

ORIGINAL

Decision No. 54681

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the petition of)
 the City of North Sacramento to)
 have fixed the just compensation)
 to be paid for the municipal)
 water system of Citizens Utili-)
 ties Company of California,)
 existing within and adjacent to)
 the boundaries of said City.)

Application No. 38629

INTERIM OPINION AND ORDER OVERRULING
 OBJECTIONS AND DENYING MOTION TO DISMISS

On December 4, 1956, the City of North Sacramento, hereinafter called petitioner, filed a petition under Division 1, Part 1, Chapter 8 of the Public Utilities Code, 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 City to acquire the same under eminent domain proceedings. As required by the Code, the Commission thereupon issued its order directing Citizens Utilities Company of California, hereinafter called respondent, to appear and show cause, if any it had, why the Commission should not proceed to hear the petition and to fix such just compensation.

The record shows that all procedural requirements which are contemplated by Sections 1406 and 1408 of the Public Utilities Code were completed prior to the return date of the order to show cause. A hearing on such order was had before Commissioner Ray E. Untereiner and Examiner Wilson E. Cline at Sacramento on January 25, 1957. At the close of the hearing the respondent was given the opportunity to file a written statement or brief with respect to the jurisdictional issues within three weeks from January 25, 1957.

As the respondent elected not to file such written statement or brief, the matter was taken under submission on February 15, 1957.

Prior to the hearing respondent filed an answer to petition and return to the order to show cause wherein it was alleged that the greater part of respondent's water system is located outside the boundaries of the City of North Sacramento and that none of that part of respondent's water system which is situated outside of the exterior boundaries of petitioner is at all necessary or required for the rendition of efficient and adequate water service to existing and potential consumers within said boundaries, save and except the Calvados plant and the main approximately 1,000 feet in length extending therefrom to respondent's existing main on Bassettlaw Avenue. Respondent further alleged that, by reason of the above (1) petitioner is without authority or right to acquire by eminent domain any part of respondent's said water system, (2) petitioner is without authority or right to acquire by eminent domain any part of respondent's said water system which is situated outside of petitioner's exterior boundaries, other than the Calvados plant and the connecting main extending therefrom, and (3) petitioner is without authority under the Constitution of the State of California or any code or statutory provision to acquire by eminent domain any properties or rights situated outside of its exterior boundaries. The respondent also alleged that the description of the properties and rights which petitioner seeks to have evaluated, as contained in the petition herein, is inadequate and insufficient to permit of identification or evaluation thereof. The respondent requested that the petition be dismissed and that the Commission not proceed to fix the just compensation to be paid for respondent's water system.

At the hearing respondent's attorney stated that he had been unable to find any precedent for the proposition that the

Commission is ousted of jurisdiction to evaluate the properties in question because of the fact that respondent denies the right of petitioner to condemn all or any part of the same. The Commission itself has long and consistently held otherwise. Decision No. 1370 in Application of City Council of Eureka, 4 CRC 466; Decision No. 2960 in Application of City of Los Angeles, 8 CRC 637; Decision No. 21513 in Application of City of Fresno, 33 CRC 502; and Decision No. 31403 in Petition of Sacramento Municipal Utility District, 41 CRC 633.

As to the sufficiency of the description of the properties to be evaluated, petitioner introduced evidence through a consulting engineer retained by petitioner, who participated in preparation of the descriptions contained in the petition. He explained the scope and plan of description. In proceedings of this nature it is inevitable and is contemplated by petitioner, as well as by the statute under which the proceeding is brought, in relation to matters of detail in connection with specific items, that changes in the petition may be made by appropriate amendment during the pendency of the proceeding. 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. Amendments have been deemed necessary in most prior proceedings of this nature. 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.

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

INTERIM ORDER

The City of North Sacramento having filed a petition under Division 1, Part 1, Chapter 8 of the Public Utilities Code, 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 petitioner to acquire the same under eminent domain proceedings, order to show cause directed to the owner and claimant named in said petition having been issued, written answer to petition and return to said order to show cause having been filed by said owner and claimant, public hearing having been had, and good cause appearing,

IT IS ORDERED that the objections set forth in the written answer and 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.

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

Dated at San Francisco, California, this 19th day of MARCH, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioner

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.