

Decision No. 29266

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of
 THE CITY OF FRESNO, a municipal
 corporation, to ascertain the value
 of and to fix the just compensation
 to be paid by the City of Fresno, a
 municipal corporation, for certain
 lands, property and rights of the
 SAN JOAQUIN LIGHT AND POWER CORPORA-
 TION, a corporation, located and situ-
 ate within the corporate limits of the
 City of Fresno and used and/or useful,
 in the generation, distribution and/or
 sale of electric energy within said
 City of Fresno.

ORIGINAL

Application No. 18932

Claude L. Rowe and G. R. Kenny, for Applicant.
 Chaffee E. Hall, for San Joaquin Light and
 Power Corporation; Wells Fargo Bank and
 Union Trust Company, and the Chase National
 Bank of the City of New York.
 Harry Barnes, for Madera County Farm Bureau.
 Carl Heinze, for the City of Fresno.

BY THE COMMISSION:

O P I N I O N

This is a proceeding under Section 47(b) of the Public Utilities Act in which the City of Fresno, a municipal corporation, hereinafter referred to as the City, asks the Railroad Commission to fix and determine the just compensation for the taking of certain lands, properties and rights of the San Joaquin Light and Power Corporation. Such lands, properties and rights are described in Exhibit "A" of the original petition, filed June 2, 1933, amended as shown in "Application for leave to amend petition" filed June 30, 1934, and consist of certain described electric distribution prop-

and \$1,664,000 as damage to the property and business remaining.

These extreme variations in claims for just compensation result mainly from the fundamental differences of theory and law applied. Quotations from their briefs may be taken fairly to indicate their respective views.

The City states:

" * * * loss in earnings of the system following loss of Fresno plant and business cannot be used as the basis for the computation of just compensation,"

and that

" * * * cost of reproduction less depreciation plus an allowance for going concern value represents just compensation for the property taken."

It further declares that:

"Severance damage is not related to relative earning power before and after the taking but is measured by the cost of making repairs, retirements or new construction to enable the Company to continue to conduct the remainder of the business after the taking. The Company is entitled to nothing as compensation for so-called damage to the business which it still retains but which it is claimed becomes less profitable because of the loss of the business in Fresno."

Contrasted with the City's declaration of position, the Company asserts:

" * * * It is the law * * * that in a condemnation case the award to which the owner is entitled as compensation for the property taken is the market value of the whole property taken, physicals and business, as a unit, and that such market value is dependent upon earning power and may only be determined by earning power."

and that:

" * * * the severance damage to which the owner is entitled as compensation for damage to property not taken is the out-of-pocket cost of re-establishing service interrupted by the taking plus the loss in market value of the property not taken caused by the taking, and that such loss in market value is dependent upon loss in earning power and may only be determined by loss in earning power."

erties and franchises within the corporate limits of the City of Fresno, except certain described parcels of real property and all telephone lines and equipment, transportation equipment, tools and supplies, etc. of the Company. The application was amended by leave of the Commission, dated July 23, 1934. As provided in Section 47(b) of the Public Utilities Act, just compensation is to be determined for such lands, properties and rights as of June 2, 1933, the date of the filing of the original application.

Hearing of the Order to Show Cause was held in Fresno on September 5, 1933. The receiving of exhibits and taking of testimony commenced September 18, 1934, and was concluded on October 2, 1935, all of said hearings, with one exception, being held in the City of Fresno. During this period 32 days were devoted to the taking of testimony. The record made consists of 3,208 pages of transcript and 68 exhibits introduced by the interested parties. The matter was submitted upon filing of briefs and after oral argument before the Commission en banc held in San Francisco on December 20, 1935.

The City and the Company differ widely in their contentions as to the just compensation to be fixed. The City claims that without recognition of severance damage due to temporary idle plant, the total award should approximate \$1,710,000, while if the Commission recognize an allowance for damages to property rendered temporarily idle, the total award should be approximately \$1,900,000. Its claim is approximately \$1,550,000 for the value of property and rights taken and either \$160,000 or \$350,000, as the case may be, for damage to property not taken. The Company, on the other hand, claims the award to which it is entitled is \$4,664,000, this consisting of \$3,000,000 as the value of the property and rights taken

