CEQA Does Not Apply To Investor-Owned Public Utility's Exercise Of Power Of Eminent Domain To Acquire Electric Facilities Maintenance Easement

By Arthur F. Coon on April 19, 2023

In a published opinion filed March 2, 2023, the Fifth District Court of Appeal held that where no governmental approvals were required, an investor-owned public utility was not required to comply with CEQA prior to exercising its eminent domain power by filing an action to condemn a maintenance/access easement in connection with its existing electrical power transmission facilities located on and traversing private property. *Robinson v. Superior Court of Kern County* (5th Dist. 2023) 88 Cal.App.5th 1144. While most of the opinion involved eminent domain issues irrelevant to this blog, the pertinent issue here is a simple definitional one: CEQA applies only to "discretionary projects proposed to be carried out or approved by public agencies" (Pub. Resources Code, § 21080(a)), and CEQA's definition of "public agency" includes only state agencies, boards and commissions, and local and regional agencies. (Pub. Resources Code, § 21063; CEQA Guidelines, § 15379.)

Investor-owned public utilities are not included in the definition, and because under the circumstances of the case the utility (Southern California Edison Company) was not required to obtain an approval from the CPUC or any other public agency to carry out its project, CEQA didn't apply. (*Robinson*, 88 Cal.App.5th at 1163.) The Court noted that this did not mean the proposed easement's environmental impacts would escape scrutiny, however, since the Eminent Domain Law requires a superior court to determine in the condemnation action whether the project is planned or located so as to be compatible with the greatest public good and least private injury. (*Id.*, citing Code Civ. Proc., §§ 1240.030(b), 1255.410(d)(2).)

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