

ORIGINALDecision No. 59158

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 with-
 in and adjacent to the boundaries
 of said district.

Application No. 39637

Peggy L. McElligott, of Kirkbride, Wilson, Marzfeld
 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.

SUPPLEMENTAL OPINION

Pursuant to Decision No. 57435 issued October 7, 1958, and
 the Supplemental Order thereto, Decision No. 57465, issued October 15,
 1958, a further hearing was held in this matter before Examiner
 Wilson E. Cline in San Francisco on March 3, 1959. At this hearing
 evidence was introduced respecting the reasonableness of the esti-
 mated 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 for the purpose of enabling the Commission to deter-
 mine the amount of bond to be deposited by petitioner. The matter
 was taken under submission upon the filing of petitioner's reply
 brief on July 10, 1959.

In its opening brief petitioner made reference to Section 1058 of the Code of Civil Procedure which reads as follows:

"In any civil action or proceeding wherein the State, or the people of the State, is a party plaintiff, or any State officer, in his official capacity or on behalf of the State, or any county, city and county, city, district, or town, or the United States or any instrumentality or agency thereof, or any Federal officer in his official capacity or on behalf of the United States or any instrumentality or agency thereof, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the State, or the people thereof, or any officer thereof, or of any county, city and county, city, district, or town, or of the United States or any instrumentality or agency thereof, or any officer thereof; but on complying with the other provisions of this code the State, or the people thereof, or any State officer acting in his official capacity, or the United States or any instrumentality or agency thereof, or any Federal officer acting in his official capacity, shall have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code."

Petitioner points out that this proceeding before the Commission is an alternative to a part of an eminent domain proceeding and contends that amounts which may be assessed against it pursuant to Sections 1414 and 1415 should be subject to limitations no less stringent than in a court of law. Reference was made to Section 1255a of the Code of Civil Procedure pertaining to the abandonment of condemnation proceedings. This section reads as follows:

"Plaintiff may abandon the proceedings at any time after filing the complaint and before the expiration of thirty days after final judgment, by serving on defendants and filing in a court a written notice of such abandonment; and failure to comply with such Section 1251 of this code shall constitute an implied abandonment of the proceeding. Upon such abandonment, express or implied, on motion of any party, a judgment shall be entered dismissing the proceeding and awarding the defendants their costs and disbursements, which shall include all necessary expenses incurred in preparing for trial and reasonable attorney fees. These costs and disbursements, including expenses and attorney fees, may be claimed in and by a cost bill, to be prepared, served, filed and taxed as in civil actions; provided, however, that upon judgment of dismissal on motion of plaintiff, defendants, and each of them, may file a cost bill within thirty (30) days after notice of

entry of such judgment; that said costs and disbursements shall not include expenses incurred in preparing for trial where the said action is dismissed forty days prior to the time set for the trial of the said action."

Section 1256 provides the following:

"Except as otherwise provided in this title, the provisions of part two of this code are applicable to and constitute the rules of practice in the proceedings mentioned in this title."

Section 1058 appears in part two of the Code of Civil Procedure and hence is applicable to the special proceedings in eminent domain provided for in said Code.

Respondent in its brief has also stated that proceedings such as that pending herein before the Commission are "an alternative to a part of an eminent domain proceeding", and the Commission agrees with such conclusion.

The fact that the courts may not require a cost bond of a water district in an eminent domain proceeding is certainly strong evidence that in this proceeding no cost bond should be required of the San Lorenzo Valley County Water District. As petitioner has pointed out in its reply brief re estimated expenditures there are even more persuasive reasons to protect a private landowner than a public utility from costs incurred in an uncompleted condemnation proceeding.

The Commission hereby finds and concludes that petitioner should not be required to post a cost bond and that this Commission should proceed with further hearings in this matter, to be held at such times and places as may hereafter be set. The order to follow will so provide.

SECOND SUPPLEMENTAL INTERIM ORDER

Good cause appearing,

IT IS ORDERED that the Interim Order issued October 7, 1958, in Decision No. 57435, as modified by the Supplemental Order issued October 15, 1958, in Decision No. 57465, is hereby further modified to provide:

1. 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.

2. The motion to hold the proceedings in abeyance be, and it is, hereby denied.

3. All other provisions of the said Interim Order in Decision No. 57435, as modified by the said Supplemental Order in Decision No. 57465, are hereby stricken.

4. Further hearings in this matter shall be held at such times and places as may hereafter be set.

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

Dated at San Francisco, California, this 13th day of October, 1959.

 President
[Signature]

[Signature]

[Signature]

 Commissioners

Everett C. McKeage
Commissioners ~~Everett C. McKeage~~ ~~Reter E. Mitchell~~, being necessarily absent, did not participate in the disposition of this proceeding.