The comprehensive scope of the evidence presented in this proceeding enables the Commission to approach its task of determining just compensation without wholly accepting either one or the other of these legal concepts. Market transactions at a given time often determine within accurate limits the market value of commodities, but in the same sense the market value of a portion of an electric utility, owing to its inherent qualities, cannot be readily ascertained. It becomes necessary to review all elements in the search for value. Every fact surrounding the utility property and enterprise, including costs, recognizing that it has a business attached with power to earn, must be considered and assigned that proper weight which fairness and justice demand. Briefly stated, the record contains evidence reflecting cost covering plant, attachment of business, damage to property remaining, together with present and prospective earnings and earning position subsequent to the severance of the Fresno properties. In addition, there is opinion evidence as to the total award which is believed should rightfully be allowed.

A detailed summation of all evidence cannot here be attempted, but certain facts and issues should be discussed to the extent necessary to indicate the basis of the Commission's judgment upon the ultimate question presented. This will be done in the usual manner by first considering the property and rights to be acquired and then those factors contributing to the damage resulting to the property and business not taken. In accordance with the duty imposed by statute, our finding of total just compensation will be made in such a manner as to state separately the amount for severance damage.

PROPERTY TO BE TAKEN

The property under condemnation, as of June 2, 1933, is described in Exhibit "A" of the original petition and in the amendment thereto. A detailed inventory was made in the field during the early part of 1934 by the Commission's engineers, under the close check and cooperation of the engineers of the Company and the City. The impossibility of inventorying the described property on the date of application necessitated the adjusting of the inventory by certain additions and deductions, dependent upon the progress of work under construction. This method without question preserves the interest of the parties. All of the changes in inventory due to errors and omissions were thoroughly reviewed by the engineers, and the quantities as set forth in the record are in substantial agreement.

Reproduction Cost New

To estimate the cost to reproduce the property new, the engineers priced the inventory both upon the basis of a two-year pricing period ending June 2, 1933, and upon one-day spot prices as of that date. Trended appraisals to reflect material prices for other periods were also introduced in evidence, these covering periods both prior to and subsequent to the date of application. Such trended appraisals are an indication of costs, but do not reflect costs with the same degree of accuracy as is obtained by the preparation of a detailed appraisal.

The pricing period taken may closely approximate the assumed construction period provided those prices fairly reflect costs to construct the property as of the date of valuation. The evidence in this case indicates that the time-average prices during the two-year period preceding June 2, 1933, with certain

qualifications, may be taken to more nearly represent reasonable construction costs as of that date than those obtaining during any of the other pricing periods covered.

In order that we may analyze some of the important differences between the appraisals presented by the engineers for the Commission, the Company, and the City, bearing in mind, however, that construction costs are not the sole measure of value, we may appropriately set forth here a tabulation showing the respective estimates on the properties included in the application, using for this purpose the detailed appraisals based upon the two-year pricing period preceding the date of application. The comparison of the estimates of Reproduction Cost New are shown in Table I following:

TABLE No. I

FRESNO ELECTRIC DISTRIBUTION SYSTEM - OPERATIVE PROPERTY
COST TO REPRODUCE NEW AS OF JUNE 2, 1933 - TWO-YEAR AVERAGE PRICING PERIOD
COMPARISON OF ESTIMATES BY ENGINEERING DEPARTMENTS OF COMMISSION, COMPANY AND CITY

