

Decision No. 19402

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the CITY OF MARYSVILLE, a municipal)
corporation, that the Railroad Com-)
mission of the State of California)
fix and determine the just compensa-)
tion to be paid by the said City of)
Marysville for the water system of)
the Marysville Water Company, a cor-)
poration.)

Application No. 10,302.

W. P. Rich, for City of Marysville.

Devlin & Brookman, by Frank R. Devlin,
and Richard J. Belcher, for
Applicant, Marysville Water Company.

LOUTTIT, Commissioner:

FIRST SUPPLEMENTAL OPINION

On December 21, 1926, by Decision No. 17,794. herein, this Commission made and filed its finding of the just compensation to be paid by the City of Marysville to the Marysville Water Company for all of the lands, properties and rights of said company used for the production and distribution of water for domestic, commercial, municipal and other purposes in and about said City of Marysville.

On June 8, 1927, the Marysville Water Company filed an application requesting from this Commission an order--

1. Finding that the City of Marysville has failed to pursue diligently its rights conferred under section 47(b) of the Public Utilities Act;
2. Determining that said finding as to just compensation shall no longer be of any force and effect.

ELH

and

(3) Determining the reasonable expenditures necessarily incurred by the Marysville Water company in said proceeding which, in the opinion of this Commission, should be assessed against the City of Marysville.

The Commission directed the City of Marysville to appear and show cause why an order should not be issued in conformity with this request. Subsequently, the City of Marysville filed an answer to the said order to show cause, alleging substantially that the city had proceeded with said matter diligently and in accordance with the provisions of the Public Utilities Act, and requesting that the said order to show cause be dismissed. A public hearing was held before me in San Francisco, the matter was duly submitted, and is now ready for decision.

The original petition herein is one of the second class, as specified in section 47(b). Under subsection 6 of that section it is provided in part:

"In the case of a petition of the second class, if the owner does not file said stipulation within said twenty days, the political subdivision, within sixty days after the commission has made and filed its said finding, must initiate proceedings for the purpose of submitting to its voters a proposition to acquire under eminent domain proceedings said lands, property and rights, or said part or portion thereof."

At the hearing it was stipulated by the parties that within sixty days after the Commission had made its finding as to just compensation, the city had initiated proceedings for the purpose of submitting to its voters the proposition whether or not the lands, property and rights of the Marysville

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Water Company should be acquired, and that at an election held pursuant thereto the proposition was defeated.

Under subsection 7 of section 47(b) of the Public Utilities Act this Commission is empowered to grant relief of the character herein sought where the petition is of the second class, in two instances only: first, where the political subdivision fails to proceed diligently to submit a proposition to its voters to acquire under eminent domain proceedings the lands, property and rights of the utility, and, second, where the political subdivision fails, if its voters have voted in favor of the acquisition of said lands, property and rights of the utility, to file said action in a court of competent jurisdiction within sixty days after the voters have voted in favor of said acquisition.

In view of the stipulation that the city did, within sixty days after the Commission had made its finding as to just compensation, initiate proceedings for the purpose of submitting to its voters the proposition to acquire under eminent domain proceedings the lands, property and rights of the Marysville Water Company, and further, in view of the fact that in so doing the city complied with the procedure outlined in subsection 6 of section 47(b), and initiated the proceeding within the time prescribed by that subsection, it is my opinion that the city proceeded diligently to submit said proposition to its voters.

There is no provision under the Public Utilities Act which authorizes the Commission to grant relief of the character herein sought when the matter of the acquisition of the properties of a public utility has been submitted to the voters within the time allowed by the statute, and rejected by them.

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With respect to the request for an order finding that the City of Marysville has failed to proceed diligently with its rights conferred by and under Decision No. 17,794, the application should be denied. With respect to the request for an order determining that said finding as to just compensation shall no longer be of any force and effect, and the request for an order determining the reasonable expenditures necessarily incurred by the company which should be assessed against the city, the application should be dismissed for want of jurisdiction. This latter determination is made upon the ground that the power of this Commission to award such relief is dependent upon our finding that the city has failed to proceed diligently which, as above noted, is not the case here.

I recommend the following form of order:

O R D E R

An application having been filed by the MARYSVILLE WATER COMPANY, as above set forth, on June 8, 1927, in the above entitled matter, the Commission having fully considered the same, and being now fully advised, and good cause appearing,--

IT IS HEREBY ORDERED that, with respect to the request for an order finding that the City of Marysville has failed to proceed diligently with its rights conferred by and under Decision No. 17,794, said application be, and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that, with respect to the request for an order determining that the finding as to just compensation contained in Decision No. 17,794 shall no longer

of any force and effect, said application be, and the same is hereby dismissed for want of jurisdiction.

IT IS HEREBY FURTHER ORDERED that, with respect to the request for an order determining the reasonable expenditures incurred by the Marysville Water Company in this proceeding which should be assessed against the City of Marysville, said application be, and the same is hereby dismissed for want of jurisdiction.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of February, 1928.

Leon A. Wall
C. A. Seaver
Ernest C. ...
Thos. ...
M. J. ...
Commissioners.