

Decision No. 64245**ORIGINAL**

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
 UTILITIES COMPANY OF CALIFORNIA
 existing within and adjacent to the
 boundaries of said city.

Application No. 38629

ORDER DENYING MOTION OF
CITIZENS UTILITIES COMPANY OF CALIFORNIA
FOR A CONTINUANCE OF ANY FURTHER HEARINGS

At the hearing on the supplementary petitions in this matter on December 16, 1959, the petitioner introduced into evidence Exhibit No. 3 which is a copy of the Interlocutory Judgment of Condemnation entered by Superior Court of Sacramento County on November 5, 1959. At the request of the parties further hearings were continued to a date to be set.

At the request of petitioner, the City of North Sacramento, a further hearing was held before Examiner Wilson E. Cline in San Francisco on July 23, 1962. At this hearing said petitioner introduced into evidence the following exhibits:

No. S-4. Minute order of the Superior Court of Sacramento County entered December 22, 1959, denying motion of Citizens to set aside the Interlocutory Judgment of Condemnation, Exhibit No. S-3.

No. S-5. Opinion and decision of the District Court of Appeal of California entered May 24, 1961, affirming the Interlocutory Judgment of Condemnation, Exhibit No. S-3, with a note that Citizens' petition for a hearing by the Supreme Court was denied July 19, 1961.

No. S-6. Order of the Superior Court of Sacramento County entered August 4, 1961, extending time of payment of the Interlocutory Judgment, Exhibit No. S-3.

No. S-7. Order of the Superior Court of Sacramento County entered April 9, 1962, denying a motion by Citizens to stay execution of judgment in condemnation, Exhibit No. S-3.

No. S-8. Order of the District Court of Appeal of California entered April 18, 1962, denying Citizens' petition for a writ of review and/or prohibition of the order of the Superior Court denying the motion to stay execution of judgment, Exhibit No. S-7.

No. S-9. Order of the Supreme Court of California entered May 16, 1962, denying hearing after judgment by the District Court of Appeal, Exhibit No. S-8.

No. S-10. Receipt dated May 17, 1962, of the Superior Court of Sacramento County showing payment by the City of North Sacramento to Citizens of the amount of \$2,206,000 plus \$37.75 costs.

No. S-11. Final Order of Condemnation entered by the Superior Court of Sacramento County on May 17, 1962.

No. S-12. Order of the District Court of Appeal of California on May 18, 1962, denying Citizens' request for a writ of supersedeas pursuant to Rule 13 of the Revised Rules of the Supreme Court of the United States.

No. S-13. Order of the Superior Court of Sacramento County entered May 25, 1962, denying Citizens' motion for a stay of execution of its judgment, Exhibit No. S-11.

No. S-14. Order for writ of assistance entered by the Superior Court of Sacramento County on May 25, 1962.

No. S-15. Writ of assistance and possession issued by the Superior Court of Sacramento County on May 25, 1962.

No. S-16. Order of the District Court of Appeal of California entered May 29, 1962, denying Citizens' petition for writ of supersedeas.

Counsel for petitioner stated that (1) the City of North Sacramento attempted to take possession of the water system properties on May 17, 1962, the date the final order of condemnation was entered, but that Citizens refused to deliver possession; (2) the City took physical possession of the properties on May 25, 1962; (3) Citizens has appealed to the District Court of Appeal of California from the final order of condemnation, Exhibit No. S-11, and the order for writ of assistance, Exhibit No. S-14; and (4) Citizens has also appealed to the United States Supreme Court from the order of the District Court of Appeal of California denying review and/or prohibition, Exhibit No. S-8.

Counsel for Citizens moved for a continuance of any further hearings in this matter until the appellate proceedings before the United States Supreme Court and the District Court of Appeal of California have been concluded. He pointed out that the question directly involved in these two appeals is whether or not the City is rightfully in possession of the property; and he urged that it would be futile for the Commission to determine in these supplemental proceedings the amount by which the just compensation should be modified as of a date that may not ultimately prove to be the date upon which the City is entitled to and takes legal

possession of the property. He pointed out that at the conclusion of these supplemental proceedings the Commission must certify to the Superior Court the modification to be made in the interlocutory judgment and that he knows of no procedure which will enable the Commission to do this more than once.

Citizens' position is that Section 1419 of the Public Utilities Code which in part provides: ". . . upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action shall be entitled to immediate possession of the lands, property and rights", is in violation of the Fourteenth Amendment to the Federal Constitution. Also Citizens made a motion in the Superior Court of Sacramento County to stay execution of the judgment unless and until the City either pays or provides security for the just compensation of \$2,206,000 fixed in the original judgment of compensation and such additional sum as the Court might find to be reasonable to insure payment of whatever additional award might be forthcoming as the result of the supplemental proceedings herein. This motion was denied, Exhibit No. S-13.

Counsel for the City of North Sacramento pointed out that the federal constitutional question which is now pending in the United States Supreme Court has been considered and resolved in favor of the City by the Superior Court, the District Court of Appeal and the Supreme Court of California. Inasmuch as Citizens will claim interest on the amount of the supplemental award the City is urging (1) that the motion to stay these proceedings be denied; (2) that the Commission staff proceed to make the studies of additions and betterments and of additional accrued depreciation.

as of May 17, 1962; and (3) that the Commission set hearing dates that will permit the staff to place its findings into evidence as soon after they are completed as practicable.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the motion of Citizens for a continuance of further hearings in this proceeding pending final disposition of the appeals now pending is denied. This matter is set for further hearing before Examiner Wilson E. Cline, or such Commissioner or other Examiner as the Commission may designate, at 10:00 a.m., Wednesday, January 23, 1963, at the Commission's courtroom in San Francisco.

Dated at San Francisco, California, this 11th day of SEPTEMBER, 1962.

George J. Grover
President
D. Lynn Fox
Fredrick B. Halaluff

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

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