

# Inverse Condemnation and Utility Liability

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## What is Inverse Condemnation?

- Inverse Condemnation is a legal concept that entitles property owners to just compensation if their property is damaged by a public use.

## How does it work?

- Article One, Section 19 of the California Constitution states “Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner”. This clause includes requirements for the exercise of eminent domain; the taking of private property for public use. In 1885, the California Supreme Court held that this clause granted property owners the right to compensation in the event a public improvement did not physically take or purchase a property, but rather caused tangential harm to the property and losses to the property owner. (*Reardon v. San Francisco (1885) 66 Cal. 492, 501*)
- Entities subject to inverse condemnation include the government, municipally-owned public utilities and investor-owned utilities.

## Why does it apply to private investor-owned utility companies?

- In California, existing law provides investor-owned utility companies with the ability to use eminent domain to condemn private property to construct and operate their gas and electrical infrastructure.
- In 1979, the California Supreme Court held that an investor-owned utility was more like a government entity than a private employer, citing close regulation by California Public Utilities Commission (CPUC) as a key factor. (*Gay Law Students Association v. Pacific Telephone & Telegraph Co. (1979) 23 Cal.3d 458, 469*)
- In 1999, the California Supreme Court held an investor-owned utility liable for damages sustained from a wildfire started by its powerlines under inverse condemnation. In the decision, the court cited the ability to condemn property through eminent domain as a key factor in its ruling that there was no significant difference between a publicly owned or privately owned electric utility for the purpose of finding inverse condemnation. (*Barham v. Southern California Edison Company (1999) 74 Cal. App 4<sup>th</sup> 744*)

## Who bears the cost of compensation under Inverse Condemnation?

- Private/investor-owned utilities are regulated by the CPUC and have shareholders who pursuant to California law are entitled to a reasonable returns on their investments. These



returns are paid in part through CPUC approved rates that are charged to ratepayers for the services provided by the utility.

- In the event that an investor-owned utility company is found liable for damages through inverse condemnation, the CPUC must determine whether passing that cost onto the ratepayer is “just and reasonable,” or if shareholders must shoulder the burden of the company’s liability.
- The CPUC has held that before ratepayers bear any costs incurred by the utility, those costs must be just and reasonable. That is, the costs must have been prudently incurred by competent management exercising the best practices of the era, and using well-trained, well-informed and conscientious employees and contractors who are performing their jobs properly.
- When that occurs, the Commission can find the costs incurred by the utility to be just and reasonable and able to be recovered from ratepayers.

### **Why is it important for counties?**

- If investor-owned utility actions are found to be just and reasonable in an inverse condemnation case, the utility can pass the cost of compensation onto the ratepayer. If not, the shareholders bear the burden. Thus, inverse condemnation liability provides a strong incentive for investor-owned utilities to take action and invest in critical safety measures that protect ratepayers and residents.
- Inverse condemnation allows for more timely settlement negotiations with victims and local governments. Under negligence claims, corporations with vast financial and legal resources can simply extend costly proceedings against fire victims and local governments. Inverse condemnation is an important tool for our communities to access a fair resolution after destruction from a utility caused wildfire.

### **Contact**

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