["The meter does not discriminate between electricity used to fire pottery and power used to grow orchids, tomatoes or marijuana. It only tells officers how much electricity is being delivered by the utility . . ."].) This is also why the City does not generally seek search warrants on electrical consumption information alone. Rather, the City will send the listed subscriber a warning letter, or will further investigate to determine whether there are facts supporting probable cause of an illegal residential cannabis grow at the subject address. (Section II.C, *supra*.)

Petitioners rely on *Naperville Smart Meters Awareness v. City of Naperville* (7th Cir. 2018) 900 F.3d 521 for the proposition that governmental collection of smart meter energy usage information unreasonably intrudes upon the public's reasonable expectation of privacy. *Naperville*, however, is factually distinguishable.

In *Naperville*, the City of Naperville was *also* the public utility collecting smart meter data. (*City of Naperville, supra*, 900 F.3d at p. 524.) For that reason, the court concluded that the city's collection of smart meter data at fifteen minute intervals constituted a search. (*Id.* at pp. 526-27.) However, the court also concluded that the search was reasonable, and therefore did not violate either the Fourth Amendment or the Illinois Constitution's parallel protections, because the city's public utility employees, not law enforcement, collected and reviewed this smart meter data. (*Id.* at p. 528.)

Here, the City and SMUD are separate entities.[8] Moreover, the City neither requests

[8] Petitioners make much of the fact that SPD and SMUD have worked together well in coordinating the electrical consumption request process. (Petitioners' Brief, p. 21:5-8.) This does not change the fact that the City and SMUD are distinct legal entities. The smart meter data SMUD receives and maintains is not the same as the aggregated electrical consumption information it transmits to law enforcement agencies such as SPD.

nor retrieves smart meter data from SMUD – rather, it requests only the aggregated electrical consumption data for high-energy subscribers for the past month, without a breakdown of when energy was consumed within that month, and narrowed down to only subscribers using electricity in a 12-hour or 18-hour pattern cycle. (See CR 128, 132-206 [Mendoza Decl., ¶ 5, Exh. A]; see also PR 1012 – 1181.) Because such a request, under *Stanley*, does not intrude upon SMUD's subscribers' reasonable expectations of privacy, the City's requests do not constitute a search.[9]

Petitioners also rely upon a Public Utilities Commission opinion from 2001, citing it as "positive law." This opinion has no precedential effect on this Court. Nor does the existence of a Public Utilities Commission opinion, finding that a group of petitioners failed to persuade the Commission to modify a prior opinion covering the release of records well beyond what the City has requested in this case, affect *Stanley*'s applicability here. (See PR 1896, 1897 fn. 4 [finding that the petitioners failed to "[make] an adequate case" for modifying a previous decision by the Commission precluding private utility companies from releasing customer information, including *customer credit information or calling records*, absent legal process].)

Additionally, Petitioners reference legislative materials concerning Public Utilities Code, sections 8380 and 8381, as well as SMUD's policies regarding customer information, which indicate that smart meter consumption data can potentially reveal sensitive information. (Petitioners' Brief, pp. 22:20 – 23:16.) But, as noted above, the City does not request or receive granular smart meter data from SMUD.

Finally, Petitioners, while observing that article I, section 13 of the California Constitution is more protective than the Fourth Amendment of the United States Constitution, have not cited a single case interpreting the California Constitution as leading to a different result *here*.

Petitioners incorrectly assert that California courts will "rule 'solely' under [article I, section 13, as opposed to the Fourth Amendment] where, as here, the U.S. Supreme Court has

[9] To the extent Petitioners claim that SMUD's collection of smart meter data, standing alone, constitutes a search, such a search would be reasonable under *City of Naperville*. (See *City of Naperville, supra*, 900 F.3d at pp. 527-28.)

not yet reached the issue." (Petitioners' Brief, p. 18:10-13, citing *People v. Buza* (2018) 4 Cal.5th 658, 686.) That is not what *Buza* states. *Buza* explains that, when the United States Supreme Court has not decided the issue under the Fourth Amendment, the *California Supreme Court* has, on occasion, ruled solely under article I, section 13. (*Buza, supra*, 4 Cal.5th at p. 686 ["[o]n various occasions . . . *this court* has also decided questions pertaining to the legality of searches and seizures solely under article I, section 13 when the United States Supreme Court had not yet decided the parallel question under the Fourth Amendment."] [emphasis added].) But even the California Supreme Court has generally "treated the law under [article I, section 13] as 'substantively equivalent' to the [United States] Supreme Court's construction of the Fourth Amendment" and has thus "resolved questions about the legality of searches and seizures by construing the Fourth Amendment and article I, section 13 in tandem." (*Ibid*.)

