

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - CALIFORNIA**

### **Riverside County Transportation Commission v. Southern California Gas Company**

**Court of Appeal, Fourth District, Division 2, California - August 24, 2020 - Cal.Rptr.3d - 2020 WL 4932129 - 20 Cal. Daily Op. Serv. 9035 - 2020 Daily Journal D.A.R. 9334**

County transportation commission brought action against gas company for breach of pipeline licenses, reimbursement of gas pipeline relocation costs, trespass, quiet title, and declaratory relief. Gas company moved for summary judgment or summary adjudication, and commission cross-moved for summary adjudication of breach of licenses, reimbursement, and trespass claims.

The Superior Court granted summary adjudication in favor of gas company on claims for trespass, quiet title, and declaratory relief, summarily adjudicated reimbursement claim in favor of commission, and otherwise denied motions. Parties stipulated to dismiss remaining claims with prejudice, and after entry of final judgment, commission appealed and gas company cross-appealed.

The Court of Appeal held that:

- Transfer of property from railroad to commission included assignment of pipeline licenses;
- Gas company lacked standing to challenge assignment of licenses as defective;
- Transfer of property did not revoke licenses;
- City's street right-of-way authorized city to grant public utility franchise for gas pipeline beneath right-of-way;
- Genuine issues of material fact precluded summary judgment on trespass claims;
- Commission was acting in governmental capacity in requiring relocation of pipeline; and
- Pipeline licenses were not subject to gas company's rights as utility franchisee.

Public Utility Commission (PUC) did not have exclusive jurisdiction over dispute between gas company and county transportation commission regarding extension of rail line that required relocation of gas pipelines, where no statute provided PUC with jurisdiction over county transportation commission as public entity.

County transportation commission's voluntary dismissal, with prejudice, of its claim against gas company for breach of license agreements, after trial court granted commission's motion for summary judgment on its claim for reimbursement of utility relocation costs based on licenses, did not preclude commission's recovery on its claim for reimbursement under doctrines of res judicata or collateral estoppel; trial court's judgment was not final for purposes of res judicata or collateral estoppel while appeal was pending, and grant of summary judgment on reimbursement claim fully compensated commission for same loss underlying breach of license agreements claim, such that commission had no reason to continue pursuing breach of license agreements claim and no threat of double recovery existed.

Citation in amicus brief to provision of Civil Code governing scope of transfers, which was not contained in arguments before trial court, did not present new issue for the first time on appeal,

and, thus, Court of Appeal would consider provision in determining whether licenses were included as part of transfer or property; newly-cited statutory provision merely supported transferee's timely-asserted and thoroughly-litigated argument that licenses were included in transfer of property, rather than raising new argument altogether, and citation of case, statute, or authority that was not cited below fell squarely within role of amicus curiae.

Right under pipeline licenses to compel gas company to remove pipelines was reasonably essential to beneficial use and enjoyment of railroad property on which pipelines were placed, and, thus, transfer of property from railroad company to county transportation commission included assignment of licenses, even though agreement for transfer of property provided that property and licenses would be conveyed by separate documents, where property transferred consisted of rail line that commission intended to expand, parties to property transfer agreement did not intend to prevent licenses from transferring with property, and property transfer agreement conveyed title "subject to" licenses.

Assignment of pipeline licenses, along with conveyance of property, from railroad company to county transportation commission was voidable, not void, and, thus, gas company as third-party licensee lacked standing to challenge assignment of licenses based on any defect in assignment, where agreement for conveyance of property gave commission ongoing power to demand that railroad company complete assignment of licenses if any defect were present, and only parties to agreement had authority to ratify or extinguish assignment of licenses pursuant to agreement.

County transportation commission ratified pipeline licenses that were purportedly transferred to it along with railroad property, and, thus, transfer of property did not revoke licenses; only commission, as transferee, had authority to invoke general rule that license is revoked by conveyance of land, and commission's acceptance of benefits of licenses, including provisions allowing commission to terminate licenses and demand that licensee remove pipelines, constituted ratification.

County transportation commission's agreement to purchase property from railroad company, which provided that railroad company would give written notice of assignment of pipeline licenses associated with property, did not give gas company an enforceable right as licensee to written notice of assignment; agreement specifically stated it had no third-party beneficiaries.

Gas company's contractual duty to remove pipelines from property survived termination of license agreements, where license agreements specifically provided that gas company, as licensee, had obligation to abandon use of pipeline and remove it upon termination of license and demand of licensor.

Pipeline license agreements required gas company, as licensee, to remove pipelines at its own expense upon termination of licenses, where agreements required removal of pipelines upon termination of licenses and did not provide for any compensation for removal.

Jurisdiction of Public Utility Commission (PUC) over railroad crossings did not preclude city from granting franchises to allow gas company to run pipelines across railroad's property; constitutional provision governing local utilities regulation preserved city's right to grant franchises for public utilities as exception from PUC's otherwise-exclusive jurisdiction.

City's street right-of-way over railroad's property authorized city to grant public utility franchise to gas company to place pipeline beneath right-of-way without railroad's permission, and, thus, gas company's placement and operation of pipeline pursuant to franchise did not constitute trespass on railroad's property, where pipeline was means for transporting commodity, pipeline served public

interest, and pipeline did not unduly endanger or interfere with use of property for railroad purposes at time city granted franchise.

County transportation commission's purpose of requiring relocation of pipeline to make way for extension of existing rail line was proper governmental purpose, and, thus, commission was acting in its governmental capacity, such that it could require gas company, as utility franchisee, to bear its own costs of relocating all pipeline equipment under common law rule of franchise relocation; commission was governmental entity with authority to acquire, construct, maintain, and operate public transit systems.

Provisions in property purchase agreement and deeds conveying railroad's "right, title, and interest" in "the land" to county transportation commission subject to "all applicable laws" did not render gas pipeline licenses, which agreement required railroad to assign to commission, subject to gas company's rights as utility franchisee; commission's rights under licenses were not "land" or real property, commission's assumption of title subject to franchises did not abrogate licenses, which provided separate rights from those deriving from franchise city granted to gas company prior to gas company's entry into license agreement with railroad, and deeds and agreement did not purport to surrender commission's common law right as governmental entity to require relocation of franchise equipment.