

Decision No. 57435

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of )  
the SAN LORENZO VALLEY COUNTY )  
WATER DISTRICT to have fixed the )  
just compensation to be paid for )  
the water system of CITIZENS )  
UTILITIES COMPANY OF CALIFORNIA )  
existing within and adjacent to )  
the boundaries of said district. )

Application No. 39637

Peggy L. McElligott, of Kirkbride, Wilson, Harzfeld  
and Wallace, for San Lorenzo Valley County Water  
District, petitioner.

William G. Fleckles, of Bacigalupi, Elkus and  
Salinger, for Citizens Utilities Company of  
California, respondent.

J. T. Phelps and Carol T. Coffey, for the Commission  
staff.

INTERIM OPINION AND ORDER  
OVERRULING OBJECTIONS AND  
DENYING MOTION TO DISMISS AND  
MOTION TO HOLD PROCEEDINGS IN ABEYANCE

On December 16, 1957, the San Lorenzo Valley County Water District, hereinafter called petitioner, filed a petition of the first class under Division I, 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 petitioner 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.

On March 26, 1958, respondent filed its return to the order to show cause alleging certain facts, many of which were incorporated in the stipulation of facts recited below and requesting

that the petition be dismissed on the grounds that the petitioner lacks legal capacity to file such "Petition of the First Class" and to institute the proceedings thereon, and that the Commission refuse to proceed to fix the just compensation to be paid by petitioner for respondent's water system.

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 Examiner Wilson E. Cline at Boulder Creek on April 3, 1958. During the course of the proceeding the respondent moved that the matter be held in abeyance until the Superior Court of the County of Santa Cruz makes its determination in a declaratory relief action pending before it seeking, among other things, a determination of the legal status and capacity of the petitioner herein to maintain the proceedings under Division I, Part 1, Chapter 8 of the Public Utilities Code. The matter was taken under submission upon the filing of closing briefs on June 20, 1958.

The following stipulation of facts was accepted by the Commission and will constitute the findings of fact upon which the Commission will base its conclusions in this matter.

"At all times herein mentioned, owner, who is the Citizens Utilities Company of California, was and still is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at 1607 Del Paso Boulevard, in the City of North Sacramento, County of Sacramento, State of California, and is engaged in the business of a public utility water corporation operating a water distribution system in various counties in the State of California, including the County of Santa Cruz.

"At all times herein mentioned, petitioner, San Lorenzo Valley County Water District, which will be hereinafter referred to as 'District', was a duly organized County Water District which historical fact bears out and it is an existing County Water District organized under

Division 12 of the California Water Code and situated in the County of Santa Cruz, State of California. At all times herein mentioned, the government, management, and control of said District was and still is vested in its Board of Directors, and all the acts of said Board of Directors as hereinafter referred to were done for and on behalf of said District and were and are the acts of said District.

"On three occasions prior to August 13, 1957, to wit: March 27, 1945, December 3, 1946 and February 8, 1955, bond elections were held by said District for the purpose of securing the authorization of the electors of said District to the incurring of bonded indebtedness by said District, the proceeds from the sale of said bonds to be used principally for the acquisition of the water distribution system owned and operated by owner within the boundaries of said District and in territory outside and adjacent thereto used and useful in serving said District.

"At the aforesaid election of March 27, 1945, the District sought to secure authorization to incur a \$300,000 indebtedness through the issuance and sale of general obligation bonds; at the aforesaid election of December 3, 1946, the District sought to secure authorization to incur a \$500,000 indebtedness through the issuance and sale of general obligation bonds; at the aforesaid election of February 8, 1955, the District sought approval to incur an \$800,000 indebtedness through the issuance and sale of revenue bonds.

"At each of the aforesaid three elections, the electors of said District refused to authorize the District to incur the aforesaid indebtedness and/or to issue the aforesaid bonds; and each of said three bond elections wholly failed.

"Section 31416 of the California Water Code provides that whenever the electors of a county water district which has no bonded indebtedness, is not operating a water system, and has not bona fide contracted for the construction of an adequate water system for the District, have refused to authorize the issuance of bonds at three elections, the last of which was held in 1948 or thereafter, no further bond elections shall be held by such District until the question of dissolution of such District has been submitted to the electors as provided in Section 32858 of the California Water Code.

"At the time said District held its third bond election as aforesaid, it had no bonded indebtedness, was not operating a water system, and said District had not bona fide contracted for the construction of an adequate water system for said District.

