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ORIGINAL

Decision No. _____

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

Supplementary Petition of CITIZENS UTILITIES COMPANY OF CALIFORNIA for increase of the just compensation fixed by the Commission.

Supplementary Petition of the CITY OF NORTH SACRAMENTO under Section 1417 of the Public Utilities Code for a finding and order decreasing the total compensation fixed by the Commission's Decision No. 57344, dated September 15, 1958.

Martin McDonough and Raymond McClure, for the City of North Sacramento, petitioner.
Claude N. Rosenberg, William G. Fleckles and Bacigalupi, Elkus and Salinger, for Citizens Utilities Company of California, respondent.
Walter J. Cavagnaro, Martin Abramson and William R. Roche, for the Commission staff.

O P I N I O N

On November 25, 1959, respondent Citizens Utilities Company of California, hereinafter sometimes called Citizens, filed its petition for an order increasing the just compensation fixed by the Commission in Decision No. 57344, dated September 15, 1958, and on December 2, 1959, petitioner, the City of North Sacramento, hereinafter sometimes called North Sacramento, filed its supplementary

petition for an order decreasing the total compensation fixed by the Commission in said Decision No. 57344.

Public hearings on these supplementary petitions were held before Examiner Cline in San Francisco on December 16, 1959, July 23, 1962, and January 23, April 1, May 20, 21 and 22, 1963. The supplemental proceedings were taken under submission on the filing of petitioner's closing brief on September 16, 1963.

North Sacramento paid the amount of the original finding of just compensation as of December 3, 1956, of \$2,206,000, to the Clerk of the Superior Court in Sacramento on May 17, 1962, and the Superior Court entered a final order of condemnation on the same date. North Sacramento took actual possession of the water system on May 25, 1962, under a writ of assistance issued by the court, and the petitioner has been in possession of the water system continuously since said date.

North Sacramento introduced evidence, principally through witnesses from the Commission staff, to show that (1) for the period December 3, 1956 to May 17, 1962, expenditures for net additions to the system made by Citizens amounted to \$534,967; (2) the adjustment to reproduction cost new for retirements during the period was \$32,736; and (3) additional accrued depreciation during the period, computed on the same basis as the Commission staff witness computed depreciation in the original proceeding, was \$284,505. Citizens' general manager testified that respondent had paid City and County ad valorem taxes applicable on a prorated basis to the period after May 17, 1962, in the amount of \$6,128. North Sacramento contends that the amount of the supplemental award should be computed as follows:

Expenditures for net additions	\$534,967	
Plus prepayment of ad valorem taxes	<u>6,128</u>	
Total		\$541,095
Less retirements	\$ 32,736	
Additional accrued depreciation	<u>284,505</u>	317,241
Remainder		<u>\$223,854</u>
Additions and betterments made subsequent to May 17, 1962...		2,829
Supplemental Award		<u>\$226,683</u>

Citizens contends that Section 1417 and 1418 of the Public Utilities Code require an increase in just compensation for appreciation in the value of surviving plant between the date of filing the petition and take-over date. The respondent's witness testified that the reconstruction cost new, for the surviving plant, reflecting price changes between December 3, 1956 and May 17, 1962, was \$2,992,260, and that accrued depreciation on surviving plant computed by the sinking-fund method, as of May 17, 1962, was \$539,584.

Citizens contends that the supplemental award should be computed as follows:

Total RCN of surviving plant as of May 17, 1962	\$2,992,260	
Less accrued depreciation on surviving plant as of May 17, 1962	<u>539,584</u>	\$2,452,676
Net additions and betterments	\$ 537,102	
Less accrued depreciation on A's and B's	<u>15,720</u>	521,382
Prorated portion of ad valorem taxes		<u>6,128</u>
Total just compensation as of May 17, 1962		\$2,980,186
Less just compensation (excluding severance damages)		2,200,000
Supplemental Award		<u>\$ 780,186</u>

The following issues have been presented for determination by this Commission: ✓

1. Is Citizens entitled to an increase in just compensation by reason of appreciation in the value of surviving plant between the date of the filing of the petition (December 3, 1956) and the date on which the condemner was entitled to take over the property (May 17, 1962)?

2. What method properly should be employed in determining accrued depreciation?

3. Should depreciation be deducted from expenditures for additions and betterments?

4. If a deduction is made for depreciation on additions and betterments, should Citizens' book depreciation be used to determine the amount of the depreciation deduction?

5. Are ad valorem taxes, paid by Citizens and allocable to the period after the take-over, expenditures which increase the just compensation and, hence, should be included in the supplemental award?

Section 1417 of the Public Utilities Code in part provides as follows:

"At any time within 30 days subsequent to the entry of such judgment, the owner of the lands, property, and rights may file with the commission a verified petition in writing, alleging that by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission, for the purpose of preserving or improving the lands, property, and rights, or by reason of other acts and occurrences subsequent to that date, the just compensation theretofore fixed by the commission should be increased, and praying that the commission make its find increasing such compensation. At any time within 30 days subsequent to the entry of the judgment, the political subdivision may file with the commission a verified petition in writing, alleging that by reason of loss or destruction of the lands, property, and rights, or by reason of depreciation or deterioration thereof or by reason of other acts and occurrences, subsequent to the date of the filing of the original petition, the just compensation theretofore fixed by the commission should be decreased, and praying that the commission make its finding decreasing the compensation . . ."

A reading of this Section 1417 indicates that the increase in just compensation may be based on either (1) "expenditures made by the owner subsequent to the date of the filing of the original petition with the commission, for the purpose of preserving or improving the lands, property, and rights," or (2) "other acts and occurrences subsequent to that date." The decrease in just compensation may be based on (1) "loss or destruction of the lands, property, and rights," or (2) "depreciation or deterioration thereof," or (3) "other acts and occurrences," all of which are "subsequent to the date of the filing of the original petition." Section 1417 emphasizes expenditures for the purposes of preserving and improving the lands, property, and rights, and loss or destruction of the lands, property, and rights, or depreciation or deterioration thereof. No specific mention is made of appreciation in the value of the surviving plant. Section 1418 also emphasizes the importance of expenditures in the supplemental proceeding and similarly makes no reference to appreciation.

This Commission has previously ruled on the first issue in City of Redding, 20 C.R.C. 1022 at 1023, "that these items of so-called 'appreciation in value,' due to increased market prices entering into the valuation of the property or into the allowance for severance damage, are not allowable under the provisions of the Public Utilities Act."

In Citizens Utilities Co. of Cal. v. Superior Court, 59 A.C. 833, 31 Cal. Rptr. 316, the Supreme Court noted that the argument of the company was "premised upon the contention that such subsequent improvements must not be valued at cost but according to the amount by which their presence enhanced the fair market value of the utility system." The Court replied, however, that "Fair

market value' is not the exclusive standard by which to measure just compensation, and it is widely recognized that such a standard is meaningless when, as here, a public utility is being condemned. . . . Thus a 'cost-less-depreciation' valuation, like that used by the Public Utilities Commission, would certainly fully compensate the condemnee for any post valuation date expenditures it is required to make, . . ."

The finality given to the original award of just compensation by Section 1416 of the Public Utilities Code shows that it is more than a "guide" award. The public agency takes over the property on the basis of the original award. Because the utility is obligated by law to continue to operate and to make extensions and replacements until the actual takeover by the public agency, the statute provides that the original award may be increased by reason of such expenditures for extensions and replacements and decreased by reason of loss or destruction or depreciation or deterioration which has occurred during the operation of the property by the utility prior to the takeover. Revaluing the property by reason of the increase or decrease in market prices is not required by anything that is unique in utility condemnation.

Respondent urges that it is unfair for the public agency to have an option to take the property if the market prices have increased or to refuse to do so if the market prices have decreased. However, the public agency does not have a free choice. Not only does the public agency incur substantial expenses in the process of obtaining the original award, but if it does not proceed diligently thereafter pursuant to Section 1414 of the Public Utilities Code, the owner may obtain an order and finding from this Commission as to the reasonable expenditures necessarily incurred by the owner

in the proceeding before the Commission, the cost of which may be assessed against the public agency.

The Commission concludes, consistent with its own decisions in prior proceedings, that respondent is not entitled to an increase in just compensation by reason of appreciation in the value of the surviving plant between the date of the filing of the petition (December 3, 1956) and the date on which the condemner was entitled to take over the property (May 17, 1962).

This Commission in Decision No. 57344, issued herein on September 15, 1958, stated that in determining just compensation it considered historical cost less straight-line depreciation, reconstruction cost new less straight-line depreciation, and reconstruction cost new less sinking-fund depreciation, but that reconstruction cost new less straight-line depreciation was nearer to market value than reconstruction cost new less sinking-fund depreciation. The Commission concludes that in determining just compensation great weight will be given to depreciation computed by the straight-line method. In this supplementary proceeding, for the reasons heretofore stated, no weight was given to the exhibits of respondent based on reproduction cost new of the surviving plant as of May 17, 1962, and using depreciation computed by the sinking-fund method.

This Commission further concludes that depreciation should be deducted from expenditures for additions and betterments and that book depreciation may be used unless it is shown to be unreasonable.

