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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) for a Determination Under Section 851 of Whether a Condemnation of Assets by the South San Joaquin Irrigation District Would Serve the Public Interest.	Application 24-08-013

ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION OF SOUTH SAN JOAQUIN IRRIGATION DISTRICT TO DISMISS OR, ALTERNATIVELY, SUSPEND APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) FOR A DETERMINATION UNDER SECTION 851

Summary

This *Ruling* denies the *Motion of South San Joaquin Irrigation District to Dismiss or, Alternatively, Suspend Application of Pacific Gas and Electric Company (U 39 E) for a Determination Under Section 851* because the law in existence at the time in which this Application was filed vests the Commission with the authority to determine if the proposed condemnation of public utility assets is in the public interest. As such, the Commission will maintain jurisdiction over this *Application* as reflected in the scoping memo and ruling that will be filed shortly.

1. Factual and Legal Background

This proceeding has a long and complicated legal and procedural history that precedes its filing, so a brief summary of the facts and applicable law is in order as it will help to clarify the parties' legal positions. In July 2016, the South San Joaquin Irrigation District (SSJID) filed an eminent domain complaint in the San Joaquin Superior Court captioned *South San Joaquin Irrigation District v.*

Pacific Gas and Electric Company (Case No STK-CV-UED-2016—0006638 [*Eminent Domain Complaint*]) to acquire Pacific Gas and Electric Company's (PG&E) electric distribution system assets that provide retail electric service within the SSJID service territory. The lawsuit's initiation followed the SSJID's Board of Directors' adoption of a Resolution of Necessity (RON), which determined that the proposed acquisition of PG&E's assets met the statutory public interest and necessity requirements for exercising its power of eminent domain.

At the time the *Eminent Domain Complaint* was filed, there was a version of Pub. Util. Code §851 that, as interpreted by the courts, did not give the Commission the authority to question "the otherwise unrestricted power of the city to condemn public utility property under Code of Civil Procedure §1241 by requiring the consent of the commission before the superior court may enter a final judgment of condemnation." (*People ex rel. Public Utilities Commission v. Fresno* (1967) 254 Cal.App.2d 76, 82.) Thus, there would not have been a legal obligation for either SSJID or PG&E to have filed an application with the Commission for approval of the proposed condemnation of public utility property.

But in 2019, while the *Eminent Domain Complaint* was pending in San Joaquin Superior Court (and, for a while, in the Court of Appeal), Pub. Util. Code §851 was amended by Senate Bill 550 (2019 Hill), and the parties disagree about the scope of the amendments and whether the amended Section 851 applies to this *Application*. PG&E argues that the amended version of Section 851 now gives the Commission broad authority over eminent domain proceedings against public utilities and permits the Commission to conduct a public interest evaluation. SSJID disagrees and argues that the earlier version of Section 851 should apply since that was the version in effect when it made its RON and

commenced the *Eminent Domain Complaint*. But even if the amended version of Section 851 applies, SSJID contends that the Commission's right to conduct a public interest analysis does not apply to eminent domain proceedings.

Because of the change to Pub. Util. Code §851, on May 21, 2024, PG&E filed a *Motion to Stay* the *Eminent Domain Complaint*. PG&E argued that under the primary jurisdiction doctrine, the Commission should be the first to review and authorize SSJID's involuntary taking as required by Pub. Util. Code §851(a).[1] The assigned judge directed PG&E to ask if the Commission was going to conduct a review of SSJID's proposed condemnation under Pub. Util. Code §851. As part of its minute order, the court stated, "the Legislature has mandated that the Commission review and approve the proposed taking under the provisions of the Public Utilities Code Section 851 to determine whether the proposed taking served the public interest."

PG&E complied and filed A.24-08-013 (*Application*) on August 30, 2024.

On October 4, 2024, SSJID filed both a *Protest* to the *Application* and a *Motion to Dismiss the Application,* with each pleading containing the same arguments to support either the dismissal or stay of the *Application*.

On October 21, 2024, PG&E filed its *Response* to the *Motion to Dismiss* and disputed each of SSJID's positions.

[1] Primary jurisdiction is a judicially created doctrine that can be used by courts when both a court and a state agency have concurrent jurisdiction. (*Travers Indem. Co. v. Lara* (2022) 84 Cal.App.5th 1119, 1132.) Primary jurisdiction applies "when the claim is originally cognizable in the courts, [but] enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." (*Id.*)

2. Standard for Evaluating a Motion to Dismiss

The Commission has explained that "the purpose of a motion to dismiss in civil practice is that it is an exercise of the court's inherent power to prevent abuse of the judicial process," which includes preventing sham, frivolous, or vexatious causes of action and filings that are not done in good faith, or "that are in disregard of established procedural requirements, or otherwise violative of orderly judicial administration." (D.21-08-022 at 16.) The preliminary issue that must be addressed is whether "the application is properly before the Commission." (*Id.*, citing D.18-11-028 at 2.)

