

orig

Decision No. 43569

RECEIVED
MAY 11 1950

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of the
MARIPOSA PUBLIC UTILITY DISTRICT for
order fixing the just compensation to
be paid for a portion of land of the
"Trabucco Water System," a public utility.

Application No. 30434

ROBERT OWEN CURRAN for Petitioner.

DOCKER & DOCKER, by F. W. DOCKER, for respondents John
Trabucco and Catherine B. Trabucco.

OPINION AFTER HEARING ON ORDER TO SHOW CAUSE WHY
COMMISSION SHOULD NOT PROCEED TO FIX JUST COMPENSATION

On June 22, 1949, the Mariposa Public Utility District filed the above
entitled petition praying that the Commission proceed in accordance with the pro-
visions of Section 47(b) of the Public Utilities Act to fix the just compensation
to be paid by said District for certain lands which it intends to acquire under
eminent domain, it being alleged that the lands to be acquired constitute a portion
of the lands of that certain utility known as the "Trabucco Water System." The
petition names John Trabucco and Catherine B. Trabucco as the owners of the lands
to be acquired, and it names three other persons as claimants of leasehold inter-
ests in said lands and the Pacific Gas and Electric Company as a claimant of a
right of way.

The Commission thereafter, as required by Section 47(b), issued its
order directing each of the named owners and claimants to appear and show cause
why the Commission should not proceed to hear the petition of the Mariposa Public
Utility District* and to fix the just compensation for the lands described. Pub-

* The petitioner will usually be referred to in this opinion as the district,
and John and Catherine B. Trabucco, the named owners of the lands the dis-
trict seeks to acquire, will be referred to as respondents.

lic hearing was held thereon at Mariposa on October 5, 1949. Respondents appeared at that hearing through counsel who stated that he was not then prepared either to acknowledge or to challenge the jurisdiction of the Commission to proceed in the matter. Accordingly, he requested permission later to submit a written pleading should it be determined that the Commission's authority to proceed might be subject to question. Thereupon, it was suggested by the presiding Commissioner that some evidence be taken for the purpose of clarifying certain facts which might aid the Commission in determining whether the requisite jurisdictional facts were present. After the receipt of such evidence, the Commissioner requested that briefs be filed by both the petitioner and the respondents covering the questions suggested. Briefs have been filed.

The Commission must determine whether it should proceed further to hear the petition of the district and to fix the just compensation to be paid for the lands it seeks to acquire through condemnation as provided in Section 47(b) of the Public Utilities Act. As the jurisdiction of the Commission to entertain such a petition is derived from special statutory authority unrelated to the power given it to regulate public utilities, it is evident that its right to entertain such a petition may not be conferred by agreement of the parties, but that the requisite jurisdictional facts must be pleaded and shown to exist. A brief recital of the facts pleaded, and as supplemented by evidence received, will serve to indicate the nature of the jurisdictional questions which must be determined. The position taken by the parties with respect to such questions will be considered presently.

The petitioner is a public utility district organized under the Act of 1921. It alleges that its petition to the Commission is one of the first class under Section 47(b) and that it intends to acquire under eminent domain a portion of the lands of that certain utility known as the "Trabucco Water System," which lands are owned by John Trabucco and Catherine B. Trabucco. The petition recites that theretofore, on December 8, 1948, the district filed an action in the Superior Court of Mariposa County to condemn the lands in question and that such complaint containing a description of the lands described therein is made a part of the

petition filed with the Commission. Attached to the petition are copies of other pleadings filed in that eminent domain action begun in the Superior Court, together with certain orders made by the Court thereon.

The pleadings filed in the Superior Court declare that the lands to be acquired consist of about sixty-three acres of grazing land which is unimproved except for two dwellings thereon. The acquisition of this land by the district is said to be necessary for the purpose of constructing a dam on Stockton Creek and a regulating reservoir for supplying domestic and commercial water service. The Court was asked to ascertain and assess the value of the land sought to be condemned. It was alleged also that because of the urgency of its proceeding immediately with the construction of the proposed works, the district be authorized to take immediate possession of the land pursuant to Article I, Section 14, of the Constitution. On December 13, 1948, the Court issued an order fixing the amount of the deposits to be made by the district to secure to each named owner or claimant the payment of just compensation for the taking of his estate, including damages by reason of an adjudication that there is no necessity for such taking. The amounts thus fixed having been deposited on the same day, the Court issued an order placing the district in possession of the lands with the right immediately to remove all obstacles thereon and to construct the public improvements described.

Evidence presented at the hearing before the Commission on October 5, 1949, indicates that the district had taken possession of the lands described and that it was then proceeding to construct water storage facilities thereon.

Subsequent steps taken by the parties in the Superior Court action relate only to matters of pleading. The respondents here filed their answer to that complaint on April 30, 1949. The answer denies that the public use to which plaintiff intends to apply said property is a more necessary public use than that to which it, or any part thereof, is already appropriated; and it is affirmatively alleged by the defendants that the property sought to be taken from them is a part of a public utility which has been and is operated by them for the purpose of furnishing a water supply to the town of Mariposa, and that the property sought to be taken

by the district is an integral part of said water system.

Facts placed in evidence at the hearing before the Commission reveal that respondents own and operate water service facilities supplying water to residents within a portion of the town of Mariposa. However, the Commission has never assumed jurisdiction to regulate that water service as a public utility service, and no complaint or other pleading has been filed with it calling for a determination of respondents' status as a public utility. The water supplied by respondents is derived from fourteen springs which are located on their lands lying outside the town of Mariposa. The evidence indicates that none of the land sought to be acquired by the district is presently the source of any of the water system. It does appear that water was once obtained from a spring located upon the property sought to be acquired, and that a pipe formerly used to transport water from that spring had remained in place until the time possession was taken by the district. It was testified that other springs on such lands could have been utilized by respondents in the future, and that it had been their intention to use one segment of the land as a tank site.

