

# **Bond Case Briefs**

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## **EMINENT DOMAIN - CALIFORNIA**

### **Robinson v. Superior Court of Kern County**

**Court of Appeal, Fifth District, California - March 2, 2023 - Cal.Rptr.3d - 2023 WL 2338102**

Investor-owned electric utility filed complaint in eminent domain seeking to condemn easement across landowner's property for purpose of accessing and maintaining existing power transmission lines.

The Superior Court granted utility's motion for order of prejudgment possession. Landowner petitioned for writ of mandate.

The Court of Appeal held that:

- Utility was a "public utility" to which right of eminent domain could extend;
- Utility was not a "public entity" which would be required, pursuant to Eminent Domain Law, to adopt a resolution of necessity before initiating suit to condemn property;
- Utility was not required to obtain approval of its regulator before instituting eminent domain action;
- A "public agency," as would be required to comply with the California Environmental Quality Act (CEQA) before commencing an eminent domain action, does not include investor-owned public utilities;
- As a matter of first impression, a nonpublic entity is "entitled to take the property by eminent domain," as could support order for prejudgment possession of property pursuant to "quick take" procedure, when the plaintiff establishes it is statutorily authorized to exercise power of eminent domain and proves by preponderance of evidence that all the requirements of statute setting out general limitations on exercise of eminent domain are met; and
- As a matter of first impression, trial court was required to make explicit findings as to whether all requirements of statute setting out general limitations on exercise of eminent domain were met when granting motion for order of prejudgment possession.

Investor-owned electric utility was a "public utility" to which right of eminent domain could extend so as to allow utility to condemn easement across landowner's property for purpose of accessing and maintaining existing power transmission lines, where transmission lines were part of an electrical plant, and utility was an electrical corporation.

Investor-owned electric utility was not a "public entity" which would be required, pursuant to Eminent Domain Law, to adopt a resolution of necessity before initiating suit to condemn easement on landowner's property for purpose of accessing and maintaining existing power transmission lines, even though utility was a "public utility" to which right of eminent domain could extend; utility was not a political subdivision.

Investor-owned public electric utility was not required to obtain approval of its regulator, the California Public Utilities Commission (CPUC), before instituting action to condemn easement on landowner's property for purpose of accessing and maintaining existing power transmission lines, where easement was not sought for competitive purposes.

A “public agency,” as would be required to comply with the California Environmental Quality Act (CEQA) before commencing an eminent domain action, does not include investor-owned public utilities.

A nonpublic entity is “entitled to take the property by eminent domain,” as could support order for prejudgment possession of property pursuant to “quick take” procedure, when the plaintiff establishes it is statutorily authorized to exercise power of eminent domain and proves by preponderance of evidence that all the requirements of statute setting out general limitations on exercise of eminent domain are met.

Trial court was required to make explicit findings as to whether all requirements of statute setting out general limitations on exercise of eminent domain were met, when granting investor-owned electric utility’s motion for order of prejudgment possession pursuant to “quick take” procedure in utility’s action to condemn easement across landowner’s property for purpose of accessing and maintaining existing power transmission lines; property rights being taken from landowner were significant, potential adverse effects, including widening of existing roadway to 16 feet, were substantial and not quickly remediated, and utility’s original moving papers did not acknowledge necessity of findings that statutory requirements were satisfied.

Evidence was insufficient to support any implied finding that easement sought to be condemned by investor-owned electric utility to access and maintain existing power transmission lines, in form of roadway 16 feet in width, satisfied condemnation requirement of necessity, as would be required to support utility’s motion for order of prejudgment possession pursuant to “quick take” procedure; declaration of utility’s employee implied that existing roadways would provide adequate access to transmission lines since those roadways had been used in past, and declaration of utility’s real estate advisor stated that a 16-foot wide access easement was the most feasible method of access but did not provide any facts to support that opinion.