

Introduced by Senator Ashburn

February 27, 2009

An act to amend Section 625 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 814, as introduced, Ashburn. Public utilities: eminent domain.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes certain public utilities to condemn property, as prescribed, but prohibits specified public utilities that offer competitive services from condemning any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds, pursuant to a petition or complaint filed by the public utility, in accordance with specified provisions that such an action would serve the public interest.

This bill would provide that specified notice requirements do not apply to a condemnation eminent domain action brought by a public utility consistent with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 625 of the Public Utilities Code is
- 2 amended to read:
- 3 625. (a) (1) (A) For the purpose of this article, except as
- 4 specified in paragraph (4), a public utility that offers competitive
- 5 services may not condemn any property for the purpose of
- 6 competing with another entity in the offering of those competitive

1 services, unless the commission finds that such an action would
2 serve the public interest, pursuant to a petition or complaint filed
3 by the public utility, personal notice of which has been served on
4 the owners of the property to be condemned, and an adjudication
5 hearing in accordance with Chapter 9 (commencing with Section
6 1701), including an opportunity for the public to participate.

7 (B) The requirements of this section do not apply to the
8 condemnation of any property that is necessary solely for an
9 electrical ~~company~~ *corporation* or gas corporation to meet its
10 commission-ordered obligation to serve. Proposed exercises of
11 eminent domain by electrical or gas corporations that initially, or
12 subsequently, acquire property for either commission-ordered
13 electrical corporation obligation to serve and competitive
14 telecommunications services or gas corporation obligation to serve
15 and telecommunications services are subject to paragraph (2) of
16 subdivision (b). For property acquired through the exercise of
17 eminent domain after January 1, 2000, by an electrical or gas
18 corporation solely to meet its commission-ordered obligation to
19 serve, any electrical or gas corporation, or subsidiary or affiliate,
20 that intends to install telecommunication equipment on the property
21 for the purpose of providing competitive telecommunications
22 services shall provide notice for the planned installation in the
23 commission calendar.

24 (2) (A) Before making a finding pursuant to this subdivision,
25 the commission shall conduct the hearing in the local jurisdiction
26 that would be affected by the proposed condemnation. The hearing
27 shall commence within 45 days of the date that the petition or
28 complaint is filed, unless the respondent establishes that an
29 extension of not more than 30 days is necessary for discovery or
30 other hearing preparation. The commission shall provide public
31 notice of the hearing pursuant to the procedures of the commission
32 and shall also notify the local jurisdiction. In addition, the
33 commission shall provide the local jurisdiction with copies of the
34 notice of hearing in time for the local jurisdiction to mail that notice
35 at least seven days in advance of the hearing to all persons who
36 have requested copies of the local jurisdiction's agenda or agenda
37 packet pursuant to Section 54954.1 of the Government Code.

38 (B) For purposes of subparagraph (A), "local jurisdiction" means
39 each city within whose boundaries property sought to be taken by
40 eminent domain is located, and if property sought to be taken is

1 not located within city boundaries, each county within whose
2 boundaries that property is located. However, where there is more
3 than one local jurisdiction with respect to a single complaint or
4 petition, the commission shall provide notice and copies of notices
5 for mailing to all local jurisdictions involved, but shall hold only
6 a single hearing in any one of those local jurisdictions.

7 (3) (A) The assigned commissioner or administrative law judge
8 shall render a decision on making a finding in accordance with
9 this subdivision within 45 days of the conclusion of the hearing,
10 unless further briefing is ordered, in which event this period may
11 be extended by up to 30 additional days to allow for briefing.

12 (B) If the rendering of a decision pursuant to this subdivision
13 requires review under the California Environmental Quality Act
14 (Division 13 (commencing with Section 21000) of the Public
15 Resources Code), then the time limits contained in subparagraph
16 (A) of paragraph (2) and subparagraph (A) of *this* paragraph ~~(3)~~
17 shall be extended as needed to accommodate that review.

18 (4) This subdivision and Section 626 do not apply to a railroad
19 corporation, a refined petroleum product common carrier pipeline
20 corporation, or a water corporation.

21 (b) The commission may make a finding pursuant to subdivision
22 (a) if, in the determination of the commission, either of the
23 following conditions is met:

24 (1) The proposed condemnation is necessary to provide service
25 as a provider of last resort to an unserved area, except when there
26 are competing offers from facility-based carriers to serve that area.

27 (2) The public utility is able to show all of the following with
28 regard to the proposed condemnation:

29 (A) The public interest and necessity require the proposed
30 project.

31 (B) The property to be condemned is necessary for the proposed
32 project.

33 (C) The public benefit of acquiring the property by eminent
34 domain outweighs the hardship to the owners of the property.

35 (D) The proposed project is located in a manner most compatible
36 with the greatest public good and least private injury.

37 (c) The commission shall develop procedures to facilitate access
38 for affected property owners to eminent domain proceedings
39 pursuant to this section, and to facilitate the participation of those
40 owners in those proceedings.

1 ~~(d) Nothing in this section relieves a public utility from~~
2 ~~complying with Section 1240.030 of the Code of Civil Procedure~~
3 ~~or any other requirement imposed by law.~~

4 ~~(e)~~

5 *(d) (1) A public utility that does not comply with this section*
6 *may not exercise the power of eminent domain, including, but not*
7 *limited to, any authority provided by Title 7 (commencing with*
8 *Section 1230.010) of Part 3 of the Code of Civil Procedure.*
9 *Nothing in this section relieves a public utility from complying*
10 *with Section 1240.030 of the Code of Civil Procedure or any other*
11 *requirement imposed by law. The authority provided in this section*
12 *supplements, and does not replace or otherwise affect any other*
13 *limitation in law on the exercise of the power of eminent domain,*
14 *including, but not limited to, any authority provided by Title 7*
15 *(commencing with Section 1230.010) of Part 3 of the Code of Civil*
16 *Procedure.*

17 *(2) Notwithstanding paragraph (1), the requirements of*
18 *subdivision (b) of Section 1255.410 of the Code of Civil Procedure*
19 *do not apply to a condemnation eminent domain action brought*
20 *by a public utility consistent with this section.*

21 ~~(f) The authority provided in this section supplements, and does~~
22 ~~not replace or otherwise affect any other limitation in law on the~~
23 ~~exercise of the power of eminent domain, including, but not limited~~
24 ~~to, any authority provided by Title 7 (commencing with Section~~
25 ~~1230.010) of Part 3 of the Code of Civil Procedure.~~

26 ~~(g)~~

27 *(e) (1) At the request of a public utility gas corporation, the*
28 *commission shall hold the local hearing required in subparagraphs*
29 *(A) and (B) of paragraph (2) of subdivision (a) and make and*
30 *certify the finding required by paragraph (1) of subdivision (a) as*
31 *part of the procedure to issue a certificate of public convenience*
32 *and necessity.*

33 *(2) Notwithstanding any other provision of law, if the*
34 *commission holds public hearings during the certification*
35 *procedure for the purpose of making the determination required*
36 *under paragraph (2) of subdivision (b), the commission shall have*
37 *an additional 45 days beyond the date of any otherwise applicable*
38 *statutory or regulatory deadline for making a determination.*

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