Opinion Analysis: Monterey Peninsula Water Management District v. California Public Utilities Commission

On January 25, 2016, in *Monterey Peninsula Water Management District v. California Public Utilities Commission*, the California Supreme Court issued its first opinion in over twenty years reviewing a California Public Utilities Commission ("CPUC") decision. The last time the court spoke on the scope of the CPUC's jurisdiction—in 1995—it ruled that the CPUC's otherwise broad authority does not allow it to ignore express statutory directives or other clear restrictions on its authority. *Assembly v. Public Utilities Commission* (1995) at 103–104. After a long hiatus, the court has again clarified the limitations of the CPUC's jurisdiction: the CPUC does not have the authority to scrutinize government fees that are collected ministerially through the bills of CPUC-regulated public utilities. In California, virtually all government-imposed utility taxes and fees are collected through the bills of public utilities, whether government-owned (e.g., Los Angeles Department of Water and Power and East Bay Municipal Utility District) or privately owned (e.g., Pacific Gas and Electric Company, Southern California Edison Company, and California-American Water Company).

The Monterey Peninsula Water Management District, a local government entity not subject to CPUC regulation, had imposed its statutorily authorized user fee on ratepayers in the Monterey area for over thirty years until the CPUC issued the now-vacated decisions. Under the District's enabling act, the user fee was collected through the bills of California-American Water Company, and the revenues were passed on to the District to fund environmental mitigation and water supply programs administered by the District. Despite the CPUC's lack of authority over the District, the CPUC scrutinized the level and elements of the user fee, and ultimately rejected a proposal under which the Water Company would simply continue its thirty-year-old practice of collecting the District's user fee on its water bills. The

CPUC claimed its review and rejection was proper because Public Utilities Code section 451 requires that "all charges demanded or received by any public utility" for any product or commodity furnished, or any service rendered, be just and reasonable. The CPUC later admitted it had no authority over government entities or fees collected ministerially on their behalf through utility bills. It instead justified its scrutiny of the District's user fee with the fact that the user fee funds mitigation programs that the Water Company is legally obligated to perform in the event the District fails to do so.

The court rejected both of the CPUC's arguments. First, the court found that section 451 does not apply "to all charges in the abstract" on utility bills, but to charges for utility services rendered by the utility itself. Moreover, even if section 451 could be read so broadly, the court held that nothing in its text provides the CPUC with the express statutory authorization necessary before the CPUC can regulate any aspect of a government entity. *County of Inyo v. Public Utilities Commission* (1980) at 166. Second, the court was unpersuaded by the CPUC's arguments that it could regulate the user fee because it was actually a "utility surcharge" included in some fashion in the Water Company's own rates, or that the Water Company's contingent responsibility for the mitigation programs funded by the user fee bootstrapped the fee into CPUC jurisdiction. Instead, the court found no basis in the record to conclude the fee could be considered an element of the Water Company's rates or that the Water Company had any current legal obligation to administer the mitigation programs. The court also noted that if the Water Company's customers shared the CPUC's concerns over the level of the user fee, the customers could bring a legal action or elect new leaders to the District's managing board. The court set aside both the CPUC's original decision refusing to permit the Water Company to continue collecting the user fee for the District and the CPUC's decision on rehearing that affirmed the original decision.

This is a significant opinion, not only because it is the first time in over twenty years the court has spoken on the limits of the CPUC's jurisdiction, but also because the vast majority of large municipalities in California collect utility fees and taxes through the bills of CPUC-regulated utilities. It is now clear that the CPUC's broad reach does not extend to reviewing, let alone rejecting, these government fees.

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