

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
11/13/2018
Kevin J. Lane, Clerk
By: Michael Hubbard

SAN DIEGO GAS & ELECTRIC,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION,

Respondent;

PROTECT OUR COMMUNITIES
FOUNDATION et al.,

Real Parties in Interest.

D074417

(Public Utilities Commission No. 17-11-033)

THE COURT:

The petition for writ of review filed by San Diego Gas & Electric Company (SDG&E) and the accompanying exhibits, the answers filed by real parties in interest Protect Our Communities Foundation (POCF) and Ruth Henricks, the answer filed by the California Public Utilities Commission, and the reply to answers filed by SDG&E have been read and considered by Justices Benke, O'Rourke, and Dato.

SDG&E challenges the Commission's decision denying its application to include \$379 million in settlement payments stemming from litigation involving wildfires caused by its facilities in 2007. SDG&E asserts the Commission's decision should be annulled because it interpreted Public Utilities Code section 451 (further statutory references are to the Public Utilities Code) in a manner that unconstitutionally conflicts with the strict liability the utility faced in the wildfire litigation as a result of the plaintiffs' inverse condemnation claims. SDG&E also argues the Commission's decision must be annulled because insufficient evidence supported its determination that (1) SDG&E was an imprudent manager and (2) SDG&E's conduct caused the Witch Fire.

" "[A]ny aggrieved party [to a decision of the Commission] may petition for a writ of review in the court of appeal" (SFPP, L.P. v. Public Utilities Commission (2013) 217 Cal.App.4th 784, 793 (SFPP).) "[W]hen 'writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.' [Citation.] We are not, however, 'compelled to issue the writ if the [Commission] did not err" (Ibid.)

"The limited grounds and standards for our review are set forth in section 1757, subdivision (a). 'No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine . . . whether any of the following occurred: (1) The commission acted without, or in excess of, its powers or jurisdiction. (2) The commission has not proceeded in the manner required by law. (3) The decision of the commission is not supported by the findings. (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record. (5) The order or decision of the commission was procured by fraud or was an abuse of discretion. (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.' " (SFPP, supra, 217 Cal.App.4th at pp. 793-794.)

" 'There is a strong presumption favoring the validity of a Commission decision.' " (SFPP, supra, 217 Cal.App.4th at p. 794.) " 'Generally, we give presumptive value to a public agency's interpretation of a statute within its administrative jurisdiction because the agency may have "special familiarity with satellite legal and regulatory issues," leading to expertise expressed in its interpretation of the statute. [Citation.] Therefore, "the PUC's 'interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language' " " (Ibid.)

The Commission's determination that the principals of inverse condemnation did not bar its prudent manager analysis under section 451 was not in excess of its powers, nor a violation of the law, including the Constitutions of the United States and California. Contrary to SDG&E's assertion, the Commission's review was statutorily mandated, and no legal authority authorized it to forego its obligation under section 451. Of note, SDG&E settled the inverse condemnation claims in the wildfire litigation rather than continue to advance its position that it could not be held strictly liable as a non-governmental entity. Further, had the Commission determined that SDG&E acted as a prudent manager, the costs could have been passed onto the ratepayers regardless of any potential strict liability in a civil litigation setting.

In addition, the exhibits submitted by SDG&E do not support its assertion that the Commission's findings under section 451 were not supported by sufficient evidence. Specifically, the record contains substantial evidence showing both that SDG&E's facilities caused all three of the wildfires at issue, and that SDG&E did not meet its burden to show that it reasonably and prudently operated and maintained those facilities. (See *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 537 ["The findings of fact by the Commission are to be accorded the same weight that is given to jury verdicts and the findings are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence."].)

In sum, SDG&E has failed to demonstrate that the Commission erred on the claims it asserts. Under these circumstances, we decline to issue the writ of review. (*Pacific Bell v. PUC* (2006) 140 Cal.App.4th 718, 729.) The petition is denied. The application of Southern California Edison Company and Pacific Gas and Electric Company for leave to file an amicus curiae brief is denied as moot.

BENKE, Acting P. J.

Copies to: All parties