Accordingly, in the absence of any authority showing a different result under the California Constitution, *Stanley* is controlling. (See *Sacramento Cnty. Deputy Sheriffs' Assn. v. Cnty. of Sacramento* (1996) 51 Cal.App.4th 1468, 1485-86 [rejecting plaintiffs' argument that the California Constitution offers broader protections against search and seizure than the Fourth Amendment as applied to them, in the absence of any citation to California law supporting a different result in the context of the search at issue].)

2. The City's Requests Are Not an Unreasonable Governmental Intrusion on any Reasonable Expectation of Privacy Because the City is Authorized Under the CPRA to Request and Receive Electrical Consumption Data.

Even if there was a reasonable expectation of privacy in the electrical consumption data requested, the City's requests are authorized under the California Public Records Act ("CPRA"), and are thus not an unreasonable government intrusion on any such expectation of privacy. "Law enforcement officials make a search within the purview of constitutional prohibitions only when they jeopardize an individual's expectation of privacy that society has recognized as justified." (*People v. Abbott* (1984) 162 Cal.App.3d 635, 641 [quotation omitted].)

The Public Utilities Code permits disclosure of electrical consumption data by a local publicly owned electrical utility, such as SMUD, as required under state or federal law. (Pub. Util. Code, § 8383, subd. (f)(3).) The CPRA, as one such state law, requires local publicly

owned electrical utilities to disclose utility customer names, addresses, and utility usage data[10] upon request under certain conditions. (Gov. Code, § 7927.410.) Because the CPRA authorizes the City to request and receive this information, and requires SMUD to disclose this data, the City's requests do not unreasonably jeopardize any expectation of privacy SMUD's subscribers may have.

a. The CPRA's Exemptions from Disclosure Must Be Construed Narrowly and in Favor of Disclosure.

The CPRA "generally requires disclosure of public records upon request and establishes a presumptive right of access to any record created or maintained by a public agency that relates to the agency's business, unless a statutory exception applies." (*Sacramento Television Stations Inc. v. Superior Ct. of Placer Cnty.* (2025) 111 Cal.App.5th 984, 996.) Accordingly, "CPRA exemptions [from disclosure]" must be "*narrowly construed*." (*ACLU Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1042 [emphasis added].)

In 1990, a California appellate court "held that a public utility's customer records were in fact public records subject to the CPRA, and open to disclosure." (PR 1453, citing *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585.) Noting that there was no right to privacy in public utility customer files, the California Legislature passed SB 448, which added Government Code, section 6254.16 (now section 7927.410), as an exemption from disclosure under the CPRA. (See PR 1452 ["This bill would add to the list of express exemptions to disclosure . . . ."]; see also PR 1459.)

Notably, the Legislature could have provided that a public utility's customer records are *not* public records for the purpose of the CPRA, but chose *not to do so*. When the Legislature has intended to deem a record to *not* be considered public under the CPRA, the Legislature has done so expressly. (See Gov. Code, § 7928.300, subd. (a) ["The home addresses, home telephone numbers . . . shall not be deemed to be public records and shall not be open to public inspection . . . ."] In contrast, section 7927.410 does not contain any such language. Thus,

[10] Notably, Government Code, section 7927.410 does not narrow the scope of "utility usage data" whatsoever. If any of the exceptions to section 7927.410's exemption from disclosure apply, *all* utility usage data, including smart meter data, would be subject to disclosure.

the Legislature, in enacting section 7927.410, left *New York Times Co.'s* holding, that public utility customer records are public records, undisturbed.

Because section 7927.410 serves as an exemption from the disclosure of public records under the CPRA, the exempting language must be construed narrowly. As a corollary, the *exceptions* to section 7927.410's exempting language, codified under subdivisions (a) through (f), and addressed below, must be construed *broadly* so as to facilitate disclosure.

b. The City's Requests are Relative to an Ongoing Investigation.

A local utility must disclose the name, utility usage data, and home address of its customers "[u]pon court order or the request of a law enforcement agency relative to an ongoing investigation." (Gov. Code, § 7927.410, subd. (c).) SPD's requests to SMUD for electrical consumption data are relative to an ongoing investigation for citywide violations of the Sacramento City Code, chapter 8.132. (See CR 214-15 [Decl. Peletta, ¶¶ 2-6], 217 [Decl. Green, ¶¶ 3-4].) Accordingly, the City is entitled to request and receive customer electrical consumption data under the CPRA.

(1) Petitioners' Federal Citations are Distinguishable.

As an initial matter, Petitioners' cited cases under the federal Stored Communications Act and Employee Polygraph Protection Act provide no guidance as to what constitutes an ongoing investigation under the CPRA.

The cases Petitioners cite under the Stored Communications Act do not define what constitutes an investigation or ongoing investigation under the Stored Communications Act. Instead, in each case, the court rejected the Government's applications under 18 U.S.C. § 2703, subdivision (d) for failure to state facts sufficient to show a nexus between the records sought and the crime under investigation. (See *In re Applications* (D.D.C. 2016) 206 F.Supp.3d 454, 458; *United States v. Moreno-Vasquez* (D. Ariz. Mar. 11, 2020) 2020 WL 1164970, at p. *3.[11]) In *In re Applications*, the court presumed the existence of an ongoing criminal investigation. (See generally *In re Applications, supra*, 206 F.Supp. 3d 458 [repeatedly referring to the Government's

[11] It should be noted that, in addition to being factually and legally distinguishable, *Moreno-Vasquez* is an unpublished district court case.

applications as made pursuant to an ongoing criminal investigation, but denying them on other grounds].)

Additionally, the cited case under the Employee Polygraph Protection Act analyzed a statute specifically requiring an employer to have "a reasonable suspicion that the employee was involved in the incident or activity under investigation" before requesting an employee to submit to a polygraph test. (29 U.S.C. § 2006, subd. (d)(3).) Once again, the court did not define what constitutes an investigation or ongoing investigation. Rather, the court held that the employer failed to establish reasonable suspicion against the affected employee, as expressly required by statute. (*Polkey v. Transtecs Corp.* (11th Cir. 2005) 404 F.3d 1264, 1270.) No such language appears in Government Code, section 7927.410, subdivision (c).

(2) The City's Requests are Relative to a Targeted Inquiry Into a Particular Crime.

As Petitioners acknowledge, the term "ongoing investigation" is neither defined by Government Code, section 7927.410, nor interpreted by any California court. (Petitioners' Brief, p. 28:22-23.)

In analyzing the word "investigate" under the CPRA's "records of investigations" exemption from disclosure, the California Supreme Court found that dictionary definitions provided "minimal guidance" because they were "not specific to the law enforcement or CPRA contexts." (*ACLU Foundation, supra*, 3 Cal.5th at pp. 1039-40.) In the absence of such guidance, the Court analyzed the CPRA's context, "including the presumption in favor of access . . . ." (*Id.* at p. 1040.)

Petitioners argue that the "ongoing investigation" exception to section 7927.410's exemption from disclosure should be construed narrowly. This contradicts established law. The CPRA must be construed so as to promote, rather than inhibit, disclosure. (See *ACLU Foundation, supra*, 3 Cal.5th at p. 1042.) Thus, an exemption from disclosure should be construed *narrowly*, and the exceptions to an exemption from disclosure should be construed *broadly*.

