

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - CALIFORNIA**

### **Cannara v. Nemeth**

**United States Court of Appeals, Ninth Circuit - December 30, 2021 - F.4th - 2021 WL 6141690 - 22 Cal. Daily Op. Serv. 109 - 2022 Daily Journal D.A.R. 4**

Public utility ratepayers brought action for declaratory and injunctive relief against California Public Utilities Commission (CPUC), its members, and various state government entities, alleging that California bill which established wildfire fund to help cover utility liabilities resulting from wildfires and the related surcharge proceeding initiated by CPUC violated their right to procedural due process and qualified as an unlawful taking under Fifth Amendment.

The United States District Court for the Northern District of California granted defendants' motion to dismiss for lack of subject matter jurisdiction. Ratepayers appealed.

The Court of Appeals held that:

- Ratepayers' action challenged state utility rate-making within meaning of Johnson Act, which barred federal courts from exercising jurisdiction over suits affecting state-approved utility rates, and
- CPUC's surcharge proceedings provided reasonable notice and hearing within meaning of Johnson Act, such that Act barred federal courts from exercising jurisdiction over the action as one affecting state-approved rates.

Public utility ratepayers' claims against California Public Utilities Commission (CPUC), its members, and state government entities for declaratory and injunctive relief, alleging that California bill which established wildfire fund to help cover utility liabilities resulting from wildfires and related surcharge proceeding initiated by CPUC violated their right to procedural due process and qualified as an unlawful taking, challenged state utility rate-making within meaning of Johnson Act, and thus the Act barred federal courts from exercising jurisdiction over the suit; ratepayers asked court to find unconstitutional and enjoin sections of bill which created the fund and process by which a utility could seek assistance from fund, and this relief would necessarily affect utility rates.

Surcharge proceedings initiated by California Public Utilities Commission (CPUC), which resulted in imposition of ratepayer surcharge to support wildfire fund that was created to cover utility liabilities resulting from wildfires, provided "reasonable notice and hearing" under Johnson Act, and thus Act barred federal courts from exercising jurisdiction over ratepayers' action against CPUC challenging constitutionality of surcharge and legislation that created fund, although there was no evidentiary hearing, where CPUC allowed anyone interested to become party to proceedings, circulated notice of hearing in newsletter, allowed parties to present opinions at multiple stages, allowed oral argument, accepted comments on proposed decision, and responded to those comments in final decision.

Compliance with state-law procedures in public utility rate-making proceedings is relevant in assessing whether a rate-making order was entered following "reasonable notice and hearing" within meaning of Johnson Act, for purposes of determining whether the Act bars federal court from

exercising jurisdiction over suit affecting state-approved utility rate, but it is not itself determinative because state law could provide fewer procedural protections than the Johnson Act's basic standard requires.