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A Public Utility May Not Qualify as a "Public Utility" - Nossaman California Eminent Domain Report

The Refugio Oil Spill in 2015 resulted in not only impacts to a highly diverse stretch of California's coast, but also years of associated litigation. In a recent California Court of Appeal opinion, *State Lands Commission v. Plains Pipeline, L.P., No. B295632* (Nov. 19, 2020), the court held that the judicial doctrine establishing that public utilities do not owe the public a duty to provide their services continuously and without interruption did not apply to Plains Pipeline, L.P. and its affiliates (collectively, "Plains Pipeline") on the ground that despite being a public utility, it did not "deliver essential municipal services to members of the general public."

Background

The burst pipeline that led to the Refugio Oil Spill previously served as a connection between offshore facilities and refineries for a few other oil companies. As a result of the closure of the pipeline, one of the oil companies stopped production, quitclaimed its lease back to the State, and halted its royalty payments to the California State Lands Commission ("Commission"). As a result, the Commission was left with loss of royalties and alleged that upkeep and maintenance costs after the shutdown amounted to recoverable property damage. It therefore brought suit against Plains Pipeline. The trial court agreed with Plains Pipeline's argument that, as a public utility, it was exempt from liability for interruption of service based on the long-standing rule that public utilities owe no duty to provide uninterrupted service, first recognized in *Niehaus Bros. Co. v. Contra Costa Water Co.* (1911) 159 Cal. 305.

Appellate Court Opinion

The California Second District Court of Appeal reversed and instead held that Plains Pipeline was not exempt from liability because the public utility rule was not applicable. In so holding, the Court construed prior case law applying that doctrine to be limited to situations where the "utility directly serves members of the general public."

The Court held that Plains Pipeline did not qualify under the public utility doctrine because it concluded that Plains "does not deliver essential municipal services to members of the general public." This rationale was based upon the Court's belief that Plains Pipeline "transport[ed] oil to a private entity for commercial purposes." In reaching this result, the Court declined to follow a recent decision by the Ninth Circuit applying the same doctrine to bar the same tort-law claims by the oil company that had ceased operations and quitclaimed its lease back to the state. (See *Venoco, LLC v. Plains Pipeline, L.P.* (9th Cir. 2020) 814 Fed. Appx. 318.)

In making such a decision, the Court declined to recognize a blanket immunity to all public utilities for service disruptions. Instead, the Court held that merely being a public utility with rates set by a regulatory agency was insufficient for purposes of asserting immunity against liability for service disruptions – such immunity stems from the provision of "essential municipal services" to the general public.

The dissent warned that “the majority casts doubt on more than a century of cases holding public utilities exempt from liability for interruptions to service,” and “gives rise to more questions than it answers.” Thus, while seemingly narrowing the public utilities exemption, this opinion may actually result in increased litigation as parties attempt to decipher this new requirement.

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