

Affirming a Pipeline's Eminent Domain Rights

by Joseph S. Dzida, Esq.

A California appellate court has ruled that a public utility oil pipeline corporation may condemn a permanent, subsurface easement beneath city streets rather than pay excessive franchise fees demanded by the city that controlled the streets.

In *Shell California Pipeline Company v. City of Compton*, 95 Daily Journal D.A.R. 8012, Compton argued that the only way a pipeline corporation could obtain subsurface rights beneath public streets was by negotiating a franchise agreement with the city. For many years, Shell Oil had paid franchise fees to Compton for two pipelines that went through the city beneath its streets. The franchise agreements came up for renewal. Shell Oil transferred the pipelines to the plaintiff, Shell California Pipeline Company, a public utility pipeline corporation. Shell Pipeline offered to pay more than the legally required fee to renew the franchises for an additional 10 years. That did not satisfy the City, which wanted more money and also a "most favored nations" clause that would obligate Shell Pipeline to pay the City a rate equal to the highest rate it paid any other city.

After lengthy but fruitless negotiations with Compton, Shell Pipeline embarked on an innovative course of action. It filed suit in eminent domain as a public utility pipeline corporation to condemn permanent, non-exclusive, subsurface easements for its existing

pipelines. Shell Pipeline appraised the value of these easements generously, but still far below the franchise fees it had previously offered for a 10-year renewal.

At trial, Compton stipulated that Shell Pipeline was a public utility and stipulated to the company's valuation of the condemned easements. However, the city argued that (1) California's franchise laws were the exclusive method of obtaining subsurface rights

*After lengthy but
fruitless negotiations
with Compton, Shell
Pipeline embarked on
an innovative course
of action.*

beneath city streets; (2) any conflict between a public utility's power of eminent domain and the franchise laws had to be resolved in favor of the franchise laws; (3) there was no public ne-

cessity for, or public use justifying, the taking because Shell's affiliates, rather than the public, were the sole beneficiaries of the pipeline; and (4) permitting eminent domain would shield pipeline utilities from city environmental and safety oversight, and improperly give the courts, rather than the affected cities, control over public streets.

In response, Shell Pipeline contended that, as stated by the California Supreme Court in *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 65, California's Eminent Domain Law is a "comprehensive" statutory scheme intended to cover "all aspects of condemnation law and procedure." It argued that the power of eminent domain includes the right to condemn public property for a particular use if that use will not unreasonably interfere with already existing public uses. This right is given to "any person" authorized to acquire property through eminent domain (including pipeline utilities), not just governmental entities. This right includes the right to condemn subsurface rights for "public utility facilities and franchises." Code of Civil Procedure section 1240.110(a). Shell contended that the franchise laws themselves contained provisions that show that the Legislature was aware of the right of a utility pipeline to condemn an easement and still chose not to forbid the exercise of that right in regard to public streets.

Shell contended that permitting the exercise of eminent domain made com-

mon sense. Franchises can expire. Local governments can refuse to renew them. Like Compton, cities could attempt to condition renewal only upon payment of excessive fees. Streets can be abandoned by local governments, rendering

(private pipeline corporations lack the power of eminent domain and must still negotiate and pay for franchise rights)

the question of obtaining a franchise moot. The company argued that it merely sought to exercise its eminent domain rights in order to prevent Compton from extracting excessive franchise fees by holding the pipelines hostage.

The trial court agreed with Shell. Despite the potential danger of creating

precedent adverse to its interests, Compton appealed.

The Court of Appeal agreed with the trial court and Shell. In a decision certified for publication, the Court of Appeal held that, in California, the franchise laws "merely establish the manner in which an entity may obtain a franchise. They do not provide the only manner in which a right to use the public streets may be acquired."

The court ruled that there was substantial evidence of public use and necessity justifying Shell Pipeline's use of eminent domain. The trial court's finding that the easements were required by public interest and necessity was supported by evidence that "acquisition of the pipeline easement would allow Shell to provide lower priced gasoline to the public and to transport oil products by subsurface pipeline rather than tanker trucks."

Finally, the court dismissed Compton's concern that the ruling would leave an unregulated pipeline com-

pany in effective control over the city's streets. The court noted that the California Public Utilities Commission would still retain oversight regulatory power over these pipelines.

This decision balances the scales when public utility pipeline corporations negotiate with cities (private pipeline corporations lack the power of eminent domain and must still negotiate and pay for franchise rights). Although pipeline utilities still must pay just compensation for subsurface easement rights, cities can no longer look to the utilities merely as deep-pocket sources of ever-increasing franchise revenue. □

Joseph S. Dzida, Esq. is a partner in Sullivan, Workman & Dee, a Los Angeles-based law firm that concentrates its practice in the areas of eminent domain, land use, governmental regulatory disputes, inverse condemnation and environmental law.

Over 25 Years Experience in Turn-key Land Acquisition Services

- Program Management
- Project Scheduling
- Environmental Plans
- Public Meetings
- Titles
- Surveys
- Mapping/Legal Descriptions
- Appraisal/Valuation/Review
- Negotiations
- Relocation Packages
- Relocation Plans
- Relocation Assistance
- Relocations
- Project Management
- Demolition Bid Packages
- Asbestos Abatement Plans
- Construction Development
- Planning
- Research Studies

D. R. COLAN ASSOCIATES, INC.

Fort Lauderdale, FL • 305/761-5700 a WBE firm
 St. Louis, MO • South Charleston, WV • Tampa, FL

An Equal Opportunity Employer