Account	C. R. C. Engineers (1)	Company Engineers (2)	Exh. A0 City Engineers (3)	Company More Than C. R. C. (4)	City Less Than C. R. C. (5)
<u>INTANGIBLE FIXED CAPITAL</u>					
301 Organization	\$16,500	\$16,500*	-	\$ -	\$16,500
302 Franchises	700	-	\$ 700*	(700)	-
Total Intangible Fixed Capital---	\$17,200	\$16,500*	700*	(700)	\$16,500
<u>TANGIBLE FIXED CAPITAL</u>					
342 Land	\$39,618	\$39,618*	\$39,618*	\$ -	\$ -
343 Structures	47,213	57,278	46,607	10,065	606
344 Substation Equipment	242,394	266,503	241,690	24,109	704
346 Poles and Fixtures	308,232	443,786	304,577	135,554	3,655
347 Overhead Conductors	276,752	284,876	265,812	8,124	10,940
348 Underground Conduits	8,079	9,769	7,975	1,690	104
349 Underground Conductors	13,291	14,968	13,121	1,677	170
350 Line Transformers	213,382	236,357	210,647	22,975	2,735
351 Services	82,383	93,176	81,327	10,793	1,056
352 Consumers' Meters	236,037	260,581	233,011	24,544	3,026
355 Installations on Consumers' Premises	51,740	58,948	50,275	7,208	1,465
357 Street Lighting Equipment-Line	163,735	176,949	173,899	13,214	(10,164)
357 Street Lighting Equipment-Oper. Substation	12,783	14,921	15,570	2,138	(2,787)
--- Tree Trimming	4,680	11,456	-	6,776	4,680
Total Tangible Fixed Capital---	\$1,700,319	\$1,969,186	\$1,684,129	\$268,867	\$16,190
Total Tangible & Intang. Fixed Capital---	1,717,519	1,985,686	1,684,829	268,167	32,690
--- Commercial & Engineering Records	8,500	8,500*	8,500*	-	-
--- Construction Work in Progress	39,600	40,360	-	760	39,600
Grand Total---	\$1,765,619	\$2,034,546	\$1,693,329	\$268,927	\$72,290

* Figures introduced by C.R.C. Engineers.
(Red Figures)

Non-Controverted Items

The figures set forth in the foregoing table, covering lands and rights of way, organization, franchises, commercial and engineering records, are those testified to by the Commission's staff, and it appears that no controversy arises as to their allowance. The amount set forth for franchises covers only the estimated cost of securing them and any additional sum covering value will be reflected in the intangible elements included in our findings of just compensation for such lands, property and rights taken. Likewise, the figure included for commercial and engineering records is the estimated cost of copying certain identified records.

Construction Work in Progress

Construction work in progress which reflects certain items of property nonoperative as of the date of application should be included as part of the appraisal. The amounts set forth in Table I are in substantial agreement.

Controverted Items

The total operative structural property, as testified to by the various witnesses for the two-year pricing period, is set forth by accounts in Table I.

The total difference of \$16,190 between the estimates of the engineers for the Commission and for the City covering tangible fixed capital, is mainly due to the overheads estimated. The total difference of \$268,867 between the estimates of the engineers for the Commission and for the Company is accounted for in the following tabulation:

<u>Item</u>	<u>Amount</u>	<u>Per Cent Total Amount</u>
1. Overheads	\$131,794	49.0
2. Joint Pole Equities	58,375	21.7
3. Labor Costs	34,011	12.7
4. Material & Indirect Costs	25,217	9.4
5. Miscellaneous	19,470	7.2
Total---	\$268,867	100.0%

These items of controversy will here be considered:

1. Overheads: The subject of overheads is often one of the major items of controversy in an engineering appraisal. The property under consideration is to be taken as a whole and its reproduction cost estimated on material and labor plus overheads as of a definite time. The approach should be on the basis of wholesale rather than piecemeal construction.

The main difference in the item of overheads is due to the method of calculating interest during construction. The assumptions as to the method of financing the project, the period upon which interest payments are to be calculated, bank balance credits, operative dates for portions of the property, interest rates to be applied, etc. varied to a greater or less extent in the estimates presented.

In the development of overheads applicable to a reproduction cost new estimate, extreme care must be exercised in that each assumption made be consistent with the other. The Commission's Valuation Engineer, Mr. Mess, presented a study covering overheads in great detail in which his construction theories were applied with more reasonable consistency than were those adopted by either the witnesses for the City or the Company. It is true, as Mr. Mess testified, that the assumed construction period might be shortened, but this would be a sacrifice of efficiency and with increased overall costs of construction. Our conclusion, therefore, will accord greater weight to his estimate, but will give effect to certain additional factors appearing in the record.

2. Joint Pole Equities: The Company claims an added construction cost covering an assumed obligation to grant a free interest in certain poles used jointly by the Company and other operating utilities and, in addition, the theoretical expense of transferring the equipment of the other utilities to the jointly used poles. It is our opinion

that this claim should not be included in the costs.

3. Labor Costs: An analysis of actual labor performances covering the property involved is of material aid in determining the reproduction cost new, provided there is a proper weighing of wage scales, methods of construction, difficulty factors, crew compositions, elements of reconstruction, etc.

In the development of labor unit costs the engineers for the Commission and Company each made a detailed analysis of past performances covering distribution construction in the City of Fresno, which in turn reflected piecemeal construction. During the construction period adopted, ending June 2, 1933, the labor market presented no problem in the securing of trained and experienced personnel. Although the efficiency of the crew at the start of construction might vary somewhat from that realized by the Company's regular personnel, the factors entering into wholesale construction would, in our opinion, be more than an offsetting item. This is particularly true with respect to the overhead system. The estimate of the Commission's engineers, having been based consistently upon wholesale construction, should be adopted.

4. Material and Indirect Costs: The development of material and indirect costs reflected in the appraisals presented by the Commission's engineers was consistent with the construction assumptions used throughout. The engineers for the City made a detailed check of these costs and applied them in their appraisal. We believe the evidence justifies their acceptance.

5. Miscellaneous Items: The difference set forth under this heading is accounted for mainly by the items of tree trimming, transportation and tool expense, and substation costs. We are unable to subscribe either to the premise under which the Company prepared its estimate of cost of tree trimming or to the contention of the City in ex-

cluding this item entirely from its appraisal. Our conclusions will reflect an amount deemed proper. The amount to be allowed for transportation and tool expense will be based upon the general premise already referred to in the development of a reproduction cost new of the properties. Such items of substation costs that are of the same character as items already reflected in the other accounts discussed and disposed of will be treated in similar manner.

Reproduction Cost New Less Accrued Depreciation

The City's witness, Mr. Kenny, in Exhibit No. 10, setting forth his calculations covering accrued depreciation, accepted the same ages, lives, salvage ratios, and interest rate as had been adopted by Mr. Thelen, witness for the Commission, in presenting his study of accrued depreciation in Exhibit No. 3. Each exhibit was based primarily upon the age-life sinking fund method.

The Company's witness, Mr. Moulton, in Exhibits Nos. 17 and 20, presented two calculations based primarily upon the age-life sinking fund method, applying a 6 per cent interest rate in one and a 5½ per cent rate in the other. In addition, he introduced a depreciation estimate covering only two of the fixed capital accounts and a portion of a third, applying what he labeled an "Equal Annual Cost Method."

The results arrived at by pursuing these various methods and assumptions differed to a rather wide degree. An examination of the extensive data and testimony presented reveals, however, that the witnesses were in agreement in one fundamental particular, namely, that in general a calculation of accrued depreciation made upon the sinking fund basis fairly reflects the difference between the value of a used plant and one constructed new. Because each of the witnesses prepared complete sinking fund calculations of accrued depreciation, based primarily on the age-life sinking fund method with the use of a 5½ per cent interest rate, a comparison of the results reached in those studies will reflect their differences on a comparable base.

These appear in Table II following:

TABLE No. II

FRESNO ELECTRIC DISTRIBUTION SYSTEM - OPERATIVE PROPERTY
COST TO REPRODUCE NEW LESS ACCRUED DEPRECIATION AS OF JUNE 2, 1933
TWO-YEAR AVERAGE PRICING PERIOD AND 5½% AGE-LIFE SINKING FUND COMPUTATION
COMPARISON OF ESTIMATES BY ENGINEERING DEPARTMENTS OF COMMISSION, COMPANY AND CITY

