

Decision No. 21513.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of the CITY OF FRESNO, a municipal corporation, to ascertain the value and to fix and ascertain the just compensation to be paid to the CALIFORNIA WATER SERVICE COMPANY, a corporation, for the acquisition by said City of Fresno of the system of distribution of water belonging to said California Water Service Company, a corporation, and all the appurtenances and appliances used in connection with or a part of said distributing system within the City of Fresno and adjoining territory used in the distribution of water to the inhabitants and consumers thereof.

Application No. 13655.

Lorin A. Butts, City Attorney, for
Applicant,
McCutcheon, Olney, Mannon and Green
and Everts and Ewing for California
Water Service Company, et al.

LOUTTIT, COMMISSIONER:

OPINION

This is a proceeding under Section 47(b) of the Public Utilities Act in which the City of Fresno, hereinafter referred to as the City, asks the Railroad Commission to fix and determine the just compensation to be paid by the City to the California Water Service Company, hereinafter referred to as to Company, for certain land, property and rights of the Company, which land, property and rights are described in Exhibit "B" attached to the amended petition and made a part thereof, and consist of the water distributing system and rights

of the Company in the City of Fresno and adjacent territory.

The Company urges dismissal of the application on several grounds related to the regularity of the proceedings and the constitutionality of the statute under which the Commission is acting. Section 47 of the Public Utilities Act provides that any city may file a petition setting forth the intention of the city to submit to the voters a proposition to acquire the properties of any character of any public utility. Subdivision (b) of Section 47 sets forth the necessary allegations of such a petition.

It appears in this proceeding that the petition filed does not contain all of the allegations required by the provisions of the statute and that the applicant is one designated by the statute as authorized to institute and maintain the proceeding. Under these circumstances, the Commission should proceed to exercise its power in the execution of the statute, determine the valuation prayed for and leave for determination of the proper tribunal the questions as to the constitutionality of the statute which are presented in this proceeding for the consideration of the Commission. This procedure was early outlined and has been consistently followed by the Commission and we can see no good reason for departure therefrom at this time. Furthermore, it appears that the constitutionality of Section 47 of the Public Utilities Act and the procedure therein provided has been passed upon by the California Supreme Court several times and consistently upheld.

The City seeks in this proceeding to have the Commission fix the just compensation to be paid by the City for all of the properties of the Company in and adjacent to the City of Fresno. There are, therefore, no questions involving severance damages and the only question to be determined is the just compensation to be paid for the properties involved.

Three studies of the property based on reproduction cost new and reproduction cost new less depreciation were

made and filed as exhibits; one by the Loveland Engineers for the Company, one by J. E. Phillips, a consulting engineer for the City, and one by the Commission's Engineering Department. There are no essential differences in the inventories of the property items and the money differences result from the application of different unit costs of materials and labor, labor indirects, material indirects and general overhead allowances and from the varying treatments of the question of depreciation and paving over mains.

A discussion of each of the many points of difference would make an unreasonably long Opinion. It is only necessary to say that careful consideration has been given to all the exhibits filed, the testimony supporting each, and to the briefs filed by counsel.

The Company contends that the reproduction cost should include estimated cost of cutting and replacing all pavement now existing over the mains and services irrespective of whether such pavement was or was not actually cut and replaced at the time of the installation of the mains. The City argues that only such pavement as was laid prior to the installation of the pipe and which, therefore, was actually cut and replaced by the Company should be included. The Commission's Engineers introduced figures under both theories. It is apparent that under a hypothetical reconstruction program, the cost of cutting and replacing of pavement would be incurred; but the Company does not own and has not paid for the pavement in question. The laying of pavement over a main does not increase its usefulness nor add to its value except when that value is wholly measured by a theoretical reproduction cost. Here we are concerned primarily with the value of this system

rather than with a theoretical cost of construction under conditions that would be encountered in the actual reconstruction of the property. The theoretical cost of this pavement is an item that represents neither an actual cost to the Company nor an intrinsic value and there appears no reason for considering it as one of the constituent elements of the value of the property involved.

The Company's engineers estimated accrued depreciation by the inspection method. The City's engineers calculated the accrued depreciation on the straight line basis. The engineers of the Commission presented three figures for depreciated cost; one based upon the straight line theory, one upon the 5 per cent sinking fund basis, and the third on what they designate "Equal Annual Cost" method. The use of the straight line method either ignores the effect of interest or else assumes that it will be offset by the increase of maintenance and operating costs with age. From the standpoint of the mathematics involved, it would be only by chance that the straight line method would give the correct result. In the inspection method, unless used in conjunction with an age-life calculation, it is easy to overlook the obligation to replace the items of property under review and there is danger of neglecting the unseen elements of depreciation. The determination of accrued depreciation involves, at the best, a large amount of judgment and the solution that is based on the widest consideration of determinable facts and the logical use of those facts clearly appears to be most reliable. What has been termed as the "Equal Annual Cost" method rests upon a study of pertinent statistics as well as upon an inspection of the property and the consideration of all available information

in a logical way from a standpoint of one making a normal use of the property.

