Upcoming Oral Argument: Can the California Public Utilities Commission Regulate Local Government User Fees through Utility Bills?

On November 3, 2015, the Supreme Court of California will hear arguments in *Monterey Peninsula Water Management District v. CPUC*. The case will address whether the California Public Utilities Commission ("CPUC") has the authority to review and regulate a user fee imposed by a local government entity that is collected through a public utility's bills to ratepayers. The court's decision in this case will affect government entities' autonomy in assessing taxes and fees through utility bills and the CPUC's power to review and determine whether such taxes are reasonable to ratepayers.

The CPUC has the authority to regulate public utility rates and cost recovery and to ensure that those rates and costs are just, reasonable, and nondiscriminatory. Petitioner Monterey Peninsula Water Management District ("MPWMD") is a government entity that the California legislature created in 1977 to manage water resources in the Monterey Peninsula. MPWMD is not a utility subject to CPUC jurisdiction. MPWMD has the statutory authority to impose fees and taxes to fund its services and facilities. Real party in interest California-American Water Company ("Cal-Am") is a public utility subject to CPUC jurisdiction. Since 1983, MPWMD has contracted with Cal-Am to collect a user fee on MPWMD's behalf through Cal-Am's utility bills.

Cal-Am collected MPWMD's user fee without incident until 2010, when the CPUC directed Cal-Am to file an application with the CPUC to request authority to continue collecting the user fee on MPWMD's behalf. In reviewing the application, the CPUC expressed concerns that the user fee as proposed was unreasonable. The CPUC believed that there was insufficient evidence explaining program costs, that

MPWMD's choice to set the fee as a percentage of revenue rather than an amount tied to cost was unreasonable, that the user fee had increased significantly over past levels, and that there was an apparent overlap in program activities and costs between Cal-Am and MPWMD. The CPUC directed the parties to resolve those issues.

MPWMD, Cal-Am, and the Division of Ratepayer Advocates ("DRA") (the consumer-advocacy arm of the CPUC) proposed a settlement agreement to allow Cal-Am to continue to collect and remit a user fee on MPWMD's behalf. This agreement found the proposed user fee was reasonable, supported by sufficient evidence, and that there was no overlap between Cal-Am and MPWMD program activities and costs. The CPUC disagreed and ultimately denied Cal-Am's application and the parties' proposed settlement agreement absent further evidentiary support and justification for the user fee. MPWMD petitioned SCOCA for review, arguing that the CPUC does not have the authority to review and regulate the user fee at all.

The statute at issue is Public Utilities Code section 451, which states in relevant part:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

MPWMD argues that section 451 does not extend CPUC's jurisdiction to taxes and fees that originate with a government entity not subject to CPUC regulation. Based on the plain language of the statute, MPWMD argues that section 451 does not permit CPUC regulation over charges not generated by a public utility. MPWMD cites case law and principles of statutory construction that limit the CPUC's power over government entities, absent express statutory authority allowing such power.

The CPUC, on the other hand, reads section 451 to allow it to regulate all charges appearing on a utility bill, regardless of where the charge originated, based on its authority to protect the ratepayers from unreasonable charges. Such regulation, the CPUC claims, is not an assertion of jurisdiction over a government entity but a valid

exercise of its powers to regulate what ratepayers pay for their utilities. To support its broad authority to act in matters that are cognate and germane to utility regulation, absent express limitations on such power, the CPUC cites to Article 12, sections 1–6 of the California constitution.

From a policy standpoint, MPWMD contends that the CPUC cannot exceed its jurisdiction and substitute its own judgment for the judgment of local governments in imposing taxes and fees. The CPUC maintains that it does have such power if the taxes and fees are collected through utility bills, to protect ratepayers' interests. It concedes that it would not have any jurisdiction to review taxes and fees MPWMD imposes independently of utility bills.

This case arose from the specific circumstances surrounding water management in the Monterey Bay, but the issue presented has broad implications for the powers of the CPUC and local government entities throughout California.

The CPUC's focus in the matter was on the connection between the user fee and the actual costs consumers are paying for water, both of which are charged through utility bills. MPWMD has instead framed the issue before the court as the CPUC's power to regulate taxes and fees generally. SCOCA appears to have adopted MPWMD's broader construction by phrasing the issue presented as whether CPUC has the authority to review and regulate user fees imposed through utility bills at all. This framework could result in a decision that will grant or deny the CPUC such power, regardless of the connection between those fees and the actual cost of the utility.

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