Both parties to this proceeding agree that ad valorem taxes paid by respondent and allocable to the period after the takeover are includable in the award, and in making the supplemental award herein the Commission will include such ad valorem taxes.

Exhibit No. S-19, Table 3-A, introduced through the Commission staff witness, shows that expenditures for net additions

and betterments to the system for the period December 3, 1956 to May 17, 1962, amounted to \$535,432 less \$2,774 for meters retained in stock by respondent, or \$532,658. To this sum should be added \$2,309 for property claimed by respondent to have been omitted making a total of \$534,967.

Exhibit No. S-20, Table 2-B, also introduced by the Commission staff, shows that the reconstruction cost new less accrued depreciation as of December 3, 1956, of the plant retirements between December 3, 1956 and May 17, 1962, amounted to \$32,042. To this sum should be added \$694 for retirement applicable to omitted property making a total of \$32,736.

Table 2-A of said Exhibit No. S-20 shows that additional depreciation in the amount of \$241,103, computed on the same basis as the staff witness computed accrued depreciation in the original proceeding, accrued during the aforesaid period on plant inventoried by the staff as of December 3, 1956, and surviving as of May 17, 1962. To this amount should be added \$41,990 for depreciation accrued on net additions (Exhibit S-20, Table 2-D) and \$1,412 for depreciation accrued on structures between the period December 3, 1956 and May 17, 1962 (Exhibit No. S-21), making a total of \$284,505 of additional accrued depreciation.

The adjustment in just compensation based on these estimates with an allowance of \$6,128 for prorated ad valorem tax and an allowance of \$2,829 for additions and betterments subsequent to May 17, 1962, amount to \$226,683. North Sacramento contends this amount should be the amount of the supplemental award.

Exhibit No. S-26 introduced through a witness for North Sacramento shows the sum of the rate base components as of May 25, 1962 and subsequent, amounts to \$1,756,869 from which is subtracted

\$26,400 for "Arden Land", leaving a balance of \$1,730,469. This is an increase of \$230,469 over the depreciated historical cost rate base of respondent for the properties in question which amounted to \$1,500,000 as of December 3, 1956. Based on this evidence the increase in depreciated historical cost rate base during the period December 3, 1956 to May 17, 1962, amounts to \$230,469. To this amount should be added \$6,128 for ad valorem taxes making a total of \$236,597.

Since the studies submitted by respondent are based on reproduction cost new of the surviving plant as of May 17, 1962, they will not be considered in determining the amount of the supplemental award.

It should also be noted that the Commission, in Decision No. 57344, indicated that the unamortized rate case expense was given consideration as an item of going concern value. Since no specific amount was prescribed as attributable to this item, it is concluded that it is unnecessary to consider this item further in connection with the supplemental award.

The following is a tabulation of the various estimates of the increase in the original finding of just compensation which have been considered by this Commission in making its finding of the amount of the supplemental award herein:

Adjusted staff estimates of increase based on reconstruction cost new as of December 3, 1956, of surviving plant as of May 17, 1962, less straight-line depreciation plus expenditures for net additions and betterments less book depreciation plus additions and betterments made subsequent to May 17, 1962	\$226,683
Increase based on depreciated historical cost rate base	236,597

FINDING AND ORDER

It is hereby found as a fact that the total just compensation to be paid by the City of North Sacramento to Citizens Utilities Company of California for the taking of the property and rights described in the petition, as amended, of the City of North Sacramento, fixed by this Commission in its Decision No. 57344, dated September 15, 1958, at \$2,206,000 as of December 3, 1956, should be increased by the sum of \$232,000 by reason of matters alleged both in the Supplementary Petition of the City of North Sacramento filed herein December 2, 1959, and in the Petition for Increase of the Just Compensation filed herein November 25, 1959 by Citizens Utilities Company of California.

IT IS HEREBY ORDERED that the Secretary of this Commission shall transmit to the Superior Court of the State of California in and for the County of Sacramento a copy of this finding duly certified under the Seal of the Commission.

Dated at San Francisco, California, this 7th
day of FEBRUARY, 1964.

William G. Smith
President

George G. Trover

Fredrick B. Holmoff

Commissioners

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

CONCURRING OPINION OF
COMMISSIONERS GROVER AND HOLOBOFF

We have joined in today's decision because, given the decision of 1958, we believe the Commission's present action lawfully and properly resolves the issues involved in these supplementary proceedings. We do not understand, however, that we are hereby concurring in the correctness of the 1958 decision or of the valuation principles upon which it was based.

George A. Grover

Frederick B. Holoboff

Commissioners