



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in the case of San Diego Gas & Electric Co. v. City of Carlsbad, et al., Fourth District Court of Appeal No. D027407

MEETING DATE: March 19, 1997

PREPARED BY: City Attorney

RECOMMENDATION: That the city join the amicus brief in the case of San Diego Gas & Electric Co. v. City of Carlsbad, et al., Fourth District Court of Appeal No. D027407

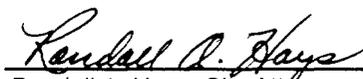
BACKGROUND: *Amicus* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves an important issue related to a city's ability to regulate the non-essential aspects of the privately owned utilities that operate within the city's jurisdiction. In this case the City of Carlsbad required San Diego Gas & Electric (SDG&E) to obtain city permission prior to disposing of dredged spoils (sand dredged up from the bottom of a lagoon) onto a city beach. The California Public Utilities Commission (CPUC) had decided that this was a local issue which the CPUC had no interest in nor desire to regulate. Despite the CPUC's declining to exercise jurisdiction, the trial court ruled that the city's actions were preempted by the state constitution and therefore invalid. Basically, the court held that whether or not the CPUC (the state) actually chose to exercise jurisdiction, this matter was one within the exclusive jurisdiction of the state and therefore no local regulation was allowed. Based on this ruling, SDG&E would be able to dispose of these dredged spoils on the city beach and the city would be without authority to enforce its local regulations aimed at protecting the interests of its residents. The City of Carlsbad is seeking to overturn this decision and the City of Lodi is being asked to join the appeal as *Amicus Curiae*.

While the essential elements of private utility operation (such as power line construction and location) are governed at the state level by the CPUC, there are areas of exclusively local concern that are properly regulated at the local level for the protection of the public. If this ruling is not reversed it could be used by privately owned utilities as a shield against such local regulation. A favorable decision at the Court of Appeal will harmonize local jurisdiction with that of the CPUC allowing local government to continue to regulate the non-essential elements of utility operations. By way of example, these non-essential elements of utility operations could include aesthetic and environmental concerns.

FUNDING: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager