

**Appendix A. Information for Property Owners, Utilities, and
the Public Regarding Senate Bill 177
(Effective January 1, 2000)**

**INFORMATION FOR PROPERTY OWNERS, UTILITIES,
AND THE PUBLIC REGARDING SENATE BILL 177
(EFFECTIVE JANUARY 1, 2000)**

**(CALIFORNIA PUBLIC UTILITIES COMMISSION REVIEW OF
PROPOSED EMINENT DOMAIN ACTIONS BY PUBLIC UTILITIES
WISHING TO CONDEMN PROPERTY IN ORDER TO
OFFER COMPETITIVE SERVICES)**

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INTRODUCTION

This manual is intended to provide general information to property owners, public utilities, and the public about Senate Bill 177 (SB 177) and the California Public Utilities Commission's procedures for implementing this new law. Anyone who has questions about these procedures, or who would like more information, is welcome to contact the Commission Public Advisor's Office as follows:

San Francisco

Public Advisor's Office
Room 5303
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2074
Email: public.advisor@cpuc.ca.gov

Los Angeles

Public Advisor's Office
Room 500
320 W. 4th Street
Los Angeles, CA 90013
Phone: (213) 576-7055
Email: public.advisor.la@cpuc.ca.gov

Interested persons may also obtain a copy of the Commission's Rules of Practice and Procedure and other helpful materials from the Commission Public Advisor's Office free of charge. These rules, plus additional information and the Commission's complaint form for SB 177, are available on the Commission's website at www.cpuc.ca.gov.

The information in this manual is not legal advice. Therefore, property owners, public utilities, and members of the public who have legal questions regarding their specific situations are encouraged to consult an attorney.

OVERVIEW OF SENATE BILL 177

SB 177 adds a new section 625 to the California Public Utilities Code. Beginning on January 1, 2000, SB 177 requires certain public utilities that wish to condemn property for the purpose of offering competitive services to first file a complaint with the California Public Utilities Commission asking the Commission to find that the proposed condemnation would be in the public

interest. This law applies to the condemnation of both private and public property.

The Commission is then required to conduct a hearing on the proposed condemnation of property by the public utility. The hearing includes both the presentation of evidence by the public utility, the property owner, and any other parties, and an opportunity for public participation.

If, after conducting the hearing, the Commission finds that the proposed condemnation would serve the public interest, the public utility may then file an eminent domain action in superior court to condemn the property. However, if the Commission finds that the proposed condemnation would not serve the public interest, the public utility may not file a superior court action to condemn the property, unless an appellate court overturns the Commission's decision.

If the Commission finds in favor of the public utility, and the public utility wins an eminent domain action in superior court, the court will generally require the public utility to pay the property owner the fair market value of the property condemned. However, the Commission's decision on the complaint will address only whether the proposed condemnation would be in the public interest, and not the value of the property. The amount to be paid to the property owner for the property will be determined in the superior court action.

APPLICABILITY OF SENATE BILL 177

SB 177 generally applies to public utilities, such as telephone, gas, and electric companies that wish to condemn property in order to offer competitive services. SB 177 does not apply to:

- railroads
- water corporations
- refined oil pipeline corporations

- electrical or gas companies when they are condemning property only in order to meet their Commission-ordered obligations to serve.

FILING AND SERVICE OF COMPLAINT

Public utilities that wish to condemn property for the purpose of offering competitive services should file a complaint, using the Commission's complaint form for SB 177 proceedings, with the Commission Docket Office in San Francisco.

Utilities must serve the complaint on:

- the property owner;

Utilities should also serve the complaint on:

- any occupants of the property (if other than the owner);
- other persons who have a legal interest in the property, such as an easement or a deed of trust;
- the owners of adjacent or bordering properties and other properties located within 300 feet of the property to be condemned;
- both the city and the county in which the property is located (each city and each county if the property is located within more than one jurisdiction);
- other public agencies that would be affected by the condemnation, such as special districts which provide services to the property (You may obtain information about the applicable special districts from the County Assessor's Office); and
- other public utilities or entities that are offering or proposing to offer, in the same geographic area, the type of service for which the public utility is seeking to condemn the property.

