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UCAN was formed in 1984 to protect consumers
from San Diego Gas & Electric Corporation

Sunrise Powerlink Eminent Domain Primer^a

Many of you may have already been contacted by San Diego Gas & Electric (“SDG&E”) and/or its appraisers about taking your land to build the Sunrise Powerlink transmission lines. If you do not accept SDG&E’s proposal for your land, SDG&E will start a legal proceeding (known as eminent domain, or condemnation) to require you to sell your land at a cost to be determined by a jury.

Most of you have probably not been involved in eminent domain proceedings before, and it is important that you approach these proceedings carefully. We have prepared this short informational material to help you understand the process. THIS MATERIAL IS NOT A SUBSTITUTE FOR LEGAL GUIDANCE AND IN NO WAY SHOULD BE SEEN AS LEGAL ADVICE. BEFORE PROVIDING ANY INFORMATION OR ACCESS TO SDG&E, WE RECOMMEND THAT YOU TALK TO AN ATTORNEY THAT SPECIALIZES IN PROTECTING PROPERTY OWNERS’ RIGHTS IN EMINENT DOMAIN CASES.

Does SDG&E Have the Right to Take My Land?

Probably, if it follows the rules. State or federal government may take private property for public use under eminent domain. The State has delegated eminent domain power to SDG&E so that it can bring an eminent domain action to run power lines for the Sunrise Powerlink.

What Am I Entitled to if My Land is Taken for Public Use?

You, as the property owner, are entitled to “just compensation” for the taking of your land. “Just compensation” means that you should be paid the fair market value of your land. Fair value should generally be the highest price someone would pay for the property, if it were in the hands of a willing seller. Note that SDG&E’s idea of the fair market value of your property may be much less than that of an independent appraiser.

In addition, if only a portion of your land is taken you may be entitled to severance

^a This primer was prepared jointly by the Law Office of Robert Miller (rmm@robertmillerlaw.com) and the Law Office of Steven P. McDonald, LC (smcdonald@TheMcDonaldLawFirm.com). This primer is designed for general information only. The information presented should not be construed to be formal, legal advice or the formation of a lawyer/client relationship.

damages caused to the remainder of your land not taken. Finally, if you operate a business on the property, you may recover loss of goodwill (damages) to the business.

What Can I Expect if My Land is Subject to Eminent Domain for the Sunrise Powerlink?

If your property is subject to eminent domain as a result of the proposed Sunrise Powerlink, you can generally expect the following steps to occur:

1. SDG&E may contact you to express an interest in your property and/or to schedule a date for an appraisal or environmental assessment of your property. **IF POSSIBLE, YOU SHOULD SEEK LEGAL ADVICE PRIOR TO SDG&E ENTERING YOUR PROPERTY AND YOU SHOULD NOT GIVE SDG&E, ITS APPRAISERS, OR ITS CONSULTANTS ANY DETAILED INFORMATION ABOUT YOUR PROPERTY OR BUSINESS.**

SDG&E will want to come onto your land to take pictures and conduct surveys, tests, studies and appraisals. It has the right to do this without your permission, but only if it will not damage your property or substantially interfere with your possession of the property. If there will be damage or substantial interference, SDG&E must either get your permission to enter or get a court order allowing it. (Code of Civil Procedure section 1245.010 *et seq.*) You have the right to accompany SDG&E's appraiser on the site inspection.

If SDG&E causes damage to your property or substantially interferes with your possession or use of the property, then you may have a legal cause of action against SDG&E.

2. SDG&E's appraiser will issue an appraisal of your land.

If you own and live on the property, and the property has no more than four residential units on it, then you are entitled to review a copy of the appraisal. Regardless, SDG&E will have to give you a written summary of the basis upon which they make their offer to acquire your land. Note that the appraiser works for SDG&E, not for you.

You are entitled to get your own appraisal of your property, and it is generally

recommended that you do so. SDG&E IS OBLIGATED TO PAY UP TO \$5,000 FOR YOU TO GET AN INDEPENDENT APPRAISAL, but it may try to impose conditions on this payment which you should not accept. YOU SHOULD NOT AGREE TO SHARE YOUR APPRAISAL WITH SDG&E early in the case. We can recommend appraisers who will ensure that the estimated fair market value is truly fair and includes all of the value that is being taken by SDG&E.

3. SDG&E will give you a written offer to purchase your property, with a summary of the basis, or support for its conclusion of value.

4. You will receive a notice of public hearing to adopt a “resolution of necessity” to acquire your property by eminent domain.

Before SDG&E can commence an eminent domain proceeding in court, it has to adopt a formal resolution to acquire your property. This formal resolution is known as a “resolution of necessity,” and it must be adopted at a public hearing. You will receive notice of this hearing and will have an opportunity to participate. Again, we recommend you seeking the advice of legal counsel before participating in the hearing. FAILING TO RAISE CERTAIN ARGUMENTS DURING THE HEARING COULD RESULT IN A WAIVER OF YOUR ABILITY TO RAISE THESE ARGUMENTS LATER ON IN THE PROCEEDINGS.

5. A public hearing will be held to adopt the “resolution of necessity,” as discussed above. Normally, this resolution will be adopted without regard to your objections or the value of your property.

6. SDG&E will file the eminent domain case in court, and you will receive a notice of the court filing (a Complaint in Eminent Domain).

7. SDG&E may file a motion for early possession of your property. To do so, it must deposit the probable amount of just compensation (according to its appraisal) with the Court. You are entitled to withdraw that deposit and use it for whatever you like, without agreeing that it is the right amount, that is, you can take the money but reserve the right to argue for greater compensation later.

Utility companies often request early possession of your property to allow them to start construction, even though you have not agreed to an amount of just compensation and the

trial to determine that amount may be months in the future. Courts often grant early possession requests. If the court grants the request, you as the property owner will likely have had 90 to 120 days notice before you have to vacate all or the portion of your property that is being taken.

8. You and SDG&E will conduct discovery in the eminent domain lawsuit. About six months after the case is filed, the Court will hold a hearing to schedule a trial date. Trials are usually held about a year after the case is filed. Ninety days before the scheduled trial date, the parties exchange appraisals. **WE RECOMMEND THAT YOU DO NOT AGREE TO GIVE SDG&E YOUR APPRAISAL UNTIL THAT TIME.**

Parties often settle after they have reviewed each others' appraisals.

9. If there is no settlement agreement, then you will participate in a trial before a jury who will determine the fair market value of your property. When the jury makes its decision, the Court will enter judgment.

10. SDG&E will have to pay the judgment within 30 days following entry of judgment, and title to your property will be transferred to the government by the Court.

In addition to these steps, you should be contacted by a relocation agent, who will provide assistance in relocating your residence or business.

Will SDG&E Pay for My Legal Costs?

There are some circumstances where you will be able to recover certain legal costs from SDG&E if you bring a court challenge against SDG&E. You should discuss all of the advantages and disadvantages of challenging SDG&E's right to take your property and/or proposed amount of just compensation with legal counsel before you take any action.

Get Your Own Legal Advice.

In order to get the most for your property you should fully understand your rights as early in the process as possible and definitely before providing SDG&E any information about your property or making a counter offer to SDG&E as to the value of your property. For more information on eminent domain in California, contact the UCAN office and we'll help advise you as to where you can get professional assistance.