

In the matter of the valuation of
the property of the Central Pacific
Railway Company between Mojave, Kern
County, and Owenyo, Inyo County, Cali-
fornia, (formerly Nevada and California
Railway Company).
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Case No. 196.
(Consolidated with Case 200).

By the Commission.

OPINION ON PETITION FOR REHEARING.

This is an application for a rehearing of this case, which was heard by the Commission on January 31st, February 2d, March 2d and August 7, 1914, and decided on December 8, 1915, (Decision No. 2961). A brief review of its history is contained in the decision referred to. The petitioner now prays:

1st - That this proceeding be reopened, and that applicants be permitted to submit testimony with respect to any of the issues involved in the valuation of this property.

2d- That the hearing contemplated by Section 70 of said Act be continued and completed.

3d- That pending such continuation and completion of said hearing said opinion and findings in Decision No. 2961 be either set aside or suspended.

4th- That said Case No. 200, which involves the valuation of the El Centro-Seesley Branch be continued indefinitely, not to be set until the final determination by this Commission of the issues arising in Case No. 196.

Six principal reasons are given by the petitioner why a rehearing should be granted.

Petitioner first refers to Sections 47 and 70 of the California Public Utilities Act, and states that the effect of the Commission's decision, if it remains in force, is such as to have prevented petitioner from offering testimony concerning any of the

issues involved in this proceeding, and that this Commission has made its decision without affording the petitioner the hearing contemplated by Section 70 of the Public Utilities Act. Petitioner states that in this case the hearing as contemplated by the Public Utilities Act was begun and some evidence introduced on behalf of the Commission consisting of reports and oral testimony from its engineering department; that during the course of the introduction of evidence questions arose as to what should be allowed for transportation of men and materials and also as to what theory of depreciation, if any, and if so, what percentages of depreciation, should be used by the Commission; that thereupon the further trial of this case was suspended and briefs were filed and arguments made on behalf of the petitioner respecting the two questions referred to. Petitioner believes that the records will show that when the Commission had determined what rules should apply with respect to the two questions of transportation and depreciation, the hearing would then proceed, and the applicant would have an opportunity to introduce further testimony, not only on the two matters referred to, but also on all other questions entering into the determination of original cost, cost of reproduction new, or cost of reproduction less depreciation.

We have gone carefully through the entire record in this case and find that the contention of the petitioner, as to its not having been granted full opportunity to offer evidence, is not founded on fact. A study of the transcript of the four hearings shows clearly that the case was complete when the decision was rendered. The testimony shows conclusively that at the submission of the case on August 7, 1914, there were only two matters upon which it was desired to offer further argument to the Commission, namely, the question of transportation charges and that of depreciation.

Commissioner Eshleman, before whom the case was originally heard, gave the petitioner, and also the Western Pacific Railway Company and The Atchison, Topeka and Santa Fe Railway Company, who

had come into the case as amici curiae, thirty days in which to file briefs on the two questions referred to. Such briefs were filed by the petitioner and by The Atchison, Topeka and Santa Fe Railway Company. After the filing of these briefs the case was ready for decision as soon as the Commission had determined upon the disposition of the two items referred to. This disposition was made by Commissioner Eshleman and later concurred in by the entire Commission.

In this respect, as in all others, this case was handled exactly like other similar valuation cases decided by this Commission, and there appears to be no reason why a rehearing should be granted on the claim that petitioner has not had an opportunity to introduce whatever evidence it desired. On the contrary, the Commission is of the opinion that the procedure contemplated by the law was strictly followed and that petitioner has had full opportunity to present its case.

A rehearing is asked for the second reason that the findings of the Commission with reference to the item of transportation, if used in the future, either for the purpose of rate making or for the purpose of the acquisition of the line under consideration by the public, will result in depriving petitioner of its property without due process of law and denying it the equal protection of the law.

As far as the findings of fact with reference to the question of transportation are concerned, a reference to the Commission's decision will show how exhaustively and carefully the subject was considered. The Commission, after reconsideration, finds no reason why these findings should be modified in any particular. When it is averred that the Commission's decision, if permitted to stand, will deprive applicant of its property without due process of law, we believe that applicant labors under an entire misapprehension. The Commission in this and in all similar cases

has held that in valuation proceedings findings of fact on various elements bearing on the value of the property only shall be made and that no decision will be reached on the ultimate question of the value of the property, irrespective of the purpose for which the value is ascertained. Specific mention of this limitation is made in Decision No. 2961 referred to. It is there stated that to the future will be left the use of the findings in any proceeding in which they may become relevant.

As a third reason why a rehearing should be granted petitioner asserts that by the reduction of unit prices in the estimates of cost of reproduction new and cost of reproduction less depreciation petitioner has further been deprived of the benefit of any allowance for transportation, thus indirectly nullifying the allowance of 7 mills per ton mile and 1 cent per passenger mile ostensibly made by the Commission for the transportation of men and materials.

Applicant's contention is erroneous, and an inspection of the decision and of the engineering department's report shows that the question of transportation has been handled in the manner explained in the decision.

As a fourth reason petitioner objects to the Commission's theory on land values as explained in the decision. It would seem that the Commission's position in this matter was made sufficiently clear in the decision in this case hereinbefore referred to, and we shall quote from that decision:

"We have stated in the first pages of this opinion that no findings will be made on the ultimate or fair value of this property for any particular purpose and that certain definite elements of value only are to be ascertained. Keeping this statement in mind, we are of the opinion that our purpose is accomplished if all the material facts entering into this valuation proceeding are clearly set forth. If this valuation should become material in a rate case, for instance, or in a securities case, or in any other proceeding, the Commission will have before it most of the data from which it can form an intelligent opinion of the "fair value" for the particular purpose at issue. The Commission will be in a position to accept or reject the

"multiple" or any theory as it may see fit. It is sufficient to state here that in the reproduction cost of this property, as it will be found by us, the values placed on land do not include a right of way multiple, and no allowance for interest or other arbitrary allowances, as explained above."

We have nothing to add to this statement and are of the opinion that a rehearing would not change the findings.

As its fifth and sixth reasons for asking for a rehearing the petitioner puts before the Commission its statement that the bases used to arrive at the cost of reproduction now are largely erroneous, and again avers that no opportunity was granted to present evidence with respect to said bases, and to object to and offer testimony with respect to the methods and unit prices adopted by the Commission's engineering department.

The petitioner's contention is not borne out by the transcript in this case, which shows that on the day of submission, August 7, 1914, there remained for consideration by the Commission only the questions of transportation and depreciation, on which further oral argument was not desired by the petitioner, and briefs were submitted later.

It is the Commission's opinion that the petition for a rehearing should be denied.

O R D E R.

Applicant in the above entitled proceeding having filed with the Commission a petition asking for a rehearing, and careful consideration having been given said petition, and no just ground being given why a rehearing should be held,

IT IS HEREBY ORDERED, That said petition be and the same is hereby denied.

Dated at San Francisco, California, this 4th day of April, 1916.

Max Shelton

W. H. ...

...

Stan R. ...

Commissioners.