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Nor does the legislative history of section 7927.410 support Petitioners' position. As Petitioners note, an earlier version of the underlying bill permitted disclosure upon request of a law enforcement agency, without any requirement that the request be made pursuant to an ongoing investigation. The Legislature ultimately amended the bill to require that, for this exception to apply, a "mere" request by law enforcement is insufficient – the request must be made relative to an ongoing investigation. (Petitioners' Brief, p. 30:7-16.) Aside from differentiating a "mere request" from a request relative to an ongoing investigation, the legislative history provides no further instruction on how to define "ongoing investigation." Nor does it indicate any legislative intent to construe the term "ongoing investigation" narrowly.

The California Supreme Court's holding that automated license plate reader ("ALPR") data does not constitute "records of investigations" under the CPRA is contextually dissimilar. (See *ACLU Foundation v. Superior Court* (2017) 3 Cal.5th 1032.) As Petitioners note, the Court in *ACLU Foundation* observed that the "animating concern behind the records of investigations exemption" was that such records "reveal (and, thus, might deter) certain choices that should be kept confidential—an informant's choice to come forward, an investigator's choice to focus on particular individuals, the choice of certain investigatory methods." (*Id.* at p. 1041; see Petitioners' Brief, p. 29:11-15.) The Court further noted that "[s]uch choices are far less likely to be revealed where, as here, data are collected *en masse*." (*ACLU Foundation, supra*, 3 Cal.5th at p. 1041.) Because disclosure of the ALPR data would only weakly implicate the concerns underlying the records of investigations exemption, and because the CPRA requires such exemptions from disclosure to be narrowly construed, the Court held that the exemption did not apply. (*Id.* at pp. 1041-42.)

The rationale underlying *ACLU Foundation* is inapplicable here. In *ACLU Foundation*, the Court was concerned with whether or not exemption from disclosure would serve the purpose behind the "records of investigation" exemption. Specifically, the Court analyzed whether disclosure would "compromise current or future law enforcement" by revealing confidential portions of an ongoing investigation and deterring law enforcement from making

certain decisions, such that the investigatory exemption would outweigh the interest in disclosure. (*Id.* at pp. 1041-42.) That question is not before this Court.

ACLU Foundation is also factually distinct. The ALPRs in *ACLU Foundation* indiscriminately captured "an image of the license plate of each vehicle that passes through their optical range." The readers then "checked the license plate number against a list of license plate numbers that have been associated with crimes, child abduction AMBER alerts, or outstanding warrants." (*Id.* at p. 1037.) These readers were not used to "investigate whether a violation of law was occurring or had occurred." (See *Castañares v. Superior Court* (2023) 98 Cal.App.5th 295, 310 [distinguishing between (1) drone footage used to "investigate whether a violation of law was occurring or had occurred, but did not create a corresponding investigatory file", which were exempted from disclosure as records of investigations, and (2) footage from drones dispatched "to make a factual inquiry to determine what kind of assistance is required, not to investigate a suspected violation of law", which were *not* exempted from disclosure].) Nor were these scans conducted as part of a targeted inquiry into any specific crime. (See *ACLU Foundation, supra*, 3 Cal.5th at p. 1042 [ALPR technology recorded data from over a million cars per week and were not conducted as part of a targeted inquiry into any particular crime or crimes].)

In contrast, the City's efforts to uncover the existence of illegal residential cannabis grows, which include the City's requests to SMUD, are relative to an ongoing investigation because they are a continuous, targeted inquiry into the commission of specific violations of the City Code. The purpose of the City's regular requests to SMUD for electrical consumption information is to proactively investigate the existence of illegal cannabis grows in violation of the Sacramento City Code, chapter 8.132. (CR 214-15 [Decl. Peletta, ¶¶ 2-6], 217 [Decl. Green, ¶¶ 3-4].)[12] The City's need to initiate a proactive investigation commenced upon the

[12] Petitioners assert that "Respondents do not have or apply any criteria to determine if a request is actually part of an "ongoing investigation." (Petitioners' Brief, p. 30:24-26.) In support, they cite to the deposition transcripts of the City's requestor and SMUD's analysts, none of whom could define the legal term "ongoing investigation" as provided under the Government Code. (See Petitioners' Brief, p. 17:9-24) As an initial matter, defining "ongoing investigation" in the context of the CPRA requires legal analysis. Moreover, SPD leadership has considered CCIU's continuous, proactive work to identify potential violations of the City's