"On August 13, 1957, an election was held pursuant to the provisions of the Revenue Bond Law of 1941, at which time the defendant District submitted the following proposition to the qualified voters:

"'Shall the San Lorenzo Valley County Water District issue revenue bonds in the principal amount of \$950,000 for the acquisition, construction, improving and financing of an enterprise, including any or all expenses incidental thereto or connected therewith, said enterprise to consist of a system, plant, works and undertaking useful in obtaining, treating and disposing of water for public and private uses, including all parts of the enterprise, all appurtenances thereto, and lands, easements, rights in land, water rights, franchises, water mains, pumping stations, water supply, storage and distribution facilities and equipment, pursuant to the Revenue Bond Law of 1941?'

"and said voters cast 746 votes in favor of said proposition and 509 votes against it.

"District intends to acquire owner's said water distribution system through the issuance and sale of said revenue bonds purportedly authorized at said election of August 13, 1957.

"On March 10, 1958, owner filed a declaratory relief action in the Superior Court of the County of Santa Cruz, State of California, seeking among other things, a determination of the legal status and capacity of District, petitioner herein, to maintain the proceedings under Division I, Part 1, Chapter 8 of the Public Utilities Code in light of the facts related aforesaid. Such action is still pending in the court and remains undetermined.

"There has been no dissolution election held at any time nor is one presently contemplated."

The record further shows that the use of the words "bonded indebtedness" in the above stipulation of facts refers to revenue bonds and not to general obligation bonds requiring a two-thirds vote under the Constitution.

Under the facts as stated above, this Commission is the appropriate body to determine whether it has the jurisdiction to proceed and should proceed to hear the petition herein and to fix the just compensation to be paid for the lands, property and rights described in the petition.

The petitioner is an existing county water district organized under Division 12 of the California Water Code and as such is entitled to file a petition either of the first class or the second class. The fact that a petition of the second class may

be filed clearly shows that it is not necessary for a political subdivision to prove financial responsibility to acquire a water system before being entitled to have this Commission fix the just compensation to be paid therefor. Section 1410 of the Public Utilities Code permits the Commission at any time prior to making and filing its finding as to just compensation to authorize the amendment of the petition to change it from one of the first class to one of the second class, or vice versa.

The request of respondent that the petition be dismissed will be denied.

This Commission is not required at this time to determine the necessity for submitting to the voters of petitioner the question of dissolution of the District or the validity of the election in 1957 authorizing the issuance of the revenue bonds. Petitioner is well aware of respondent's contention that such dissolution election is required before petitioner may acquire respondent's water system through condemnation proceedings, and petitioner is nevertheless urging this Commission to proceed to fix the just compensation to be paid.

Sections 1412 through 1415 of the Public Utilities Code contain the provisions for protection of respondent which have been enacted by the Legislature. These sections read as follows:

"1412. Within 20 days after the commission has made and filed its finding, the owner of the lands, property, and rights may file with the legislative or other governing body of the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission. Upon the filing of the stipulation, the political subdivision shall proceed with all due diligence to provide the necessary funds under the law governing the providing of such funds, for paying the just compensation fixed by the commission. Whenever the just compensation has been tendered by the political subdivision, a deed of grant, bargain, and sale conveying the owner's right, title, and interest in and to the lands, property, and rights to the political subdivision shall be executed and delivered by the owner, and the other claimants who have any right, title, or interest

in the property shall execute appropriate instruments conveying or releasing to the political subdivision their respective rights, titles, and interests therein. If the deed or the instruments of conveyance or release are not executed and delivered within 60 days after such tender has been made, the political subdivision may commence an action in a court of competent jurisdiction or proceed under Section 1413."

"1413. In the case of a petition of the first class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings. In the case of a petition of the second class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall initiate proceedings for the purpose of submitting to its voters a proposition to acquire under eminent domain proceedings the lands, property, and rights. The political subdivision shall not be required, in either case, to delay for more than 20 days after the commission has made and filed its finding, before commencing such further proceedings. In the case of a petition of the second class, if the voters of the political subdivision, as provided by the law governing the political subdivision, vote in favor of any proposition to acquire under eminent domain proceedings, or otherwise, such lands, property, and rights, the political subdivision shall, within 60 days thereafter, commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings, unless the owner has filed with the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission."

