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Los Angeles County Superior Court Judge William F. Highberger

Judge asks utilities regulator to weigh in on wildfire liability

By Gina Kim
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LOS ANGELES — The superior court judge overseeing the Woolsey Fire litigation has invited the state's utility regulatory body to weigh in on whether inverse condemnation liability should apply in claims against Southern California Edison Co.

Edison, whose equipment has been blamed for sparking the massive wildfire last November that burned more than 96,000 acres in Ventura and Los Angeles counties, has been fighting inverse condemnation liability like every other utility in California facing wildfire claims. *Woolsey Fire cases*, JCCP 5000.

Under the inverse condemnation doctrine, utilities providing a public service are held responsible for damages incurred on private properties caused by wildfires. That means plaintiffs don't have to prove negligence or fault to recover costs.

The California Public Utilities Commission must notify Judge William F. Highberger by Nov. 1 if it desires to submit an amicus brief on Edison's motion for judgment on the pleadings.

The hearing concerning Edison's motion for judgment on the plead-

ings could be heard in late November or early December depending on the commission's decision.

Most judges presiding over wildfire cases have struck down utilities' attempts to challenge inverse liability, but not Highberger. He delayed his decision until the U.S. Supreme Court decided whether to act on San Diego Gas & Electric Co.'s request to consider the issue. *San Diego Gas & Electric Co. v. California Public Utilities Commission* 18-1368 (U.S. Supreme Court, filed Apr. 29, 2019).

The commission ruled years ago utilities could not pass off wildfire liabilities to ratepayers if they haven't been found to be prudent managers of their facilities. That decision was unsuccessfully challenged by the San Diego utility in the state court of appeal and the state Supreme Court. The U.S. Supreme Court refused to hear the utility's petition on Oct. 7.

During a status conference Tuesday, Highberger referenced *Barham v. Southern California Edison Co.* 1999 DJDAR9119, which found owners of a property damaged in a wildfire caused by a fallen power line could receive compensation for inverse condemnation from Edison. Highberger said he is grappling with whether that case was correctly de-

cidated and if it was applicable to the Woolsey litigation.

While accepting the trial court has no power to order the utilities commission to do anything, Highberger said he wanted to hear its views. Craig S. Simon of Berger Kahn, co-lead counsel for individual plaintiffs, reassured Highberger he could make a decision without the commission's input.

Edison's counsel, Doug J. Dixon of Hueston Hennigan, contended the commission's insights would be helpful.

Dixon pointed to statements made by former commission president Michael Picker and Commissioner Martha Guzman Aceves, who filed concurrent statements in 2017 questioning the appropriateness of applying inverse condemnation in cases involving wildfire damages caused by utility equipment, which they believed could result in higher rates for customers.

Aceves' and Picker's statements came after the commission denied San Diego Gas' request to socialize \$379 million in uninsured wildfire costs to customers from a trio of 2007 wildfires.

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