The Commission has recognized that a motion to dismiss before a hearing on the merits of a proceeding is a "drastic remedy, and all doubts must be resolved against the moving party." (D.21-08-022 at 13.) In addition, the Commission must assume "that the facts [but not the ultimate facts or conclusions] as alleged in the application are true for the purposes of deciding whether to grant a motion to dismiss," and "that the applicant will be able to prove everything the applicant alleged in its application." (D.23-04-005 at 14-15.) As such, a motion to dismiss should be granted only if the "outcome is a foregone conclusion *under the current law and policy of the Commission*." (D.23-04-005 at 15, italics added, citing 99-11-023 at 3 [Commission applied the current policy regarding local transmission and distribution of natural gas].) Thus, if the Commission determines that, based on the current law and policy of the Commission, the *Application* is properly before the Commission, SSJID's *Motion to Dismiss* must be denied.[2]

[2] Since we are obligated to apply the current version of the law, we reject SSJID's argument that Pub. Util. Code §851 cannot be applied retroactively to activities that occurred before its amendment. Our conclusion is not altered by the fact that SSJID previously adopted a RON for

Footnote continued on next page.

3. Discussion

3.1. The Current Version of Public Utilities Code §851 Gives the Commission the Authority to Conduct a Public Interest Review for a Pending Eminent Domain Action Against Utility Assets.

As noted above, Commission authority and practice dictate that we must apply the amended version of Pub. Util. Code §851, as this is the current version in effect when PG&E filed its *Application*. The amendment is significant to the instant dispute in the following respects: First, Pub. Util. Code §851 was changed with the addition of subpart (b), which gives the Commission the authority to determine if the change in control of utility property or assets through an eminent domain proceeding will be fair and reasonable to affected public utility employees:

> (b)(1) Subdivision (a) shall apply to any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2.
> (2) For any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2, as part of its review under subdivision (a), the commission shall determine whether the transaction is fair and reasonable to affected

its eminent domain action in 2016. But that RON did not vest SSJID with a vested interest in or right to PG&E's assets. At most, a RON creates a rebuttable presumption of necessity (*see* Code of Civil Procedure §1245.250(b)), but that presumption does not prevent the Commission from conducting its public interest analysis required by Pub. Util. Code §851. Thus, the current proceeding does not present the prospect of applying a new law retroactively to settled past transactions. Instead, it will be applied prospectively to the proceeding currently before the Commission. Under these circumstances, SSJID's retroactivity argument is factually misplaced. (*See Kizer v. Hanna* (1989) 48 Cal.3d 1, 8 ["Hanna's argument misses the point, for this case does not present a true question of retroactivity. It is undisputed that section 14009.5 affects only estates arising after the statute's effective date and that there is no legislative intent to the contrary. Because the statute affects only these estates, its application is prospective, not retroactive. "].)

> public utility employees, including both union and nonunion employees.

To determine what is meant by "any transaction," we are directed to Pub. Util. Code §854.2(b)(1)(F), which defines "change of control" of an electric or gas corporation to include:

> A voluntary or involuntary change in ownership of assets from an electrical or gas corporation to ownership by a public entity.

As the words "involuntary change in ownership" can include a change in ownership due to an eminent domain action, under the plain meaning rule that applies to matters of statutory interpretation,[3] the amended version of Pub. Util. code §851 gives the Commission the authority to, at a minimum, review a proposed eminent domain action such as SSJID's *Eminent Domain Complain*t to evaluate if it is fair and reasonable to affected public utility employees.

In addition to evaluating the effect of an eminent domain proceeding on public utility employees, the amended Pub. Util. Code §851 also gives the Commission the authority to determine if permitting the eminent domain of a public utility's assets is in the public interest. We reach this conclusion by focusing on the following portions of Pub. Util. Code §851. First, §851(b)(1) states that §851(a) shall apply to §854.2(b)(1)(F), which we have determined, above, includes eminent domain proceedings against a public utility's assets. Pub. Util. Code §851(a) prevents the sale, lease, assign, mortgage, or encumbrance of public utility property "without first having either secured an order from the commission authorizing it to do so" for a qualified transaction that meets one of

[3] Under the plain meaning rule, courts interpreting a statute begin with the plain language of the statute, "affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the legislature's enactment generally is the most reliable indicator of legislative intent." (*Heckart v. A-1 Self Storage, Inc.* (2019) 4 Cal.5th 749, 757.)

the designated financial thresholds. Historically, Commission decisions have held that the "primary standard used by the Commission to determine if a transaction should be authorized under Section 851 is whether the transaction will serve the public interest." (D.04-07-023, citing D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066 at 5; D.99-02-036 at 9; D.97-06-066, 72 CPUC 2d 851 861; *see also Hanlon v. Eshleman* (1915) 169 Cal. 200, 203 ["[a]ll that the commission is concerned with, therefore, is whether a proposed transfer will be injurious to the rights of the public. If not, the owner may be authorized to make the transfer."].) Thus, in reading Pub. Util. Code §§851(a), 851(b)(1), and 854.2(b)(1)(F) together and applying the plain meaning test, we conclude that an involuntary transfer of a public utility's assets would have to undergo a public interest analysis before the Commission can approve the transaction.

Second, our conclusion is buttressed by the language in Pub. Util. Code §851(b)(2) which directs the Commission to consider whether the transaction is fair and reasonable for affected public utility employees "as part of its review." To focus solely on the impact of utility employees would render the "as part of its review" phrase meaningless and surplusage, a result that is contrary to the rules of statutory interpretation. (*California Association of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 18, as modified on denial of reh'g (September 20, 1990), and quoting *Weber v. County of Santa Barbara* (1940) 15 Cal.2d 82, 86: ["[I]n attempting to ascertain the legislative intention, effect should be given, whenever possible, to the statute as a whole and to every word and clause thereof, leaving no part of the provision useless or deprived of meaning."]; *see also Gay Law Students Association v. Pacific Tel. & Tel. Co.* (1979 24 Cal.3d 458, 478.) The plain meaning of this phrase, supported by the canon of statutory interpretation that surplusage language must be avoided, is that "as part of its review' dictates that

the review should encompass additional considerations beyond employee impacts from a proposed eminent domain action.

In reaching this conclusion, we reject SSJID's attempt to narrow the circumstances under which the Commission can apply the public interest test. SSJID contends that Pub. Util. Code §851 applies generally to the sale of assets, and the voluntary and involuntary acquisition of utility assets described in Pub. Util. Code §854.2(b)(1)(F), like the SSJID's proposed acquisition, is not subject to the broad public interest review under Pub. Util. Code §854. Instead, SSJID asserts that only changes described in 854.2(b)(1)(D) [sale of all or a material portion of a utility's assets], and (E) [change in ownership of all or a substantial portion of the electric line of business] are subject to the broad public interest review. As we have noted above, however, when Pub. Util. Code §§851(a), (b), and 854.2(b)(1)(F) are properly construed together, the Commission is statutorily obligated to apply the public interest test to proposed eminent domain actions.

3.2. Public Utilities Code §851 Can Be Applied Before There Has Been a Completed Transaction

SSJID argues that as a prerequisite to Pub. Util. Code §851 being applied to determine the right to eminent domain, there must be a completed transaction. As support, SSJID points to the phrases "qualified transactions" in Pub. Util. Code §851(a) and "the transaction" in Pub. Util. Code §851(b). As, in SSJID's view, there will not be a transaction until there has been a condemnation and valuation in the San Joaquin Superior Court, it is premature for the Commission to invoke its authority under Pub. Util. Code §851 now.

We reject SSJID's position as being contrary to the plain language of Pub. Util. Code §851. Section (a) states that Commission permission must be obtained before the transaction is completed:

> A public utility, other than a common carrier by railroad subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, *without first having either secured an order from the commission authorizing it to do so*[.] (Italics added.)

The Commission is well within its right and duty to consider SSJID's proposed taking of PG&E's assets to determine the impact on utility employees and the general public, and has made such predeterminations in other instances. (*See* D.21-08-027 [preauthorization of the sale of PG&E's headquarters building], and D.24-05-004 [denial of proposed transfer of assets].)

3.3. Sequence for Resolving Legal and Factual Issues

Both parties spend considerable time in their pleadings on the question of whether the Superior Court or the Commission should first conduct the public interest analysis, and when the valuation should occur. SSJID points to P.21-07-012 (the CCSF Proceeding seeking the valuation of certain PG&E assets pursuant to Pub. Util. Code §§1401-1421), a proceeding that PG&E contends is not analogous to the current proceeding because the rights of the parties are being determined under a different statutory scheme. The Commission need not resolve the sequencing question or determine the relevancy of P.21-07-012 to this proceeding in this *Ruling*. Instead, such procedural issues will be addressed in the accompanying scoping memo and ruling.

IT IS RULED that:

1. SSJID's *Motion to Dismiss* is denied. First, the Commission has jurisdiction to determine if proposed eminent domain actions which seek to involuntarily transfer public utility assets is fair and reasonable to affected public utility employees. Second, the Commission's authority has been expanded to determine if proposed eminent domain actions against public utility assets are in the broader public interest, which requires the Commission to apply the public interest factors articulated in Pub. Util. Code §854.

2. The order in which this *Application* will proceed, *vis-à-vis* the *Eminent Domain Complain*t, will be determined in the scoping memo and ruling.

Dated June 6, 2025, at San Francisco, California.

/s/ ROBERT M. MASON, III
Robert M. Mason, III
Administrative Law Judge