City's determination of the existence of a link between illegal cannabis grows and violent crime, electrical fires, and residential exposure to hazardous substances. (CR 214 [Decl. Peletta, ¶ 3].) Shortly thereafter, the City coordinated with SMUD to create an ongoing investigatory process of requesting residential subscriber electrical consumption data from SMUD. (CR 214 [Decl. Peletta, ¶ 3].) That investigatory process continued, due to the practice's efficacy in early detection of illegal cannabis grows. (CR 215 [Decl. Peletta, ¶ 6].) The City's requests to SMUD are not merely a "factual inquiry to determine what kind of assistance is required." Rather, they are specific to the proactive investigation of illegal residential cannabis cultivation in violation of a specific City ordinance.

Defining an "ongoing investigation" as a continuous, targeted inquiry into the commission of a specific crime is consistent with at least one definition provided in the context of law enforcement. The International Association of Chiefs of Police ("IACP") defines criminal investigations as those involving "the collection and organization of facts and information for the purpose of identifying suspects and developing evidence sufficient to support criminal charges." Thus, an investigation includes the *identification* of suspects as well as the development of evidence. (CR 240 [Meredith Report, p. 17].) Moreover, the City's current requesting practice is consistent with law enforcement best practices, as defined by the IACP and the Commission on Peace Officer Standards and Training ("POST") (CR 240-41, 243-44 [Meredith Report, pp. 17-18, 20-21].)

Additionally, the information requested and ultimately provided to the City's law enforcement officers is specifically targeted at a small number of SMUD subscribers exhibiting indicia of illegal residential cannabis cultivation. The spreadsheet the City's requestor ultimately provides to SPD's law enforcement officers only includes SMUD subscribers within the City of Sacramento who (1) used 2,800 kWh per month over the prior month; and (2) used electricity in either a 12-hour or 18-hour pattern cycle. This is a critical distinction – the lists of all SMUD subscribers within the City using over 2,800 kWh over the past month, without

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cannabis ordinances as an ongoing investigation of the matter, including its requests to SMUD. (See CR 214-15 [Decl. Peletta, ¶¶ 2-6], 217 [Decl. Green, ¶ 3].)

filtering for pattern data, contain typically hundreds, if not thousands, of SMUD customers. In contrast, the lists *following* the filtering of pattern data are far shorter. (See PR 1026-1135; CR 130, 207-12 [Mendoza Decl., ¶¶ 13-14, Exhs. B-D].)

Petitioners make much of the fact that, in August 2023, SMUD disclosed to the City's requestor an initial list of approximately 10,000 subscribers. (Petitioners' Brief, 30:17-19; see PR 1555, 1879.) But that initial list is simply the *first* step in the process, includes subscribers with non-jurisdictional addresses, and is not provided to any sworn law enforcement officers within SPD. Once the City's requestor removed non-jurisdictional addresses, the list was culled to 4,800 subscribers. (PR 1877-79.) And, as Petitioners acknowledge, once SMUD completed its filtering for pattern data in October 2023, SMUD identified just *four* customers within the City's jurisdiction satisfying both the high-energy threshold and pattern data filter. (Petitioners' Brief at 12:4-5; see PR 1875-76, 1882-83; CR 244 [Meredith Report, p. 21].) Moreover, in response to the City's following three (and most recent) requests to SMUD, SMUD ultimately identified nine customers in March 2024, six customers in August 2024, and nine customers in December 2024. (CR 130, 207-12 [Mendoza Decl., ¶¶ 13-14, Exhs. B-D.) It is only *these* tailored spreadsheets, specifically targeted at high-energy users exhibiting electrical consumption patterns consistent with known marijuana grow cycles, which are ultimately provided to the City's CCIU officers. (CR 24-25 [Smith Depo., pp. 26:18 – 27:22], 43-44, 46-47 [Mendoza Depo., pp. 49:3 – 50:19; 155:3 – 156:5], 129-30, 207-12 [Mendoza Decl., ¶ 8, 17, Exhs. B-D].) The City's requestor, a non-sworn civilian, does not share the larger, unfiltered lists with any of the CCIU officers. (CR 23-24 [Smith Depo., p. 19:12-23, 26:9-24], 130 [Mendoza Decl., ¶ 17], 219 [Young Decl., ¶ 4].)

