

ORIGINAL

Decision No. 64397

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the CITY OF ANAHEIM, a municipal corporation, to have fixed the just compensation to be paid for that portion of the Water System of the DYKE WATER COMPANY, a corporation, FARMERS AND MERCHANTS BANK, and DOES 1 to 10, both inclusive, existing within and adjacent to the boundaries of said City and commonly known as the "ANAHEIM SYSTEM."

Application No. 44526
(Filed June 7, 1962)

City of Anaheim, by Preston Turner,
petitioner;
Dyke Water Company, by Richard P. Roe
and Chris S. Rellas, respondent.
J. T. Phelps and Parke L. Boneysteele, for
the Commission staff.

INTERIM OPINION AND ORDER

On June 7, 1962, the City of Anaheim, a municipal corporation hereinafter called petitioner, filed a petition of the first class under Division 1, Part 1, Chapter 8 of the Public Utilities Code, requesting that this Commission fix the just compensation to be paid by said city for certain lands, property and rights described therein, and setting forth the intention of petitioner to acquire under eminent domain proceedings that portion of the water system of Dyke Water Company, hereinafter called respondent, lying within the City of Anaheim and immediately adjacent thereto. Thereafter, as required by the Code, the Commission issued its order directing respondent Dyke Water Company and others to appear and show cause, if any they had, why the Commission should not proceed to hear the petition and to fix just compensation.

On September 13, 1962, the return date of the order to show cause, hearing was had before Examiner F. Everett Emerson at Los Angeles. No evidence was adduced thereat but counsel for respondent Dyke Water Company stated respondent's objections to the proceeding, relying upon the following grounds:

1. The proceeding constitutes a denial of trial by jury on the question of value, which is in violation of Section 1 of Article XIV of the California Constitution and the due process clause of the 14th Amendment to the United States Constitution, and
2. Section 23a of Article XII of the California Constitution, under which this proceeding is held, violates the 14th Amendment to the United States Constitution in that it contains an unreasonable and arbitrary classification and constitutes an unreasonable and unlawful delegation of powers and violates the due process clause and jury rights under the 14th Amendment of the United States Constitution, and
3. Chapter 8 of the Public Utilities Code, the statutory basis for this proceeding, is unreasonable, arbitrary and capricious for the reasons above stated and further by reason of the fact that upon a mere statement of intention to take property the public utility is put in an expensive and irreconcilable posture from which it cannot extricate itself.

No objection was interposed by any other party.

These objections relate generally to the constitutionality of the statute empowering the Commission to act, and the Commission's jurisdiction under the statute. We find no merit in these objections. Similar objections have been rejected by the Supreme Court on a number of occasions. The validity of the provisions of the Public Utilities Act which, since adoption of Section 23a of

Article XII of the State Constitution on November 13, 1914, empower this Commission to fix the just compensation to be paid for the property of public utilities sought to be acquired by public corporations in condemnation proceedings has been well tested before, and has been upheld by, the court. The objections will be overruled and the Commission will proceed under the law to hear the petition and to determine and to fix the just compensation for the properties sought to be taken by petitioner. Accordingly,

IT IS ORDERED that:

1. Objections raised by respondent Dyke Water Company on the return date of the order to show cause be and they are hereby overruled, and

2. 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 11th day of OCTOBER, 1962.

George H. Hoover
President

John J. Mitchell

C. Lester

Arvid O. Berg

Frederic B. Helboff
Commissioners