

## II. ENERGY

### A. Energy Infrastructure

#### 1. City of San Juan Capistrano v. California Public Utilities Commission, 937 F.3d 1278 (9th Cir. 2019)

The City of San Juan Capistrano (the City) filed a claim against the California Public Utilities Commission (the Commission), alleging the Commission violated the City's due process rights when it approved an electrical grid project located within the city. The City contended that by not giving "due consideration" to project alternatives as required by California law, the Commission "deprived the City of liberty and property interests over its environmental integrity, cultural integrity, and development, along with its procedural right to a fair hearing."<sup>1</sup> The City asked the court to enjoin the Commission's approval of the project and to declare the approval order unenforceable against the City. It also asked for attorney's fees. The District Court for the Central District of California dismissed the suit, with prejudice, holding the City, as a political subdivision, lacked standing to sue the Commission.<sup>2</sup> On appeal, the Ninth Circuit affirmed.

The project involved replacing a transmission line and upgrading a substation that were both located on property owned by San Diego Gas & Electric (the Utility). In a Commission hearing, the City opposed the project as a "duly admitted party," and following the hearing, the Commission administrative law judge (ALJ) recommended approving the alternate project with less environmental impact. However, after an ex parte meeting with the Utility, the commissioner assigned to the project recommended approval of the original project. The Commission agreed and denied the City's application for rehearing. Rather than challenge the Commission's decision in state court, the City sued the Commission in federal court, alleging the ex parte meeting resulted in the Commission rejecting the ALJ's recommendation. On appeal, the Ninth Circuit reviewed the question of standing and defendant's sovereign immunity de novo.

First addressing standing, the Ninth Circuit relied on *City of South Lake Tahoe v. California Regional Planning Agency*,<sup>3</sup> in which the Ninth Circuit characterized political subdivisions as creatures of the state, who, therefore, lack standing to challenge state law in federal court on constitutional grounds. The City claimed that *South Lake Tahoe* is limited to barring only facial challenges to state statutes and regulations and does not bar the City's challenge of administrative procedure. The Ninth Circuit rejected this claim, stating that Ninth Circuit case law relies on the identity of the parties rather than the procedural context. Therefore, the Ninth Circuit held that the City lacked standing to challenge the Commission's decision on due process grounds.

The Ninth Circuit also held that because the Commission is an arm of the State of California, the Eleventh Amendment,<sup>4</sup> which grants sovereign immunity to states in federal court, bars the City from challenging the Commission's decision in federal court. The City conceded the Commission's sovereign immunity, but argued for leave to amend its complaint against a commissioner under *Ex parte Young*.<sup>5</sup> However, the City only briefly suggested to the district court that it *could* amend its complaint and argued that the Eleventh Amendment did not apply to its claims. Therefore, the Ninth Circuit held that because the City did not request leave to amend its complaint below, the City waived its right to amend.

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<sup>1</sup> City of San Juan Capistrano v. Cal. Pub. Util. Comm'n, 937 F.3d 1278, 1280 (9th Cir. 2019).

<sup>2</sup> City of San Juan Capistrano v. Cal. Pub. Util. Comm'n et al., Case No. SACV 17-01096, 2017 WL 6820027 (C.D. Cal. 2017).

<sup>3</sup> 625 F.3d 231 (9th Cir. 1980).

<sup>4</sup> U.S. CONST. amend. XI.

<sup>5</sup> 209 U.S. 123, 155–56 (1908) (allowing suits in federal court against "individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state").

The Ninth Circuit ultimately held that the district court properly dismissed the City's claims because the City lacked standing and the claims were barred by the Eleventh Amendment.<sup>6</sup>

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<sup>6</sup> A concurring opinion mentioned the potential for the Ninth Circuit to revisit the per se rule barring political subdivisions from challenging state law in federal court, noting that since *South Lake Tahoe*, "the meaning of standing has changed." *City of San Juan Capistrano*, 937 F.3d at 1282 (R. Nelson, J., concurring).