Petitioners nonetheless insist that the City's requests to SMUD cannot be relative to an ongoing investigation if "law enforcement has no suspicion prior to making a request to SMUD that a specific residence or person is suspected of a violation of law." (Petitioners' Brief, pp. 28:23 – 29:2.) Notwithstanding that the cases Petitioners cite for this proposition are distinguishable, it is unclear what level of suspicion Petitioners believe is necessary to constitute an investigation.

If Petitioners claim that probable cause is necessary, law enforcement would have no reason to request this information as relative to an ongoing investigation. Instead, law enforcement could simply execute a search warrant, based upon probable cause, and request electrical consumption data upon court order. (See Gov. Code, § 7927.410, subd. (c) ["Upon court order *or* the request of a law enforcement agency relative to an ongoing investigation."] [emphasis added].) On the other hand, if Petitioners claim that reasonable suspicion is sufficient, the Legislature could have specified this in defining what constitutes an investigation. It did not.

Petitioners also claim that, because several CCIU officers testified that they commenced *their* investigations upon receiving the targeted lists from the City's requestor, the City's requests to SMUD cannot be a part of *any* investigation. (Petitioners' Brief, p. 31:2-5.) That CCIU's sworn law enforcement officers begin *their* investigations into specific subscribers is not exclusive of whether the City's requests to SMUD constitute a separate, ongoing, and proactive investigation of information supporting or negating the existence of illegal residential cannabis grows in violation of the City's ordinances.

Finally, Petitioners point to one instance in which a SMUD employee texted an SPD officer to send him a request for electrical consumption information as to two specific SMUD subscriber addresses. (Petitioners' Brief, p. 31:8-10; see PR 1298-1302.) The text message is undated. However, an SPD officer sent a request for electrical consumption data for those two SMUD subscriber addresses on June 14, 2019. The inference appears to be that the request was sent shortly after the text message. (PR 1298-1302.) Petitioners point to no evidence that the City *asks* SMUD to proactively alert the City to send SMUD requests as to specific addresses, or that this practice continues today. Absent such a showing, this has no bearing on the merits of this matter as to the City and Lester.

c. <u>The City's Requests are Necessary for the Performance of Its Official Duties.</u>

The City's requests, in addition to being made relative to its ongoing investigation of illegal residential cannabis cultivation, are also necessary for the performance of its official duties. (See Gov. Code, § 7927.410, subd. (b).) To the City's knowledge, there are no

published court decisions interpreting the term "necessary for the performance of [a public agency's] official duties" under the CPRA. Nor does the CPRA define the term.[13]

Federal courts have defined the "official duties" of a public employee as the performance of tasks within the scope of what the employee is paid to perform by their public employer. (*Garcetti v. Ceballos* (2006) 547 U.S. 410, 422 [analyzing First Amendment issue]; *United States v. Hoy* (2d Cir. 1998) 137 F.3d 726, 729 [analyzing federal statute imposing criminal liability for assault of a federal officer while engaged in or on account of the performance of his official duties].) SPD, through CCIU and its employees, has a duty to investigate, enforce, and regulate the City's ordinances regulating the cultivation of cannabis. (CR 214 [Decl. Peletta, ¶ 2], 217 [Decl. Green, ¶ 2].)

As provided in the Sacramento City Code, the Sacramento City Council determined that illegal residential cannabis grows present "a real and imminent threat to the public health, safety, and welfare." This is because unregulated cultivation of a large number of cannabis plants on any property creates a substantial risk of violent criminal activity, as well as electrical/building code dangers, posing a significant fire hazard to neighborhoods and creating hazardous wastes and solvents that threaten the health and safety of nearby residents. (CR 12 [Sacramento City Code, chapter 8.132.060, subdivision (A)].) Thus, the City enacted a regulatory scheme regulating the cultivation of cannabis within the City to "protect the health, safety, and welfare of the residents of the city." (CR 11 [Sacramento City Code, chapter 8.132.010; see also CR 241-43 [Meredith Report, pp. 18-20] [noting that Sacramento's City Council enacted chapter 8.132 in response to documented public safety hazards and ongoing nuisance conditions in residential neighborhoods, and providing examples of these hazards and conditions].)

