

ORIGINAL

Decision No. 64399

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the CITY OF WESTMINSTER, 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 "WESTMINSTER SYSTEM".

Application No. 44637
(Filed July 13, 1962)

City of Westminster, by James C. Booth, 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 July 13, 1962, the City of Westminster, a municipal corporation hereinafter called petitioner, filed a petition of the second class under Division I, Part I, Chapter 8 of the Public Utilities Code, reciting that petitioner intends to initiate proceedings, as may be required under the law governing petitioner, for the purpose of submitting to the voters of petitioner a proposition to acquire, under eminent domain proceedings, that portion of the Dyke Water Company system lying within the City of Westminster and adjacent to said city, for public use by petitioner and requesting that this Commission fix the just compensation to be paid by petitioner for the taking thereof. Thereafter, as required by the code, the Commission issued its order directing Dyke Water Company, hereinafter called respondent, 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. At such hearing counsel stated respondent Dyke Water Company's objections, said objections relating generally to the constitutionality of the statutes applicable to proceedings of this kind and to the jurisdiction of the Commission, and presented one witness who testified respecting the possible formation of a water district which might also be interested in the taking of respondent's water system. Respondent Dyke Water Company further objected on the grounds that the order to show cause was not issued in accordance with Section 1408 of the Code. No objection was interposed by any other party.

We find no merit in respondent's objections. Similar objections respecting constitutionality have been rejected by the Supreme Court on a number of occasions. With respect to the Commission's adherence to Section 1408 of the Code, we find that the first hearing on this petition was in fact held more than thirty days after the filing of the petition and that the time between filing and first hearing (July 13 to September 13, 1962) patently meets the requirements of said Section 1408. 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 16th day of OCTOBER, 1962.

George H. Trover
President
[Signature]
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Fredrick B. Hildebrand
Commissioners