

Commission accepts Woolsey judge's invitation to file amicus

3-4 minutes

The California Public Utilities Commission accepted a judge's invitation to weigh in on whether plaintiffs can proceed on inverse condemnation liability as a cause of action against Southern California Edison Co., which is facing thousands of lawsuits stemming from a 2018 wildfire.

Edison challenged inverse condemnation liability, like every other utility in the state facing wildfire claims.

CPUC said after conferring with legal counsel, the five-member regulatory body unanimously agreed to submit an amicus brief in litigation over the Woolsey fire, according to a letter submitted to Los Angeles County Judge William F. Highberger. Woolsey Fire cases, JCCP 5000.

CPUC has until Dec. 13 to file its amicus.

"Southern California Edison appreciates the CPUC's willingness to submit an amicus brief on this significant legal issue," Edison's spokesman Robert Villegas said Monday.

Edison filed a demurrer months ago that turned into a motion for judgment on the pleadings. The utility challenged inverse condemnation claims pursued by plaintiffs.

Under inverse condemnation law, utilities providing a public service are held responsible for damages incurred on private properties caused by wildfires. It is based on a no-fault theory, which means plaintiffs don't have to prove negligence or fault to recover costs.

If Highberger grants Edison's motion, plaintiffs' counsel can appeal. While it is pending, inverse condemnation can proceed as a cause of action when the case goes to trial.

Highberger postponed his ruling on Edison's motion for months — at one point even awaiting the U.S. Supreme Court's action on a petition filed by San Diego Gas & Electric Co. The San Diego utility challenged CPUC's decision disallowing it to spread \$379 million of uninsured wildfire liabilities to ratepayers linked to a trio of 2007 fires.

CPUC's decision Monday to weigh in via amicus in Woolsey is a different course from when it originally declined to respond to SDG&E's petition in May, until the U.S. Supreme Court ordered it to do so.

Individual plaintiffs' counsel and Edison have battled in the last several status conferences over whether CPUC's input on California law was necessary. Plaintiffs asserted CPUC has no role advising Highberger on the law and pointed to *Barham v. Southern California Edison Co.* 1999

DJDAR9119 to bolster its position. The Barham court ruled strict liability for inverse can apply to investor-owned utilities.

Edison's counsel from Hueston Hennigan LLP contended CPUC's insights would help the court get it right.

Edison, SDG&E and Pacific Gas & Electric Co. have lobbied the Legislature over the past few years to change inverse condemnation law. The utilities say the law is unconstitutional because they are barred from socializing liabilities via rate hikes because they are privately-owned companies.