Account	R. O. N. LESS ACCRUED DEPRECIATION:			DEPRECIATED COST RATIOS		
	G. R. C. Engineers	Company Engineers	City Engineers	G. R. C. Engineers	Company Engineers	City Engineers
	(1)	(2)	(3)	(4)	(5)	(6)
<u>INTANGIBLE FIXED CAPITAL</u>						
301 Organization	\$16,500	\$16,500*	-	100.00%	100.00%	-
302 Franchises	700	-	700*	100.00	-	100.00%
Total Intangible Fixed Capital---	\$17,200	\$16,500*	700*	100.00%	100.00%	100.00%
<u>TANGIBLE FIXED CAPITAL</u>						
342 Land	\$39,618	\$39,618*	39,618*	100.00%	100.00%	100.00%
343 Structures	41,404	50,956	40,873	87.70	88.96	87.70
344 Substation Equipment	218,121	251,156	216,862	89.99	94.24	89.73
346 Poles and Fixtures	248,097	367,510	245,401	80.49	82.81	80.57
347 Overhead Conductors	230,537	245,677	218,965	83.30	86.24	82.39
348 Underground Conduits	7,690	9,300	7,592	95.19	95.20	95.19
349 Underground Conductors	11,977	13,518	11,824	90.11	90.31	90.11
350 Line Transformers	164,386	204,281	162,279	77.04	86.43	77.04
351 Services	56,977	77,988	56,246	69.16	83.70	69.16
352 Consumers' Meters	178,555	210,923	176,128	75.65	80.94	75.59
353 Installations on Consumers' Premises	43,414	53,471	42,175	83.91	90.71	83.69
357 Street Lighting Equipment-Line	132,718	149,295	131,033	81.06	84.37	75.35
357 Street Lighting Equipment-Oper. Substation	9,687	12,598	9,562	75.78	84.43	61.41
--- Tree Trimming	3,510	11,456	-	75.00	100.00	-
Total Tangible Fixed Capital---	\$1,386,691	\$1,697,747	\$1,358,558	81.55%	86.22%	80.67%
Total Tangible & Intangible Fixed Cap'l	1,403,891	1,714,247	1,359,258	81.74%	86.33	80.68
--- Commercial & Engineering Records	8,500	8,500*	8,500*	100.00%	100.00	100.00%
--- Construction Work in Progress	39,600	40,360	-	100.00	100.00	-
Grand Total---	\$1,451,991	\$1,763,107	\$1,367,758	82.24%	86.66%	80.77%

* Figures introduced by G.R.C. Engineers.

The differences in the depreciated cost figures revealed in Table II are occasioned first of all by the variations in the reproduction cost new estimates appearing in Table I. In addition they result from the divergent views of the witnesses respecting the ages, lives, salvage values, etc. that were used.

Table II also gives a comparison of the depreciated cost figures with those representing reproduction cost new appearing in Table I, expressed as ratios in per cent.

Several issues are thus presented. The extensive data offered in support of the ages, lives, etc. adopted by each cannot here be discussed in detail, but have been given the Commission's full consideration. Other differences, however, justify further comment, particularly those injected by the Company's use of a 6 per cent interest rate rather than $5\frac{1}{2}$ per cent, and by the application of the so-called "Equal Annual Cost" depreciation method to certain of the property accounts.

Evidence as to the proper interest rate to be taken for the sinking fund calculation was offered by Mr. Thelen of the Commission's staff and by Mr. Moulton for the Company. Mr. Thelen based his conclusion that the use of a $5\frac{1}{2}$ per cent rate would be reasonable upon an analysis made by him of returns available from investments of the sinking fund in the utility's own property and bonds, and also in the purchase of other securities. Cross-examination of the Company's witness revealed the fact that he was not familiar with the yields to be obtained on investments in the utility's bonds or in other securities. It appears that in urging the use of the 6 per cent rate he relied mainly upon the fact that the Commission has used that percentage in rate proceedings for the purpose of determining a proper depreciation annuity. We believe that the record compels the acceptance of Mr. Thelen's conclusion.

It has already been noted that the Company's witness consistently applied the age-life sinking fund method in estimating depreciation on most of the property groups. His departure from this method as to certain amounts results in his acceptance of a greater remaining life expectancy and consequently lower figure for accrued depreciation. In brief, his "Equal Annual Cost Method" is based on group statistics of past performances. This is entirely different from the consideration of single items of property. The future performance cannot be forecast for a single item of property unless it is to be retired for physical cause only. The future performance for a large group of similar items, retired from all causes, can be reasonably forecast. This is the statistical or mortality method which is put to such practical use by actuaries in life insurance calculations. It is premised upon the assumption that no obsolescence or inadequacy can be present in a new and unused item of property identical in design with the existing items but newly installed as of the date of valuation. Having eliminated accrued obsolescence and inadequacy from consideration, he causes the rejuvenated item and the existing item to follow the same life experience curve, both being rated at 100 per cent of new during each remaining year of life, save only for the remote possibility that physical failure will cause removal of the existing item.

The witness' own testimony indicates that the bulk of the retirements made are due to causes other than physical deterioration and generally designated as obsolescence and inadequacy. Therefore, these functional elements of depreciation cannot be ignored. For these reasons our conclusions covering depreciated cost will not reflect the computations presented on the basis of the so-called "Equal Annual Cost Method."

CONCLUSIONS

Our conclusions covering the Reproduction Cost New and Reproduction Cost New Less Accrued Depreciation for the property described in the application and amendment thereto are set forth in Table III following:

TABLE NO. III
FRESNO ELECTRIC DISTRIBUTION SYSTEM
OPERATIVE PROPERTY
JUNE 2, 1933

Account	Reproduction Cost New (1)	Reproduction: Cost New Less Accrued: Depreciation: (2)	Ratio of Columns (2) to (1): (3)
<u>INTANGIBLE FIXED CAPITAL</u>			
301 Organization	\$ 16,500	\$ 16,500	100.0%
302 Franchises	700	700	100.0
Total Intangible Fixed Capital	\$ 17,200	\$ 17,200	100.0%
<u>TANGIBLE FIXED CAPITAL</u>			
342 Distribution Lands	39,620	39,620	100.0
343 Distribution Structures	47,920	42,170	88.0
344 Distribution Substation Equipment	252,953	227,660	90.0
346 Distribution Poles, Towers & Fixtures	321,654	258,935	80.5
347 Distribution Overhead Conductors	293,015	246,135	84.0
348 Distribution Underground Conduits	8,200	7,810	95.2
349 Distribution Underground Conductors	13,490	12,170	90.2
350 Line Transformers	216,585	175,430	81.0
351 Services	83,620	63,130	75.5
352 Consumers' Meters	246,322	187,205	76.0
355 Installations on Consumers' Premises	52,510	45,580	86.8
357 Street Lighting Equipment	184,891	151,055	81.7
Total Tangible Fixed Capital	\$1,760,780	\$1,456,900	82.7
Total Tang. & Intang. Fixed Capital	1,777,980	1,474,100	82.9
--- Commercial and Engineering Records	8,500	8,500	100.0%
--- Construction Work in Progress	40,000	40,000	100.0
Grand Total---	\$1,826,480	\$1,522,600	83.4%

JUST COMPENSATION FOR PROPERTY AND RIGHTS

It has already been noted that the City claims that the just compensation for the property and rights taken is approximately \$1,550,000. Of this amount the sum of \$173,500, as set forth in its Exhibit No. 10, introduced by Mr. Kenny, represents what is termed "going concern value" and the other intangibles.

The Company did not set up any separate amount for rights and business attached. In accordance with the evidence presented by its witness, Mr. Vincent, it claims an amount of \$3,000,000 as representing the total fair market value of the Fresno distribution properties and rights as of June 2, 1933, and this sum, it claims, is just compensation for the properties taken. In arriving at this conclusion Mr. Vincent assumed that the reproduction cost new less depreciation on this date would approximate \$1,800,000, but such sum was exclusive of expense covering organization, franchises, and commercial and engineering records. He also assumed that the historical cost of the property would approximate \$2,040,000.

The engineers of the Commission's staff did not express an opinion as to the total market value of the properties and rights covered by the application.

In arriving at a conclusion as to the just compensation to be awarded for the property and rights taken, recognition must be given to the fact that the property is in active operation, with business attached, and definitely earning a return upon the capital invested therein. Unquestionably, were there an actual exchange of this property in an open market the parties to the transaction would give consideration to all facts surrounding the business as well as the property devoted to that business.

The actual present earnings from this property should not be disregarded, but it is the future earning power of the property which adds or detracts from the value which otherwise would be

assigned to the physical plant alone. Therefore, in valuing the property and rights sought to be condemned, we will endeavor to fairly reflect the earning power of the business attached.

There is extensive evidence in the record relating to the earnings derived from the property computed on various bases. There is evidence respecting the diversity and growth of the electric load within the City of Fresno; cost of developing the existing loads; the general business conditions within the City and its surrounding territory; the comparative level of the rates now charged; the character and class of service rendered; the prospects for future load development and attending capital requirements to serve that load; the possibility of a reduction or retardation of load due to various forms of competition, and the sources of power supply available to a possible purchaser.

Without attempting here to review such evidence, it may be stated that the record clearly indicates that this property, in the hands of any competent operator would continue to be a profitable going business. In the hands of the present owner it has yielded a high return upon the capital invested, with a gradually increasing load which at this date has not approached the point of saturation. On the other hand, it cannot be assumed that the present rate schedules will not be subject to changes in the future. And it is obvious also that the effect of competition in various forms must be given due consideration.

It is our conclusion, after considering all of the evidence of record, that the just compensation, not including severance damage, which the City should pay to the Company for the land, property and rights described in the application as amended, including all elements of value therein, is the sum of \$2,290,000.00.

SEVERANCE DAMAGE

A great amount of evidence was received relating primarily to damage to the property and business of the Company not taken, resulting from the severance of the Fresno distribution system.

Witnesses for both the Company and the City presented estimates of the cost of carrying or retiring certain remaining portions of the physical plant to be rendered either temporarily less useful or permanently idle after the taking. Evidence was offered to show the proportionately higher operating costs of the Company after the taking. In addition, there were estimates of the immediate outlay necessary to bind up the "physical wounds" so as to enable the company to reestablish adequate service in the areas adjacent to the severed property.

Before advertng to the widely different concepts of severance damage entertained by the City and the Company, it will be of aid to compare the estimates of their witnesses, reflecting such damage as results primarily from added costs appertaining to the physical properties. This is done in Table IV following:

TABLE No. IV

FRESNO ELECTRIC PROPERTIES

Application No.18932

COMPARISON BETWEEN VARIOUS EXHIBITS AND TESTIMONY
COVERING COST OF RE-ESTABLISHING SERVICE AND LOSS
DUE TO IDLE PLANT

Item	Fresno Load Served		Fresno Supplied Wholesale	
	Company	City	Company	City
	Period:	Period:	Period:	Period:
	of Re-covery:	of Re-covery:	of Re-covery:	of Re-covery:
	(1)	(2)	(3)	(4)
Costs of:				
1. Reestablishing service and dead-ending lines at City Limits	- \$ 68,377	- \$ 64,640	- \$ 68,377	- \$ 64,640
2. Constructing substitute tie-line	- 54,183	- -	- 54,183	- -
3. Reestablishing private telephone service	- 41,407	- 16,500	- 41,407	- 16,500
4. Removing 11-Kv. Lines	- 10,282	- 9,520	- 7,701	- 6,939
Losses Due to Idle Plants in Connection With:				
5. 11-Kv. Lines to be re-tained	25 30,104	7 8,796	25 11,681	7 3,442
6. Tie-line	2 65,544	1 51,619	- -	- -
7. Steam Production	2 39,156	- -	- -	- -
8. Hydro Production	2 145,221	- -	- -	- -
9. Transmission	2 108,744	1 6,404	- -	- -
10. General	3 77,769	1.5 45,933	3 69,652	1.5 41,138
11. Ashlan Substation	25 69,515	7 32,730	- 1,596	- 1,596
12. Calif. Ave. Substation	25 134,616	7 72,670	- 14,223	- 14,223
13. Kearny Substation	25 21,789	- -	- -	- -
14. Total	\$866,707	\$308,812	\$268,820	\$148,478

SOURCES

Col. (1) and (3), Item 1, Exh. 25-A
 " " " " 2 " 28-A
 " " " " 3 " 35
 " " " All Others - Exh. 41 and Testimony
 (2) and (4), Item 1, Exh. 10, Accepted from C.R.C. Eng. Dept. Exh. 1
 " " " " 3, " 10
 " " " All Others - Exh. 64

The results here shown do not, however, fully reveal the respective contentions of the parties in respect to severance damage. The Company claims, as before stated, that the total damage to its remaining property and business occasioned by the taking of the Fresno property and business is not less than \$1,664,000; this being the opinion expressed by its witness, Mr. Vincent. The City, in its brief and final argument, seems now to question the propriety of including certain of the items and amounts indicated in the foregoing table reflecting the judgment of its own witness. It argues that a distinction should be made between the cost of retiring those portions of the plant rendered permanently idle and the costs attendant upon those facilities rendered temporarily less useful. The latter charges, it claims, are in reality damage to the business and, therefore, are not compensable.

We believe that the damage to the business remaining to the Company, as distinguished from the damage to the physical property remaining, is, under the law, a compensable item. But it is essential that a clear distinction be maintained between true damage to the business which is not taken and the allowance made for the business actually taken and included in the award of just compensation for the property and rights condemned. Certainly the law does not contemplate that when an award is made to fully compensate for the property and rights taken, which award properly reflects the potential earnings from the business attached to that property, there should again be made an allowance under the head of severance damage to compensate for the loss of those same earnings.