The factual situation thus presented in this petition to the Commission to fix just compensation to be paid for properties sought to be acquired by eminent domain differs in two respects from all others coming within the Commission's experience. The first difference is that the instant petition does not allege, nor does the evidence indicate, that the district seeks to acquire any property now devoted to public utility use. The second distinguishing fact is that the district did not initiate its condemnation proceeding by first filing its petition with the Commission. Instead it began an action in the Superior Court wherein it sought a finding by the Court of just compensation, not merely a finding that it was entitled to acquire the property and take possession thereof upon the payment of the just compensation previously fixed by the Commission and thereafter subject to alteration by the Commission.

The district contends that the duty of the Commission to hear its petition arises from the fact that the land to be condemned is a part of other lands

owned by a public utility, whether or not any part of those taken are used in utility service. It says also that the Commission must accept the declaration made in respondents' answer to the court action that the land being taken is an integral part of their utility water system.

In the opinion of the Commission the intent of Section 47(b) is to authorize it to fix just compensation only when the property being acquired is being used in a substantial sense by a public utility in rendering its utility service. A construction of that section which would give the Commission power to value property of any character because it happens to be owned by a utility would not be in harmony with those court decisions which have interpreted and sustained the alternative eminent domain procedure therein provided. In Marin Municipal Water District vs. Marin Water & Power Co., 178 Cal. 308, 316, the Supreme Court stated:

"Whether the property of public utilities forms a class which may fairly be thought to require a different kind of procedure from that adopted for the taking of other property by eminent domain is primarily a question for the state itself. Elements of peculiar complication and difficulty are often involved in the valuation of the property of a public utility. The fact that public utilities are subject to constant regulation and examination by the railroad commission may well have led the legislature to conclude that that commission was best able to make a just and equitable appraisal of their property."

In the same case, when summarizing the provisions of 47(b) the Court stated that a public corporation may proceed thereunder "to acquire the property of the owner of such public utility which is devoted to such public use." And in East Bay Municipal Utility District vs. Railroad Commission, 194 Cal. 603, 608, it was said that a public body of the designated class may file a petition setting forth that it intends to acquire "a public utility plant."

Whether the property sought to be taken by the petitioner here is substantially useful to respondents in rendering a utility service is a question which the Commission might determine in the exercise of its regulatory jurisdiction. But the difficulty here is that no regulatory authority has ever been exercised over respondents' water system, and the special function performed by the Commission in a proceeding brought under Section 47(b) is distinct from the regulatory

authority it possesses to determine the extent to which property has been devoted to public use. And should the Commission attempt now to determine whether any useful utility property is being taken by the district, it would have to base its judgment on evidence relating to conditions existing prior to the time the district filed its petition and prior to the time the district took possession of the property and began the construction of works thereon.

The second question to which our attention should be directed is whether the special valuation procedure outlined in Section 47(b) is available to a public body which has first sought judgment in a court of law and has obtained possession of the property sought to be condemned upon the payment of a sum fixed by the Court. Section 47(b) provides that the condemner shall be entitled to possession upon payment of the just compensation first fixed by the Commission, subject to later adjustment by the Commission. The decided cases clearly hold that when Section 47(b) is invoked, the procedure therein prescribed is controlling over inconsistent provisions of law applicable to condemnation actions prosecuted in the courts. Marin Water & Power Co. vs. Railroad Commission, 171 Cal. 706; Marin Municipal Water District vs. Marin Water & Power Co., supra; East Bay Municipal Utility District vs. Railroad Commission, supra; Sacramento Municipal Utility District vs. Pacific Gas & Electric Co., 72 Cal. App. (2nd) 638.

It might not be of concern to the Commission that the petitioner here had first asked the Superior Court of Mariposa County to place it in possession of respondents' property were the Commission certain of the proper course of action to be taken in determining just compensation under such circumstances. The Commission is required to value the property as of the date the petition is filed. As that was subsequent to the date on which the district took possession and proceeded to alter the property by beginning the construction of works thereon, it is evident that a finding made of just compensation as of the date the petition was filed would not represent just compensation as of the date respondents' property was actually taken.

It is the Commission's conclusion, therefore, that it should not proceed

to hear the petition. Not only do we have grave doubt as to our jurisdiction to entertain the petition, but considerable doubt arises as to the proper course of action should we undertake to determine the just compensation to be paid for the properties described. And the Commission does not perceive wherein any injustice to either the district or the respondents would result from a dismissal of the petition, for a condemnation proceeding in a court of law has already been begun and it is clear that such alternative procedure in eminent domain is available.

O R D E R

Petition having been filed by the Mariposa Public Utility District seeking an order of the Commission under Section 47(b) fixing the just compensation for certain described properties, and the Commission having issued its order to each of the named owners and claimants to appear and show cause why the Commission should not proceed to fix just compensation as prayed, a public hearing having been held on such order to show cause, and the Commission having fully considered the matter and basing its order upon the findings and conclusions expressed in the foregoing opinion; and good cause appearing,

IT IS HEREBY ORDERED that the petition of the Mariposa Public Utility District be and hereby is dismissed.

Dated at San Francisco, California, this 29th day of November, 1949.

R. Z. [Signature]
Justice J. Garner
[Signature]
Harold S. [Signature]
[Signature]
Commissioners.