TIMELINES FOR ANSWERS TO COMPLAINTS AND COMMISSION HEARINGS AND DECISIONS

1. Filing of Answer by Property Owner Within 30 Days

A property owner or any other defendant served with a complaint under SB 177 must generally file a written answer with the Commission's Docket Office in San Francisco within 30 days of the date on which the public utility's complaint was served. In the answer, the property owner or other defendant may admit or deny statements made in the complaint. The property owner or other defendant should also state any defense or otherwise raise issues regarding the condemnation if the property owner or defendant does not agree that the property should be condemned.

Under some circumstances, a property owner or defendant may obtain an extension of time in which to answer the complaint. To apply for an extension of time, property owners and any other defendants are advised to confer with the Public Advisor's Office in San Francisco or Los Angeles as soon as possible after receiving the complaint.

2. Timelines for Commission Hearings and Decisions

SB 177 requires the Commission to set hearings and make decisions on these complaints within very short timelines. These timelines may be extended as necessary if the public utility's proposed condemnation or project requires review under the California Environmental Quality Act (CEQA).

The Commission generally must hold a hearing in the city or, if the property is located in unincorporated county territory, the county in which the property is located, within 45 days of the filing of the complaint. However, property owners or any other persons named as a defendants in the case may request a postponement of the hearing for up to 30 additional days if they need

extra time to prepare for the hearing or to engage in discovery, i.e., obtain more information about the proposed condemnation from the public utility.

Property owners and other defendants who wish to apply for an extension of time and need assistance should confer with the Public Advisor's Office in San Francisco or Los Angeles as soon as possible.

After the conclusion of the hearing, the Presiding Officer, who will be either an Administrative Law Judge (ALJ) or a Commissioner, must issue a written decision, which is called the Presiding Officer's Decision (POD), within 45 days. The Presiding Officer may extend this time for up to 30 days to obtain briefs from the public utility, the property owners, and other parties.

HOW DOES THE COMMISSION DETERMINE WHETHER THE CONDEMNATION OF PROPERTY BY A UTILITY IS IN THE PUBLIC INTEREST?

1. The Two Legal Standards for Determining Whether the Condemnation of Property is in the Public Interest – “Provider of Last Resort” and “The Four Part Test”.

Under SB 177, for the Commission to find that a proposed condemnation of property by a public utility is in the public interest, one of the following two standards must be met, either:

A. “Provider of Last Resort”.

The condemnation must be necessary to provide utility service to an unserved area as a provider of last resort, when there are no competing offers to provide service from facility-based carriers.

Or:

B. “The Four Part Test”.

The public utility must show all of the following:

- a. The public interest and necessity require the proposed project; and
- b. The property to be condemned by the public utility is necessary for the proposed project; and
- c. The public benefit of condemning the property outweighs the hardship to the property owner; and
- d. The proposed project is located in a manner most compatible with the greatest public good and the least private injury.

Items B.a through B.d use legal terms. These terms are similar to those used in certain sections of the State Eminent Domain Law. The Commission will determine whether the standards contained in Items B.a through B.d have been met based on the facts in each case and the applicable law.

However, the following information is presented to help public utilities, property owners, and other parties prepare to address Items B.a through B.d at the hearing:*

2. Explanation of the Four-Part Test

A. The Public Interest And Necessity Require The Proposed Project

This requirement may be interpreted to mean that in order for the public utility to condemn the property to offer competitive services, the public utility's project, including its operations at the property in offering the

* This general information has been prepared by Commission staff and is based on Legislative Committee Comments to certain sections of the State Eminent Domain Law and court decisions interpreting the State Eminent Domain Law. It is possible, however, that the Commission or the courts will interpret the requirements of SB 177 differently, based on its specific language and legislative history, or the facts of a particular case. Again, persons seeking advice regarding a particular case should consult an attorney.

competitive services, must contribute to the “good” of the community. In making this determination, the Commission may consider a number of factors including, but not limited to:

- the social and economic effects of the public utility’s project, including its use of the property for offering competitive services in the area, such as the following examples:
 - Is the utility service already provided adequate to serve the community?
 - Would having an additional provider of the utility service benefit the community in any way (such as a broader selection of services, better customer service, the addition of new jobs, lower prices due to competition, etc.)?
 - Would the competitive services to be provided by the public utility be available to the community as a whole, a number of persons in the community, or only a few persons?
- The environmental effects of the public utility’s project, including its use of the property for offering competitive services.
- The effect of the public utility’s project, including its use of the property for offering competitive services, on the appearance of the property, neighboring properties, and the community.