The necessary costs immediately to be incurred by the Company in reestablishing its electric service in the areas adjacent to the City of Fresno clearly constitute allowable damages to the remaining system. These include the cost of construction, reconstruction, and removal of facilities and are indicated by the first four items in the foregoing table. For these an allowance will be made.

A somewhat different problem is presented in estimating the

future carrying charges on those portions of the plant which will be rendered less useful after severance of the Fresno load. These same facilities will be continued in service and as their use increases with the development of the electric load outside Fresno, will at a future date again be used to the same degree as of the time of severance even were the City not to purchase any electric energy from the Company. Such continuing costs during the period of recovery undoubtedly will diminish the Company's net return from its remaining business. Therefore, they constitute a true damage to its remaining business and are to be included to the extent deemed reasonable under the head of severance damage.

The difficult task lies in the measurement of such continuing charges upon the remaining system. Estimates must be made as to the growth of electric load in the future, the nature of that load and the net revenue to be derived therefrom. These, in turn, depend upon business conditions in the remaining areas served, the rates charged, and all of the various factors which may influence rate changes. The continuance or non-continuance of the Fresno load is an important factor. Although the record does not warrant the conclusion that the City definitely will purchase electrical energy wholesale from the Company, neither would we be justified in ignoring entirely the reasonable possibility of the Company serving that load.

After giving careful consideration to all the evidence in the record relating to the damage resulting to the property and business remaining to the Company from the taking of the Fresno properties and rights described in the application herein, we conclude that the damage resulting, and therefore to be allowed separately as severance damage, is the sum of \$300,000.00.

The order herein to be made covering the total just compensation, including both compensation for property and rights taken and for severance damages, is based upon the conclusions here expressed. Each case must be determined upon its own facts and the conclusions, in this and every instance, can in no way be taken as a criterion for the determination of just compensation for other properties. There exists no exact measure or yardstick which may be applied in all cases in determining the just compensation to be paid for utility properties. We should point out particularly that there is no fixed ratio between the elements of just compensation, and depreciated cost of property.

O R D E R

The City of Fresno, a municipal corporation, having filed with the Railroad Commission on the 2nd day of June, 1933, a petition as above entitled, and the Commission 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 the San Joaquin Light and Power Corporation, a corporation, for the taking of the property and rights described in the exhibits attached to the petition and the amendments thereto, public hearings having been held, the matter having been submitted and the Railroad Commission being fully apprised in the matter, makes the following findings:

1. It is hereby found as a fact that the just compensation to be paid by the City of Fresno to the San Joaquin Light and Power Corporation, a corporation, for the property and rights described in the application, as amended, not including severance damages, is the sum of Two Million, Two Hundred Ninety Thousand (\$2,290,000.00) Dollars.

2. It is hereby found as a fact that the just compensation to be paid by the City of Fresno to the San Joaquin Light and Power Corporation, a corporation, as severance damages to the remaining property and rights of the company after the taking of the property and rights described in the application, as amended, is the sum of Six Hundred Thousand (\$600,000.00) Dollars.

3. It is hereby found as a fact that the total just compensation to be paid by the City of Fresno to the San Joaquin Light and Power Corporation, a corporation, for the taking of the property and rights described in the application as amended, is the sum of Two Million, Eight Hundred Ninety Thousand (\$2,890,000.00) Dollars.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this 9th day of November, 1936.

M. B. Harris
John Seidell

Malcolm M. ...
Frank R. ...
Commissioners.

~~Handwritten scribbles and lines, possibly crossed-out text or a signature.~~

I am unable to concur in the award, which seems to me to be unduly high.

I accept the finding of the majority that the cost to reproduce the property less depreciation is approximately \$1,525,000. I am willing to augment the reproduction new less depreciation cost by approximately 30%, or \$455,000., for intangible elements of value. I think \$155,000. is a fair allowance for what is generally termed binding up the wounds. Loss because of plant rendered temporarily idle, while such damage may never be realized, in view of the record may reasonably be placed at \$300,000. This makes a total award of \$2,435,000., which may be rounded out to \$2,450,000.

I would divide this total amount between just compensation and severance damage as follows:

Just Compensation	\$1,975,000.00
Severance Damage	475,000.00
Total	<u>\$2,450,000.</u>

A higher figure than this, in my opinion, attaches too much weight and importance to intangibles.

W. J. Cunn

Commissioner.