



Southern California Edison Company (SCE), a privately-owned public utility, sought to condemn an easement across existing roads on private property in order to service its existing overhead transmission lines. It obtained an order of prejudgment possession, which the landowner challenged. The court held that SCE had the power to condemn, that it was not required to adopt a resolution of necessity, that approval from the California Public Utilities Commission (CPUC) was not required, and that SCE was not a public agency and therefore not subject to CEQA. It further ruled that the trial court erred by failing to adopt specific findings regarding each of the prerequisites for condemnation. *Robinson v. Superior Court of Kern County*, 88 Cal.App.5th 1144 (2023).

The appellate court first confirmed that an investor-owned public utility has the power to condemn any property necessary to the construction and maintenance of its electric plant, which includes transmission lines. It then

ruled that only government agencies, and not privately-owned public utilities, are required to adopt resolutions of necessity before pursuing condemnation. However, while resolutions of necessity conclusively establish certain prerequisites for condemnation, a decision by a privately-owned entity to pursue condemnation does not. Accordingly, "the interests of property owners are protected by requiring the nonpublic entity to prove in court by a preponderance of the evidence that [the prerequisites for condemnation] are satisfied." The court also held that SCE was not required to obtain CPUC approval for the condemnation. The court discussed statutory provisions that refer to CPUC approvals only with respect to companies that offer competitive services when easements are condemned for the purpose of competing with another entity in offering those competitive services. It agreed with SCE that "in the narrow context of this case – that is, the condemnation of an easement for existing transmission lines" – no CPUC approval was required."

The court then addressed CEQA and confirmed that investor-owned entities are not required to comply with CEQA. Because no CPUC approval was required, there was no project proposed to be carried out or approved by a public agency. Accordingly, CEQA did not apply. The court noted, however, that environmental effects must be considered by the trial court "when evaluating whether the project is planned or located so it will be most compatible with the greatest public good and the least private injury . . . and, if applicable, when evaluating the relative hardships. . . ." "The procedural requirements for condemnation by a private entity were also major issues in of the case.

Of particular interest was the requirement that a party seeking prejudgment possession establish its entitlement to take the property. When the condemning party is a private entity, this means it must establish that it is authorized by statute to exercise the power of eminent domain; that public interest and necessity require the project; that the property is necessary for the project, and that the project is planned and located to be most compatible with the greatest public good and least private injury. The trial court had not made any express findings regarding these issues. The appellate court could not infer findings because the record did not contain substantial evidence that necessity required that the roadway easement to be 16 feet wide, that the 50-foot wide easement under the transmission lines be cleared, or that SCE have the right to move or relocate guy wires and anchors, crossarms, and other physical fixtures. The appellate court therefore vacated the order of prejudgment possession and directed the trial court to conduct further proceedings.

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