In this case, in determining the reproduction cost new less depreciation, the "Equal Annual Cost" method will be applied to the reproduction cost new study made by Commission's engineers.

Excluding from consideration as an element of reproduction cost new, the amounts shown as items for uncut pavement, and after making certain adjustments in the studies submitted by the Commission's engineers and applying to the latter, depreciation by the "Equal Annual Cost" method, the result of the three studies above referred to is shown by the following table:

ESTIMATES OF REPRODUCTION COST NEW
LESS DEPRECIATION

<u>C.R.C. Account</u>	<u>Company*</u>	<u>City**</u>	<u>Commission</u>
C- 1 Organization,	\$17,800.	-	\$10,000.
C- 5 Lands,	52,142.	\$43,665.	52,142.
C- 6 Buildings,	76,076.	72,676.	67,497.
C-10 Wells,	81,878.	45,029.	74,274.
C-14 Pumping Equipment,	210,504.	154,491.	174,559.
C-18 Dist. Mains,	1,748,842.	1,056,545.	1,376,454.
C-19 Reservoirs & Tanks	60,840.	35,226.	55,256.
C-21 Services,	220,651.	142,200.	148,394.
C-22 Meters,	67,579.	57,815.	58,157.
C-23 Misc. Dist. Equip.,	13,436.	8,702.	12,254.
C-24 General Equipment,	19,855.	7,212.	13,371.
Paving cut historically,	89,376.	39,040.	44,631.
Maps and Records,	5,000.	-	-
Materials & Supplies,	28,000.	-	28,000.
TOTAL,	\$2,701,981.	\$1,662,601.	\$2,114,989.

*In presenting these figures for comparison general overheads and interest during construction claimed by the Company as separate items have been spread over physical property in proportion to capital. The Company's claimed reproduction cost less depreciation including all paving was \$3,058,754.

**In these figures \$43,400. undistributed construction expense and \$122,850. interest during construction

set up by the City as separate items have been spread over all items except land in proportion to capital.

Supplementing the evidence with reference to reproduction cost of the property, the Company introduced evidence tending to show that the cost of attaching the business of the Fresno Water System should be considered as a part of the cost of reproducing the plant as it now exists as a going concern. The Commission's engineers also presented studies along the same lines. No doubt some such expense in reproducing the plant and making it a going concern would be incurred by a new company entering the field at this time. Such expense may be thought of as the cost of that element of the property whose value is known as "going concern" or "going value". To this extent only can such evidence be considered in determining value.

The property involved is situate in and adjacent to the boundaries of the City of Fresno. The plant is well constructed and according to the evidence is readily subject to expansion without undue expenditures and the property, in my judgment, has a value in excess of the present cost of reproduction less depreciation.

In addition to the studies which have been hereinbefore mentioned, the annual reports of the Company have been introduced in the proceeding and are a part of the record and from these annual reports the cost of the property as carried on the books of the corporation is shown, also the net annual income therefrom.

I recommend, after considering all the evidence, that the Commission find as a fact that the just compensation which the City should pay to the Company for the land, property and

rights described in Exhibit "B" attached to the Amended Petition is the sum of \$2,327,000.

F I N D I N G

The City of Fresno, a municipal corporation, having filed with the Railroad Commission on April 8, 1927, an amended petition as above entitled and the Commission having issued its order to show cause thereon and having proceeded in accordance with the provisions of Section 47(b) of the Public Utilities Act to fix and determine the just compensation to be paid by the City of Fresno to California Water Service Company for the taking of the land, property and rights described in the said amended petition, and the exhibits attached thereto and made a part thereof, public hearings having been held, the matter having been submitted and briefs filed thereon, and the Railroad Commission being now fully apprised in the matter;

It is hereby found as a fact that the just compensation to be paid by the City of Fresno to California Water Service Company for the land, property and rights described in the amended application filed on April 8, 1927, and in the exhibits attached thereto, is the sum of \$2,327,000.

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

Dated at San Francisco, California, this 4th day
~~of August~~, 1929.

Four & Louette
Chapman
Leon Caldwell
W. H. ...
Commissioners.