

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 17, 2012

To: The Commission
(Meeting of April 19, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2235 (Hagman) – Public utilities: inverse condemnation.**
As introduced: February 24, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

AB 2235 would authorize an owner of property to seek compensation for any substantial reduction in the value of the property resulting from the building, expansion, or operation of a plant, line, pipeline, or other facility by a public utility. The proper owner could seek such compensation by bringing an action in inverse condemnation.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Utilities already have the power to condemn property that they do not already own that is necessary for building utility facilities. If, in doing so, they acquire only a portion of a property, they must pay damages to cover the reduction in value of the portion of the property they do not acquire. This bill, however, would require utilities to pay for reductions in property values caused by the building, expansion, or even just operation of facilities on property which they already own or over which they already have a sufficient easement. Nothing in this bill limits those who could sue for compensation to immediately adjacent property owners. All that is required is a “substantial” reduction in property value, and the term “substantial” is not defined. Thus, utilities who seek to use utility property would be subject to increased costs (that could be very large) in order to build, expand, or even just operate their facilities. In addition, utilities would likely be subject to substantial legal costs, even in defending inverse condemnation suits that they ultimately win. All of these increased costs would be passed on to the utility’s ratepayers.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Legal Division):

- 1) This bill was introduced by the Assembly member representing Chino Hills. Presumably, it was designed to deal with the situation where the CPUC has authorized Southern California Edison (SCE) to build a much larger transmission line on an easement that runs past the back yards of a number of Chino Hills residents. These homeowners are upset, and claim, among other things, that the new transmission line will decrease their property values.
- 2) It appears that SCE has owned the easement and had a transmission line in place since before these homes were built. In the last 15 years or so, this existing transmission line has been used only intermittently. In D.09-12-044 the CPUC authorized SCE to replace the existing transmission line with a new and larger transmission line running through the same easement. The City of Chino Hills (City), which owns much of the land subject to the easement, thereafter filed suit against SCE alleging, among other things, that the existing easement does not provide SCE with sufficient property rights to build the new transmission line. However, the City did not seek any money damages, only injunctive and declaratory relief against SCE. This litigation has now concluded. The City lost its case on the grounds that the relief it sought would interfere with the Commission's decision authorizing the transmission line. However, even if SCE had had to condemn additional rights in order to use the easement for the larger transmission line, it is not clear that any of the adjoining homeowners would have been entitled to any damages, because much of the land over which the easement runs is owned by the City.
- 3) In the meantime, an application for rehearing and several petitions for modification of D.09-12-044 have been filed with the Commission that seek changes to the portion of the line that runs through Chino Hills, and the Commission has stayed construction of that segment of the transmission line.
- 4) If this bill were to be enacted and the transmission line were to be built, contrary to the result under existing law, the homeowners would be able to recover from SCE, and thus from its ratepayers, any substantial decrease in property values caused by the construction or operation of the new transmission line. This would be true even if SCE needs to condemn no property at all, and even if the homeowners should have known, when they bought their homes, that there was a risk that SCE would install a larger transmission line in the easement that runs by their back yards.
- 5) Note that the bill would allow a suit for inverse condemnation by any kind of a property owner, not just a homeowner, anywhere in the state. Furthermore, nothing in the bill requires that a change in operations occurring after the enactment of the bill is necessary to bring an inverse condemnation action. The bill would only require that "operation" of a facility causes a substantial decrease in property value. Thus, under the bill, a property owner could bring an action alleging that utility

operations commenced at some time after the owner bought the property have produced a “substantial reduction in the value of the property”, subject only to whatever time limits might be imposed by the applicable statute of limitations.

- 6) The fact that property values have been falling for several years increases the litigation risks to the utilities and their ratepayers. Property owners may file claims in inverse condemnation arguing that the reduction in their property values is not due just to the falling market, but to utility activities.
- 7) Furthermore, if the property owner prevails in such a suit, or if such a suit is settled, the property owner is allowed to recover his or her attorney, appraisal, and engineering etc. costs. (Code of Civil Procedure section 1036, explicitly incorporated by reference into this bill.) This would further increase costs to the utilities and their ratepayers. The property owner may also be entitled to interest (see Code of Civil Procedure section 1268.311, explicitly incorporated by reference into this bill), but Legal Division has not yet analyzed when interest would be available, or the period over which it would be computed.
- 8) The property owner is also entitled to a jury trial on the issue of the amount of compensation, although all other issues are decided by the judge. (See 7 Witkin, California Procedure, Trial sec. 97.) Given the risks inherent in having the issue of the amount of compensation determined by a jury, utilities would be more likely to settle, rather than try, many of these cases.

PROGRAM BACKGROUND:

None.

LEGISLATIVE HISTORY:

This bill bears some resemblance to Proposition 90, which was defeated (52.4% to 47.6%) on the November 2006 ballot. That proposition would have required government entities in the state to compensate property owners for their lost property value if the government entity passed new laws or rules that resulted in substantial economic losses to their property. This bill also requires property owners to be compensated for lost value, albeit due to public utility facilities or operations, rather than due to government regulation.

Additionally, the legal risks and uncertainties created by this bill may have negative impacts on the permitting, building and operations of transmission lines needed to reach the State's clean energy and reliability goals.

FISCAL IMPACT:

None.

STATUS:

AB 2235 is scheduled to be heard before the Assembly Utilities and Commerce Committee on April 23, 2012.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Lynn Sadler, Director-OGA (916) 327-8441
Nick Zanjani, Legislative Liaison-OGA (916) 327-1418

LS1@cpuc.ca.gov
nkz@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: AB 2235 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Hagman

FEBRUARY 24, 2012

An act to add Section 610.5 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2235, as introduced, Hagman. Public utilities: inverse condemnation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The Public Utilities Act authorizes public utilities that are under the regulatory authority of the commission to condemn any property necessary for the construction and maintenance of utility services by the utility.

This bill would authorize an owner of property to seek compensation for any substantial reduction in the value of the property proximately resulting from the building, expansion, or operation of a plant, line, pipeline, or other facility by a public utility. The bill would provide that the evidentiary rules and rules of civil procedures applicable to inverse condemnation actions would apply to such an action.

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

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

SECTION 1. Section 610.5 is added to the Public Utilities Code, to read:

610.5. The owner of property make seek compensation for any substantial reduction in the value of the property proximately resulting from the building, expansion, or operation of a plant, line, pipeline, or other facility by a public utility. In any action brought pursuant to this section, the evidentiary rules and rules of civil procedures applicable to inverse condemnation actions shall apply, including Sections 1036, 1245.260, 1263.530, and 1268.311 of the Code of Civil Procedure and Section 822 of the Evidence Code.