SPD, as the City's law enforcement department, is responsible for enforcing and investigating violations of the City's various ordinances, including the City's cannabis cultivation ordinances, codified at chapter 8.132 of the Sacramento City Code. SPD's officers

[13] The term "necessary for the performance of its official duties" appears one other time in the CPRA, but is not defined therein. (See Gov. Code, § 7928.300, subd. (a)(2).)

and employees are, in turn, responsible for discharging that official duty. (CR 214 [Decl. Peletta, ¶ 2], 217 [Decl. Green, ¶ 2].)

The information SPD requests from SMUD is necessary for the performance of SPD's official duty of investigating and enforcing the City's residential cannabis cultivation ordinances. This is both because illegal cannabis grows endanger the health and safety of the affected house's occupants and neighbors, and because there is no suitable alternative that permits SPD to otherwise timely discover illegal residential cannabis grows.

First, illegal cannabis grow houses are a major electrical fire hazard. The Sacramento City Council, in enacting Chapter 8.132, observed that numerous residences used for illegal cannabis cultivation had been unlawfully altered or converted without the required building permits or code inspections. (CR 242 [Meredith Report, p. 19].) Due to overloaded electrical systems arising from such modifications, such residences were at a significantly elevated risk of electrical fires, with one study suggesting that such structures were 24 times more likely to create a fire hazard. (CR 242 [Meredith Report, p. 19].) Exacerbating the issue, those residences were frequently modified to promote rapid spread of fire, due to openings cut into the walls and ceilings for ventilation, as well as the heat emanating from grow lights. (CR 235, 242 [Meredith Report, pp. 12, 19].)

Illegal grow houses pose other significant dangers to the residence's occupants and neighbors. Due to the volume of water circulated in the base of the cannabis plants, as well as the substances used to promote cannabis plant health and growth, these structures frequently contain mold, toxic pesticides, and residual chemical contaminants. These conditions create a significant inhalation and skin absorption risk, posing a significant danger to the health and safety to both the building occupants and their neighbors. (CR 235, 242 [Meredith Report, pp. 12, 19].) Additionally, these houses are often structurally compromised. If the structure collapses, the harmful chemicals and substances could break containment and become airborne, which could, in turn, increase the risk of harm to the public. (See CR 242 [Meredith Report, p. 19].)

Additionally, due to the monetary value of the cannabis plants grown, illegal marijuana

grow houses are common targets for violent criminal activity, such as residential burglaries and home robberies. (CR 242-43 [Meredith Report, pp. 19-20] [citing Sacramento Bee news article from August 2017, identifying 76 cannabis-related robberies and 11 fire-related incidents relating to illegal cannabis grows].) Violent criminal activity endangers not only the residence's occupants, but the entire neighborhood.

Nor is there an effective way to otherwise timely identify illegal grows before these dangers manifest. Without requesting electrical consumption information from SMUD, SPD would be unable to timely discover illegal cannabis grows as they occur. The City has yet to discover a viable alternative way to proactively investigate illegal cannabis grows. (See CR 245-48 [Meredith Report, pp. 22-25] [97% of the 575 SPD search warrants originating from SMUD requests between 2018 through 2023 resulted in seizure of illegal cannabis grows; approximately 3% of SPD's total cannabis grow investigations arose from alternative sources of information, such as calls for service and consent searches, rather than data requested from SMUD].) Absent requests to SMUD, SPD would instead react to illegal cannabis grows as they become aware of such grows, through calls for service, citizen complaints, and other similar methods of traditional policing. By that point, concerns putting the health and safety of neighboring residents at risk, such as violent crime, electrical fires, or hazardous byproducts, have likely already materialized. (CR 215 [Decl. Peletta, ¶ 7], 217 [Decl. Green, ¶ 5].)

d. Public Interest in Disclosure Clearly Outweighs the Public Interest in Nondisclosure.