"1414. If the political subdivision, in a petition of the first class, fails to file such action in a court of competent jurisdiction within such period of 60 days after the commission has made and filed its finding, or if the political subdivision, in a petition of the second class, fails to proceed diligently to submit the proposition to its voters or fails, if its voters have voted in favor of the acquisition of the lands, property, and rights, to file such action in a court of competent jurisdiction within 60 days thereafter, the owner of such lands, property, and rights may file with the commission a verified petition in writing setting forth that fact. The petition may also set forth in detail the expenditures which the owner has necessarily incurred in the proceeding before the commission.

"The commission shall thereupon cause written notice, with a copy of the owners' petition attached thereto, to be served upon the political subdivision, to appear before

the commission at a time and place specified in the notice, to show cause why an order should not be made by the commission (a) finding that the political subdivision has failed to pursue diligently its rights, (b) determining that the finding as to just compensation shall no longer be of any force or effect, and (c) determining the reasonable expenditures necessarily incurred by the owner which in the opinion of the commission, should be assessed against the political subdivision. The time specified in the notice shall be not less than 10 days subsequent to the date of service."

"1415. If the commission determines that the political subdivision, in case of a petition of the first class, has failed to commence the action in a court of competent jurisdiction within 60 days after the commission has made and filed its finding of just compensation, or that the political subdivision, in case of a petition of the second class, has failed to proceed diligently to submit the proposition to its voters or has failed, after its voters have voted in favor of the acquisition of the lands, property or rights, to file such action in a court of competent jurisdiction within 60 days thereafter, the commission shall make and file its order declaring that such finding shall no longer be of any force or effect, and make its finding as to the reasonable expenditures necessarily incurred by the owner in the proceeding before the commission, which should be assessed against the political subdivision. The political subdivision shall thereupon be liable to the owner in the amount thus found by the commission, and the owner may thereupon maintain an action against the political subdivision for such amount in any court of competent jurisdiction."

A dissolution election may be required before petitioner can proceed to acquire respondent's water system through condemnation, and as the result of the election the petitioner may be dissolved. Petitioner is nevertheless entitled to have this Commission proceed to fix the just compensation to be paid for the water system providing adequate provision is made for the reimbursement of respondent's expenses in this proceeding if respondent becomes entitled thereto.

Respondent's motion that the proceeding be held in abeyance will be denied subject to the condition not only that petitioner deposit with this Commission an amount to cover estimated costs which the Commission may incur but that petitioner also deposit with a corporate escrow holder approved by this Commission an amount of

cash or securities to cover the estimated costs which may be incurred by respondent and to which it may become entitled pursuant to Sections 1414 and 1415 of the Public Utilities Code.

INTERIM ORDER

The San Lorenzo Valley County Water District having filed a petition of the first class under Division I, 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 Citizens Utilities Company of California, the owner and claimant named in said petition, having been issued; written return to said order to show cause having been filed by said owner and claimant; public hearing having been held, 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.

IT IS FURTHER ORDERED that the motion to hold the proceedings in abeyance be, and it is hereby, denied, subject to the condition that the petitioner San Lorenzo Valley County Water District not only deposit with this Commission an amount to cover estimated costs which the Commission may incur but that petitioner also deposit with a corporate escrow holder approved by this Commission an amount of cash or securities to cover the estimated costs which may be incurred by respondent and to which it may become entitled pursuant to Sections 1414 and 1415 of the Public Utilities Code. Respondent shall serve upon petitioner and shall file with this Commission copies of said



estimate of respondent's costs within thirty days from the effective date of this order. In the event said estimate is not served and filed by respondent within said time the Commission will proceed with the making of the valuation herein without requiring such deposit to be made. If the petitioner desires to protest the reasonableness of respondent's said estimate such protest must be served upon respondent and filed with this Commission within ten days after copies of said estimate has been served upon respondent and filed with this Commission. Petitioner shall select the corporate escrow holder and shall serve a copy of the escrow instructions upon respondent and shall file a copy of said escrow instructions with the Commission for written approval by the Commission of the escrow holder and the escrow instructions. If respondent desires to protest the selection of said corporate escrow holder or any of the terms of the escrow instructions such protest must be served upon petitioner and filed with this Commission within ten days after copies of said escrow instructions have been served upon respondent and filed with this Commission. Should petitioner fail to make said required deposits with the Commission and the escrow holder, further proceedings on the petition shall thereupon be suspended.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of October, 1958.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners