

ORIGINAL

Decision No. 57359

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of  
 ALAMEDA-CONTRA COSTA TRANSIT DIS-  
 TRICT to have fixed the just com-  
 pensation to be paid for certain  
 transit facilities operated by the  
 KEY SYSTEM TRANSIT LINES, INC.,  
 existing within and adjacent to  
 the boundaries of said district.

Application No. 40084

Robert E. Nisbet, and Vaughan, Paul and  
 Lyons, by John G. Lyons, for petitioner.  
 Donohue, Richards and Gallagher, by George  
 E. Thomas, for Key System Transit Lines  
 and Bay Area Public Service Corporation,  
 respondents.

Warren P. Marsden, for State Department of  
 Public Works, interested party.

John W. Collier, City Attorney, and Frederick  
 M. Cunningham, Deputy, for City of Oakland,  
 interested party.

J. T. Phelps and John L. Pearson, for the  
 Commission staff.

INTERIM OPINION AND ORDER OVERRULING  
 OBJECTIONS AND DENYING MOTION TO DISMISS

Alameda-Contra Costa Transit District, organized under the Transit District Law (Pub.U.C.A., Secs. 24501-27509), on May 14, 1958 filed a petition requesting that this Commission fix the just compensation to be paid for certain lands, properties and rights, described in the petition, consisting of the bus transportation system of Key System Transit Lines, a public utility. (Pub.U.C.A., Secs. 1401-1421.) Petitioner alleges that it intends to initiate action to submit to its voters a proposition to acquire the desired system under eminent domain proceedings, in order to conduct a public passenger transit system within the boundaries of the district and in territory outside of and adjacent to said boundaries.

The Commission, pursuant to the provisions of the Public Utilities Code, issued its order directing Key System Transit Lines and Bay Area Public Service Corporation, an affiliated public utility, (hereinafter called respondents) to appear and show cause why the Commission should not proceed to hear the petition and to fix such just compensation.

The record shows that all procedural requirements contemplated by Sections 1406 and 1408 of the Public Utilities Code were duly completed prior to the return date of the order to show cause. A hearing on the order was held before Commissioner Matthew J. Dooley and Examiner John M. Gregory at San Francisco on June 18, 1958.

Respondents filed an answer at the hearing and moved to dismiss the petition on jurisdictional and other grounds. They also requested, in the alternative, that petitioner be ordered to amend the petition in certain respects specified in the answer. The motions were taken under submission on briefs which have been filed.

Respondents contend that a "transit district" does not have eminent domain rights before this Commission, since such district is not named in Section 23a, Article XII, of the California Constitution or in Section 1402 of the Public Utilities Code. The Legislature, respondents assert, may not indirectly attempt to give such rights by the device of conferring on such a district, as it has done in Section 25703 of the Public Utilities Code, "all the rights, powers, and privileges of an incorporated city" in proceedings relative to the exercise of the right of eminent domain.

Nor, respondents argue, is petitioner entitled to maintain this proceeding as a "public corporation", which entity is specifically named in both the cited constitutional and statutory provisions, since the organization and purposes of petitioner make of it, at most, only a governmental agency formed to carry out a specific purpose, viz., "to meet the transit problem" (Pub.U.C.A., Sec. 24561),

and not "for the government of a portion of the state ..." (See former Civil Code Section 284, superseded in 1931, defining "public corporations".)

Respondents' position on the jurisdictional point appears to be that since the Commission does not exercise regulatory power in fixing just compensation for the taking of public utility property (East Bay Mun.U.Dist. v. Railroad Comm., 194 Cal. 603), only those agencies, or "political subdivisions", named in Section 23a of Article XII of the California Constitution or in Section 1402 of the Public Utilities Code may invoke the special just compensation procedures conferred on the Commission by that code.

We find no merit in respondents' position on the issue of jurisdiction. Section 23a, Article XII, of the California Constitution, as amended November 4, 1924, following the East Bay Municipal Utility District decision by the Supreme Court of California, enlarged the group of agencies entitled to invoke the Commission's procedures in just compensation cases so as to include an "irrigation district, or other public corporation or district". Section 1402 of the Public Utilities Code includes, as a "political subdivision" having the right to file a petition with the Commission to fix just compensation for the acquisition of public utility properties, the following: "a county, city and county, city, municipal water district, county water district, irrigation district, public utility district, or any other public corporation". The words "or district" following the words "public corporation" in Section 23a of Article XII of the Constitution do not appear in Section 1402 of the Code.

We have no hesitancy in holding that a "transit district", organized under the provisions of the Transit District Law, is a "public corporation or district" within the meaning and intent of the 1924 amendment to Section 23a, Article XII of the California Constitution and, as such, is included among those entities

specified in Section 23a which may invoke whatever power and jurisdiction may have been conferred by the Legislature on the Commission to fix just compensation in eminent domain proceedings.

