EMINENT DOMAIN - CALIFORNIA

Pacific Gas and Electric Company v. Superior Court of San Joaquin County

Court of Appeal, Third District, California - September 21, 2023 - Cal.Rptr.3d - 2023 WL 6156238

Irrigation district brought eminent domain action to acquire a portion of electric utility's electric distribution system that was within district's service territory in order to provide its own retail electric service.

The Superior Court confirmed an earlier order of the Superior Court concerning standard of proof to be applied at trial. Utility petitioned for writ of mandate.

The Court of Appeal held that:

- Utility could raise objection to the taking on grounds that were separate from validity of district's resolution of necessity, and
- Separation of powers doctrine did not require judicial deference to district's resolution of necessity.

Extraordinary circumstances existed for mandamus review of the substance of two superior court orders regarding standard of proof to be applied at trial on irrigation district's right to take a portion of electric utility's electric distribution system under Eminent Domain Law, even though the first order was filed six years earlier, where a timely petition for writ of mandate was previously filed with respect to first order, that petition was only dismissed because it was then moot, current writ petition was timely as to second order, and, to the extent the second order was erroneous, it was erroneous because it attempted to incorporate an erroneous and incompatible earlier ruling.

Electric utility did not have to show that irrigation district grossly abused its discretion or that the findings in district's resolution of necessity were not supported by substantial evidence in order to challenge district's right to take a portion of utility's electric distribution system that was within district's service territory for purposes of providing its own retail electric service; utility simply was required to prove that one of the public necessity elements or the "more necessary public use" element was not true by the preponderance of the evidence.

Question of necessity of the taking of a public utility's property was made a judicial question by statute, and therefore the separation of powers doctrine did not require judicial deference to irrigation district's resolution of necessity when court was resolving electric utility's challenge to the public necessity elements or the "more necessary public use" element for district's proposed taking of a portion of utility's electric distribution system that was within district's service territory for purposes of providing its own retail electric service.

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