B. The Property Proposed To Be Condemned By The Public Utility Is Necessary For The Proposed Project

This requirement may be interpreted to mean that the public utility must prove that it has a real need to condemn the property to provide competitive services. In order for the property to be necessary for the provision of competitive services, the property must be suitable as the site for the public utility's use in offering the services.

The public utility should also show that it is necessary to condemn the particular interest in the property that the public utility is attempting to acquire, such as outright ownership, a lease, or an easement, to offer the services.

For example, public utilities, property owners, and other parties may wish to address issues such as:

- Is there a reasonable way for the public utility to provide competitive service without condemning the property (such as using existing facilities, selecting another site, etc.)?
- Is the property to be condemned suitable for use by the public utility in offering the competitive services, in view of its location, topography, existing buildings, environmental conditions, etc.?
- Could the public utility condemn less property and still provide the competitive services?
- Could the public utility condemn a lesser interest in the property (such as an easement rather than outright ownership) and still provide the competitive services?
- Is the public utility attempting to condemn the property in order to meet current or future needs for the competitive service?
- If the public utility is attempting to condemn the property in order to meet future needs for service, when is the need expected to arise?
- If the public utility is attempting to condemn the property in order to meet future needs for service, is there evidence that a new or increased need for this service will arise in the future? (For example, will there be a new or increased need for service based on planned growth in the community, etc.?)

C. The Public Benefit Of Acquiring The Property By Eminent Domain Outweighs The Hardship To The Owner Of The Property

Under this requirement, the Commission will weigh the evidence presented at the hearing to determine whether the benefit to the public that would result from the public utility's condemnation of the property in order to offer competitive services is greater than the hardship to the property owner.

For example, at the hearing, public utilities and property owners may wish to address issues such as:

- Would the condemnation of the property for use by the public utility in providing competitive service result in any benefit to the public (such as increased or better service, lower prices due to competition, the addition of new jobs, etc.)?
- What problems (if any) would the property owner face if the property were condemned?
- Would the public utility's condemnation and use of part of the property interfere with the property owner's use and enjoyment of the rest of the property?
- Would the public utility's condemnation of the property require the property owner to relocate a home or business located on the property?

D. The Proposed Project Is Located In A Manner Most Compatible With The Greatest Public Good And The Least Private Injury

To satisfy this requirement, a public utility may need to analyze several possible sites for the public utility's operations in offering the competitive services. In order for the public utility to be able to condemn property, the public utility's project, including its operations in offering competitive services, must be located on a site that will benefit the public the most, and cause the property owner the least possible harm.

The public utility's choice of the property to be condemned may be considered correct unless the condemnation and use of another property by the public utility would result in a greater or equal benefit to the public and less harm to the property owner. However, the public utility may not be required to select another property if the condemnation and use of the other property in offering competitive services would result in less benefit to the public.

For example, at the hearing, public utilities and property owners may wish to address issues such as:

- The cost of the various properties considered for acquisition (if the cost of the property will affect the cost of service to the public)
- The convenience of the various properties considered as the site for use by the public utility and (if the site will be used by customers) the public
- The environmental effects of the public utility's use of the various properties considered for acquisition
- The effect of the public utility's use of the various properties considered for acquisition on the appearance of the properties, the neighborhoods, and the community
- Are there other properties in the area that would be better sites for the public utility's use in offering the competitive services than the property that the public utility is seeking to acquire?
- If yes, how would the public utility's possible condemnation and use of one of the other properties benefit the public, as compared to the property that the public utility is attempting to condemn?

COMMISSION HEARINGS ON CONDEMNATION COMPLAINTS

1. Time and Place of Hearings; Presiding Officer at Hearings

Commission hearings on complaints filed by public utilities to condemn properties are "adjudicatory" hearings under the Commission's rules. These hearings generally will be held before a Presiding Officer (who will be either an Administrative Law Judge (ALJ) or the assigned Commissioner) in the city in which the property that the public utility wishes to condemn is located. If the property is located in an unincorporated area, the hearing will generally be held in the applicable county.

2. Notice of Hearings

The Commission will give written notice of the date, time, and place of the hearing to the public utility, the property owner, and other parties. The city or county in which the property is located will notify the persons who have previously requested notice of the city's or county's meetings of the date, time, and place of the hearing at least seven days in advance.

3. Hearing Procedure

Public utilities, property owners, and other parties may be represented by attorneys at the hearing or may represent themselves. The hearing will include 2 parts:

- The presentation of evidence on the issues raised in the complaint and the answer by the public utility, property owner and other parties (the evidentiary hearing);
- Public participation, i.e., comments from members of the public who are not parties to the case (the public participation hearing).

4. Tips on Preparing Cases for Hearing

In preparing cases for hearing, public utilities, property owners and other parties should remember that:

- The Commission is interested in knowing facts which are relevant to whether the condemnation of the property is in the public interest (See pages 7-12 of this manual).
- The Commission encourages parties to prepare and serve written testimony in advance of a hearing. Prepared written testimony is often clearer than direct testimony from the witness stand. If prepared testimony is used, the hearing generally consists of cross-examination of the witnesses sponsoring the prepared testimony. A question and answer format may be used for any testimony (either oral or in writing).
- The Commission Public Advisor's Office is available to help answer any procedural questions.

At the hearing, the public utility, property owner and other parties must present evidence, such as oral or written testimony or documents which may be admitted into evidence at the hearing, to support their positions or to show that the evidence presented by the other parties is incorrect.

PUBLIC PARTICIPATION AND INTERVENTION

SB 177 hearings conducted by the Commission will include a time for members of the public, who are not parties or witnesses for parties in the case, to speak about their concerns and opinions as related to the proposed condemnation of the property. The Presiding Officer may place a limit on the time that each person is allowed to speak.

Members of the public who have factual information about the proposed condemnation, as opposed to opinions or concerns, and who want the Commission to consider this information as evidence should contact the Public Advisor's Office to find out how to participate in the evidentiary hearing. Persons who testify regarding factual information at the evidentiary hearing may be cross-examined by the other parties.

Members of the public who wish to present evidence about the proposed condemnation but are not called as witnesses by the public utility, the property owner, or another party must "intervene," i.e., become parties in the case, to participate in the evidentiary hearing. Persons who would like more information about the procedures for intervening in a case should contact the Commission Public Advisor's Office as soon as possible.

Persons who wish to intervene in a case may obtain the following materials from the Commission Public Advisor's Office free of charge:

- A copy of the complaint filed by the public utility
- A copy of the Guide for PUC Intervenors, published by the Commission Public Advisor's Office

- A copy of the Commission's Rules of Practice and Procedure

INTERVENOR COMPENSATION

An interested person who intervenes in a case may be eligible for intervenor compensation, i.e., reimbursement of the costs of participation in the case, if:

- A financial hardship would otherwise prevent the intervenor's participation,
- The intervenor files a required Notice of Intent to Claim Compensation with the Commission within 30 days of the prehearing conference (if any) or as directed by the Presiding Officer,
- The intervenor makes a substantial contribution to the decision of the Commission in the case, and
- The intervenor represents an interest beyond the intervenor's own personal interest. (See Decision 95-10-050, available from the Public Advisor's Office.)

The Commission's decision on whether to grant the intervenor's compensation request comes after the decision on whether the proposed condemnation would be in the public interest.

EX PARTE COMMUNICATIONS

Public utilities, property owners and others will be required to honor the Commission's ban on written or oral communication about the substance of the case with "decisionmakers," such as the Administrative Law Judge, Commissioners, or Commissioner's personal advisors, except during a hearing, or a public meeting or workshop. A copy of the relevant Commission Rules regarding ex parte communications is attached.

The Commission rules regarding ex parte communications in these cases also prohibit written or oral communications with "decisionmakers" by:

- Any person who has a financial interest, as defined by state law, that would be materially affected by the Commission's decision on the proposed condemnation. (For example, this category could include, but would not be limited to, public utilities that offer or are planning to offer the same types of service in the area and neighbors whose property values would be significantly affected by the public utility's acquisition and use of the property proposed to be condemned.)
- A representative acting on behalf of a formally organized civic, environmental, business, trade, or labor organization or other organization or group that intends to influence the decision of the Commission on the proposed condemnation, even if the organization or group is not a party in the case. (For example, this category would include, but would not be limited to, consumer organizations, labor unions, formally organized neighborhood associations, and organizations such as the Sierra Club, the Lion's Club, etc.)

DISCOVERY

Most or all of the necessary information about the proposed condemnation should be provided by the public utility in the complaint form that the public utility served on the property owner and any other defendants. "Discovery" is the formal way that public utilities, property owners and other parties obtain additional information from each other about the proposed condemnation and other relevant issues.

Property owners and other parties have a right to obtain certain information from the public utility about the proposed condemnation of the property. A common method for getting information is through written Data Requests. A sample Data Request is attached. For example, property owners could ask the public utility to give them copies of any reports, memos, email, or other written basis for the public utility's opinion that the condemnation of the property is necessary for the provision of competitive services. In some circumstances, public utilities may also request information from the property owner and other parties.

Some restrictions exist on the type and amount of information that may be obtained through discovery. Further information on discovery may be obtained from the Public Advisor's Office.

COMMISSION DECISIONS ON COMPLAINTS/APPEALS

1. Presiding Officer's Decision (POD)

After the conclusion of the hearing, the Presiding Officer will issue a decision, which is referred to as a Presiding Officer's Decision (POD). The POD will be based on the evidence presented at the hearing, review of any briefs filed, and the requirements of state law. The POD will also contain a Commission finding which states whether the public utility's condemnation of the property would be in the public interest. If the POD becomes the final decision of the Commission, this finding determines whether the public utility may file an eminent domain action in superior court to condemn the property.

The POD will be filed with the Commission and served on the public utility, the property owner, and other parties.

2. Appeals and Requests for Review of PODs

The public utility, property owner, or any other party to the case may appeal the POD within 30 days by filing a written appeal with the Commission Docket Office and serving it on all other parties. The purpose of an appeal is to alert the Commission to possible error. Therefore, any appeal filed by a public utility, property owner, or other party must specifically point out the reasons that the POD is believed to be incorrect or does not comply with the law.

Any Commissioner may also request Commission review of a POD within 30 days of its mailing.

The entire Commission will consider an appeal or request for review of a POD. The Commission may decide to change the POD or may leave the POD the same.

3. Effect of POD if No Appeal or Request for Review is Filed

If no appeal or request for review of a POD is filed by a party or a Commissioner within 30 days, the POD becomes the final decision of the Commission.

4. Application for Rehearing

In some cases, a party may apply to have the Commission “rehear” (i.e., reconsider) its final decision. Parties who wish to file an application for rehearing should contact the Public Advisor’s Office or their attorney for more information.

A party cannot challenge the Commission’s decision on the proposed condemnation in court unless the party has first applied for a rehearing by the Commission.

WHERE TO FILE COMPLAINTS, ANSWERS AND OTHER DOCUMENTS IN SENATE BILL 177 CASES

All complaints, answers, and other legal documents in Senate Bill 177 cases should be filed with the Commission Docket Office as follows:

California Public Utilities Commission
Docket Office
505 Van Ness Avenue, Room 2001
San Francisco, CA 94102-3298

CONCLUSION

The Commission hopes that this manual will be helpful to property owners, public utilities, and the public in understanding the requirements of SB 177. If you have questions, please feel free to call the Public Advisor’s Office in San Francisco at (415) 703-2074 or in Los Angeles at (213) 576-7055.