We turn next to a brief consideration of the powers conferred by the Legislature on the Commission, and on petitioner, which are pertinent to this discussion.

The Legislature, in Section 1402 of the Public Utilities Code, has included both a "city" and "any other public corporation" as "political subdivisions" which are given the right to file a petition with the Commission setting forth their intention to acquire public utility property under eminent domain proceedings. Section 1404 provides for the contents of such petitions, which shall include a prayer "that the Commission fix the just compensation which shall be paid" for such property.

The Legislature has provided in the Transit District Law for the exercise of the right of eminent domain by transit districts "in the manner provided by law for the condemnation of private property for public use". (Pub.U.C.A., Sec. 25703.) It has further provided, in the same cited section, that "In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers and privileges of an incorporated city..."

It is clear, therefore, and we hold that petitioner, considered either as a "public corporation" or as having all the rights, powers and privileges of an incorporated "city", has the right to petition this Commission for a determination of just compensation for the taking of public utility properties.

Respondents' second point urged against our assumption of jurisdiction is that petitioner, by seeking through its directors rather than by a general manager to acquire the desired system, has failed to comply with the Transit District Law, which, by Section

24926, Public Utilities Code, confers on the general manager, when appointed, "full charge of the acquisition, construction, maintenance, and operation of the facilities of the district and also of the administration of the business affairs of the district".

There is no merit to this contention. Section 24930 of the Code gives to the board discretionary power to appoint a general manager "until such time as the district has operated, controlled, or used facilities or parts of facilities for providing the inhabitants and cities within the boundaries of the district with transit services for a period of six months,..." We hold that petitioner, acting through its board of directors in the manner set forth in the petition, is a proper party to initiate this proceeding.

Respondents' third jurisdictional point is that if the Transit District Law is interpreted to grant to petitioner the rights it seeks to exercise in this proceeding, respondents would be deprived thereby of the franchise rights referred to in Paragraph IV of the petition, in asserted violation of federal and state constitutional prohibitions against impairment of the obligation of contracts.

We have held that petitioner is a proper party to initiate this proceeding. The right of a public body, such as petitioner, to exercise the power of eminent domain against a public utility, including acquisition of its physical assets, operating rights and franchises, without thereby violating constitutional bans against impairment of the obligation of contracts, is well settled. The question of compensation, if any, to be determined for respondents' franchises is not before us at this stage of the proceeding. We hold, accordingly, that respondents' point on this phase of the jurisdictional issue is not well taken.

We conclude, therefore, that the motion to dismiss the proceeding for lack of jurisdiction should be denied.

Respondents' alternative defense is in the nature of a request that the Commission proceed only on the condition (a) that petitioner be required to post a bond to indemnify respondents against expenses and damages incurred by virtue of their having been made parties to this proceeding, in the event that petitioner's voters reject the proposition to acquire respondents' properties by eminent domain; (b) that the petition be amended to evidence petitioner's intentions concerning acquisition of respondents' going organization; (c) that if petitioner does not intend to substitute itself for respondents as a party to existing contracts for labor and materials, the petition be amended to request a determination of compensation to be paid for damage to be suffered by respondents as a result of inability to enjoy the benefits of their organization, or of contracts or obligations which would continue after cessation of public utility business but which arose only out of respondents' public utility activities; (d) that the petition be amended to request the determination of just compensation to be paid to respondents, by way of severance damage, for certain property to be retained by respondents which is of little value except when utilized in operating a passenger transportation business.

With respect to the posting of an indemnity bond, we do not find such a requirement in Sections 1401-1421 of the Public Utilities Code, under which this proceeding has been brought. Petitioner concedes that any damages or claims allowed by the Commission pursuant to those provisions will be a legitimate claim against the district, which it must pay out of revenues. Respondents' request on this point should be denied.

The request for amendments to the petition to provide specifically for good will, going concern value and severance damages is unnecessary. The Commission may, if it so finds, fix the compensation to be paid for such items. If the Commission finds that severance damages should be paid, it is required to fix and separately state them in its order.

We conclude that respondents' alternative requests and objections addressed to the form of the petition should be overruled.

INTERIM ORDER

Alameda-Contra Costa Transit District 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 initiate action to submit to its voters a proposition to acquire said properties under eminent domain proceedings; an order to show cause directed to the owner and claimant named in said petition having been issued, written answer to the petition and return to the said order to show cause having been filed by said owner and claimant, public hearing having been had, briefs having been filed and considered, 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 23rd day of September, 1958.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners