

Decision No. 31403

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of the  
SACRAMENTO MUNICIPAL UTILITY DISTRICT  
to have fixed and determined the just  
compensation to be paid for an elec-  
tric distribution system existing  
within and adjacent to the boundaries  
of said District.

Application No. 21960

Robert L. Shinn, Stephen W. Downey and  
Marshall K. Taylor, for Sacramento  
Municipal Utility District.

Chaffee E. Hall, R. W. Duval and  
Robert H. Gerdes, for Pacific Gas  
and Electric Company, American  
Trust Company and City Bank Farmers  
Trust Company.

BY THE COMMISSION:

INTERIM OPINION AND ORDER OVERRULING OBJECTIONS  
AND DENYING MOTION TO DISMISS.

On May 21, 1938 Sacramento Municipal Utility District filed a petition under section 47(b) of the Public Utilities Act, requesting that the Commission fix and determine the just compensation to be paid for certain lands, properties and rights described therein, and setting forth the intention of the District to acquire the same under eminent domain proceedings. As required by the statute, the Commission thereupon issued its order directing the owners and claimants named in the petition (hereinafter called respondents) to appear and show cause, if any they had, why the Commission should not proceed to hear the petition and to fix such just compensation.

The record shows that all procedural requirements con-

cerning service which are contemplated by subdivision 3 of section 47(b) were completed prior to the return date of the order to show cause. Hearings on such order were had before Commissioner Wakefield at Sacramento on October 4, 1938 and at San Francisco on October 13, 21 and 22, 1938.

Respondents filed a written return to the order to show cause, and in such return they specified a number of objections to the petition and to the jurisdiction of the Commission to proceed thereunder, requesting that the petition be dismissed. These objections relate generally to the constitutionality of the statute, the right of petitioner to take certain items of property, and the Commission's jurisdiction to entertain this particular petition under the terms of the statute. The first two classes of objections mentioned were not orally argued (although not waived) because, as respondents' counsel frankly stated, certain of the objections "many times have been passed upon unfavorably by the Commission," while others present points "that must eventually be passed upon by the courts and should not be passed upon by the Commission \* \* \*."

The principal remaining objection is that the descriptions are inadequate and insufficient to permit of identification or evaluation of the properties. Before discussing this objection it might be stated that the Sacramento Municipal Utility District comprises an area in excess of six hundred square miles, and that the District seeks to acquire numerous properties constituting an extensive electric distribution system existing within and adjacent to its boundaries. The petition and the exhibits thereto comprise nine printed volumes, consisting of over two thousand pages. We

can take notice of the fact that the petition is thus describing properties of the value of several millions of dollars.

Petitioner introduced evidence through L. S. Ready, an engineer who has been specially retained by the District, and under whose supervision and direction the descriptions contained in the petition were prepared. Mr. Ready explained the scope of the petition and the manner in which the many physical units of these extensive electric properties are described in detail. The various properties sought to be valued are specified with great particularity. The petition describes in detail both those properties which are to be included in the requested valuation and those certain units or parts which are to be excluded from the valuation, and such detailed descriptions necessarily contain numerous engineering and technical terms. The preparation of a petition of the scope and extent of the petition filed by the District in this proceeding obviously requires the application of expert engineering ability and painstaking thoroughness. This is particularly apparent to any one familiar with electric utility properties.

The argument of respondents regarding claimed deficiencies in description was directed, not to the general method or system employed in describing the properties, but to asserted ambiguities or uncertainties in certain particular paragraphs relating to matters of detail in connection with specific items. To this argument the petitioner has replied, stating that even if it be found upon further analysis that minor ambiguities or uncertainties may exist, it is then inevitable and is contemplated by the District, as well as by the statute under which the proceeding is brought, that such changes in the petition may be made by appropriate amendment at any

time during the pendency of the proceeding.

Petitioner suggests, and we think correctly, that the question for determination is not whether there are minor uncertainties or ambiguities, nor whether amendments may be permitted in certain respects, but whether there is such a sufficiency of description that the Commission may order that the matter proceed. It is a fact that amendments have been deemed necessary in most prior proceedings of this nature. In dealing with diversified properties of such magnitude as are here involved, it would be surprising to find that a petitioner would feel it unnecessary to seek leave to amend at some stage of the proceeding prior to submission. Petitioner has indicated that it very likely may have certain minor amendments to suggest in the interest of clarity.

Respondents also raise a somewhat different objection to the Commission's jurisdiction to value certain of the properties in that it urges that section 1240, subdivision 3 of the Code of Civil Procedure contemplates that the Superior Court shall fix the terms and conditions of joint use where it is proposed to take a partial or fractional interest only, and that the Court has not fixed such terms and conditions. This objection presents a legal question which is not determinative of the Commission's power to proceed under the terms of section 47(b) of the Public Utilities Act.

Respondents have referred to a number of court decisions in support of their various jurisdictional objections. We have carefully considered all of these cases and do not believe that the principles therein discussed, when applied to the petition before us, detract in any way from the jurisdiction granted under the Public Utilities Act to proceed to a valuation of the properties.

The Commission is of the opinion that the objections should be overruled and the motion to dismiss denied.

INTERIM ORDER

Sacramento Municipal Utility District having filed a petition under Section 47(b) of the Public Utilities Act, requesting that the Commission fix and determine the just compensation to be paid for certain lands, properties and rights described in said petition, and setting forth the intention of the District to acquire the same under eminent domain proceedings, order to show cause directed to the owners and claimants named in said petition having been issued, written return to said order to show cause having been filed by said owners and claimants, public hearing and oral argument having been had, and good cause appearing, IT IS ORDERED that the objections set forth in the written return to the order to show cause be and they are hereby overruled, and that the motion to dismiss contained therein be and it is hereby denied.

Dated at San Francisco, California, this 31<sup>st</sup> day of October, 1938.

Rafael J. ...  
Leon ...  
Frank ...  
Ray L. ...  
Commissioners.