The CPRA additionally requires disclosure by a public utility "*[u]pon determination by the local agency* that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure." (Gov. Code, § 7927.410, subd. (f) [emphasis added].) As an initial matter, subdivision (f) indicates that discretion lies with SMUD, *not* the City, to determine whether public interest in disclosure clearly outweighs the public interest in nondisclosure. Accordingly, the City's requests to SMUD cannot act as the basis for a writ under Code of Civil Procedure, section 1085, against the City or Lester. (See Section III.A., *supra*.)

Moreover, public interest in the information disclosed by SMUD to the City clearly outweighs public interest in nondisclosure.

Disclosure provides the City with an essential tool to enforce and investigate its own cannabis ordinances. The City, through SPD and CCIU, has a duty to investigate, enforce, and regulate the City's ordinances regulating the residential cultivation of cannabis. (CR 214 [Decl. Peletta, ¶ 2], 217 [Decl. Green, ¶ 2].) In the absence of SMUD's disclosure of this information, the City would have no effective means of regulating and investigating its own cannabis grow ordinances, which would, in turn, endanger the health and safety of Sacramento's residents. (See Section III.C.2.c, *supra*.)

The public interest in nondisclosure to the City, however, is comparatively slight. The only such public interest identified by the Petitioners is the right to privacy. But, the City requests electrical consumption information substantially similar to that which the court in *Stanley* found no reasonable expectation of privacy. (*Stanley, supra*, 72 Cal.App.4th at p. 1553-54 [no reasonable expectation of privacy in the quantity of electricity, as measured by a surveillance meter, delivered by the utility to the house].) That the City requests SMUD to further filter this information for subscribers exhibiting a 12-hour or 18-hour pattern of consumption does not meaningfully change this analysis.

Additionally, the City has tailored its request process to minimize any intrusive effects its requests have on SMUD customers. By the time CCIU law enforcement officers receive residential electrical consumption data from the City's requestor, it has already been filtered to only include high-usage SMUD subscribers exhibiting either a 12-hour or 18-hour consumption pattern. (CR 24-25 [Smith Depo., pp. 26:18 – 27:22], 43-44, 46-47 [Mendoza Depo., pp. 49:3 – 50:19; 155:3 – 156:5], 129, 207-12 [Mendoza Decl., ¶ 8, Exhs. B-D].) This final spreadsheet has yielded four entries in October 2023, nine entries in March 2024, six entries in August 2024, and nine entries in December 2024. (Petitioners' Brief at 12:4-5; CR 130, 207-12 [Mendoza Decl., ¶¶ 13-14, Exhs. B-D].) Nor does SPD seek search warrants based on placement on this spreadsheet alone. Subscribers with whom SPD has not made prior contact, and using more than 2,800 kWh but less than 8,000 kWh for the prior month, will

typically receive a warning letter. (CR 129 [Decl. Mendoza, ¶¶ 10, 12], 219 [Decl. Young, ¶ 5].) SPD will investigate further, as needed, for the remaining subscribers, and will only seek a search warrant upon development of probable cause. (CR 129 [Decl. Mendoza, ¶ 12], 219 [Decl. Young, ¶ 5].)

D. Public Utilities Code, Section 8381 is Inapplicable to the City of Sacramento.

By the plain language of the statute, the *requestor* cannot violate Public Utilities Code, section 8381. Section 8381 provides that a "local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any third party a customer's electrical consumption data, except as provided in subdivision (f) or upon the consent of the customer." (Pub. Util. Code, § 8381, subd. (b)(1).) There is *nothing* in the statute prohibiting a third party, including another public entity, from requesting electrical consumption data from a local publicly owned electric utility. Thus, section 8381 is inapplicable as to the City of Sacramento.

Finally, even if the statute *did* apply to the City's requests, the City is entitled to request and receive electrical consumption data under Public Utilities Code, section 8381, subdivision (f)(3) and Government Code, section 7927.410, subdivisions (b), (c), and (f). (See Section III.C.2, *supra*.)

IV

CONCLUSION

For the foregoing reasons, the City of Sacramento and Lester request that this Court deny the petition for writ of mandate as to the City of Sacramento and Lester.

DATED: August 21, 2025

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