

State Of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date: April 29, 2002

To: The Commission
(Meeting of May 2, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2432 (Pacheco)** – This bill would prohibit property condemning public utilities from entering the real property of another prior to the condemnation without the property owner’s written authorization unless the Commission has either issued a CPCN or “found a preadvance need” involving the property. The Commission should oppose this bill due to its lack of clarity and enforceability.

The CPUC-OGA requests a formal position by the Commission for the above Assembly Bill. Please find bill summary attached.

AB 2432 (Rod Pacheco) – Public Utilities: property: condemnation: unauthorized entry.

As Introduced

RECOMMENDATION: Oppose

SUMMARY: This bill would prohibit property condemning public utilities from entering the real property of another prior to the condemnation without the property owner’s written authorization unless the Commission has either issued a CPCN or “found a preadvance need” involving the property. The Commission should oppose this bill due to its lack of clarity and enforceability.

ANALYSIS: This bill seeks to amend PU Code sections which outline the manner in which utilities may condemn property. PU Code § 625 generally outlines the requirements and prohibitions regarding condemnation, including specifications and requirements under CEQA, hearing requirements, timelines, and exemptions. This measure adds § 627 which reads:

“ A person or corporation may not enter the real property of another person prior to condemning the property pursuant to this article without the written authorization of the property owner, unless the commission has issued a certificate of public convenience and necessity or found a preadvance need involving that property.”

COMMENTS: This addition to the code raises several issues that call for our opposition:

- As written, this measure may bar entry to property over which a utility has an easement--- the specifics of addressing this eventuality are neither in the bill nor in any existing code sections;
- In the case of some rural properties owned by someone who lives distantly, getting written authorization may be difficult if not impossible;
- The measure requires that the Commission issue a CPCN before the utility can go on the property; this has implications for conducting CEQA reviews; the environment for a project could not be evaluated prior to CPCN issuance.... If this provision were used, the Commission would be in violation of CEQA.
- It is not clear if the phrase "involving that property" relates only to the finding of preadvance need, or also to the requirement of the CPCN. If it does not refer to the CPCN, then it would not actually do anything (i.e. PG&E has a CPCN, but may not have one for a specific property).
- An additional problem is that certain projects under GO 131-D do not require a CPCN. Some things can be built with a Permit to Construct (smaller transmission lines), or with no property-specific CPCN or Permit (electric distribution lines).

As written, this bill could entirely bar entry to properties that the utility will be able to condemn, but they won't be able to go on it first, to see if it is suitable.

Finally, staff is unable to determine the meaning of the phrase "preadvance need" - what does "preadvance" mean? Is that a word? In advance of condemnation? Or in advance of issuance of a CPCN? How does the Commission go about finding a "preadvance need"?

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Date: April 29, 2002

BILL LANGUAGE

BILL NUMBER: AB 2432 INTRODUCED

BILL TEXT

INTRODUCED BY Assembly Member Rod Pacheco

FEBRUARY 21, 2002

An act to add Section 627 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2432, as introduced, Rod Pacheco. Public Utilities: property: condemnation: unauthorized entry.

Existing law authorizes specific public utilities to condemn any property necessary for the construction and maintenance of their respective public utility.

This bill would prohibit those public utilities from entering the real property of another prior to condemning the property without the written authorization of the property owner, unless the Public Utilities Commission has issued a certificate of public convenience and necessity or found a preadvance need involving the property. Because a violation of the Public Utilities Act, of which this prohibition would be included, is a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 627 is added to the Public Utilities Code, to read:

627. A person or corporation may not enter the real property of another person prior to condemning the property pursuant to this article without the written authorization of the property owner, unless the commission has issued a certificate of public convenience and necessity or found a preadvance need involving that property.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.