

Decision No. 67348

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition )  
of the City of Folsom requesting )  
the Public Utilities Commission )  
to fix just compensation for the )  
acquisition of the public utility )  
property of Natomas Water Company. )

Application No. 46026  
(Amended)

Louis A. Boli, III, City Attorney, and Martin McDonough, for City of Folsom.  
John F. Downey and Harry B. Seymour, of Downey, Brand, Seymour & Rohwer, for Natomas Water Company.  
O'Melveny & Myers, by Donn B. Miller, for Southern California Water Company, and Robert E. Frye, for Water Committee, Rancho Cordova Area Chamber of Commerce, interested parties.

INTERIM OPINION

The City of Folsom, on December 11, 1963, filed a petition of the second class (Public Utilities Code, Secs. 1401-1421), requesting that the Commission fix the just compensation to be paid for certain lands, properties and rights of Natomas Water Company, a public utility, described in the petition generally as the property and rights, including water rights and rights to divert water, used in conjunction with the operation of the utility's "Folsom Division", located in the easterly portion of Sacramento County. Petitioner alleges that it is its intention to initiate proceedings for the purpose of submitting to the voters of the city a proposition to acquire the described property under eminent domain proceedings, or otherwise.

The Commission, on January 14, 1964, issued its order directing Natomas Water Company to appear and show cause, if any it had, why the Commission should not proceed to hear the petition and to fix such just compensation.

The record shows that all procedural requirements contemplated by Sections 1406 and 1408 of the Public Utilities Code were completed prior to the return date of the order to show cause. Hearings on such order were held before Examiner Cline on February 7, 1964 at Folsom and March 6, 1964 at Sacramento and the order was submitted on the latter date.

Natomas, on February 7, 1964, filed its answer to the petition and return to the order to show cause, in which it: (a) challenges the city's asserted right to acquire any part of the company's property by eminent domain proceedings; (b) alleges inadequacy of the description of the sought properties; and (c) avers that Southern California Water Company, a public utility corporation, has an interest in the sought property by reason of an executory contract of purchase dated December 19, 1963, authority for execution of which has been sought from the Commission in another proceeding, and that, therefore, Southern California is the real party in interest in this just compensation proceeding.

By way of further answer, Natomas avers that the greater portion of the sought property is outside petitioner's exterior boundaries, is not necessary or required for efficient and adequate service to existing consumers within the city's boundaries, and is appropriated or dedicated to rendition of water service in the county area outside petitioner's exterior

boundaries; moreover, the portion of the system lying outside petitioner's boundaries is not an integral part of the portion lying within the city, but is an integral part of the remainder of Natomas' system.

With respect to that portion of the system located outside of the City of Folsom, Natomas further avers that:

(a) there is no public necessity for its acquisition by petitioner; (b) such property is not necessary for the public use proposed by petitioner; (c) such acquisition would not result in the public improvement being planned or located in the manner most compatible with the greatest public good and the least private injury; (d) petitioner is without constitutional or statutory authority to acquire by eminent domain any properties or rights situated outside of its exterior boundaries.

Concerning petitioner's description of the sought properties, Natomas further avers that such description is inadequate and insufficient to permit identification or evaluation thereof, and that if such description, presumably, includes Natomas' Valley Ditch, approximately 12 miles in length, the proposed acquisition would destroy a necessary future water supply of Natomas intended by it to be used in areas not sought to be acquired by petitioner.

Natomas requests that the petition be dismissed and that no further proceedings be taken by the Commission to fix just compensation.

The City of Folsom, on February 25, 1964, filed an application for leave to amend its original petition, together with a "First Amended Petition", in order, as stated in the

application, "to more completely describe the parties, the purpose of the action, and the lands, property and rights for which petitioner seeks to have just compensation fixed in this proceeding." The amended petition contains a specific description of the sought properties (Par. VII) and a declaration by petitioner that the lands, property, rights and system so described are intended to comprise all of the water utility properties of the company lying within its Folsom Division, and the extension of the Valley Ditch outside the Folsom Division to its terminus. Excluded are office furniture and equipment, automotive and other transportation equipment, communications equipment, tools, materials and supplies, cash and accounts receivable.

Petitioner alleges that the system, lands, property and rights so described are substantially the same system and properties referred to in earlier paragraphs of the petition as being the company's water system used in carrying on the business of transmission and distribution of water within petitioner's boundaries and in territory outside and adjacent thereto, and that such outside properties are essentially a part of the company's water system within petitioner's boundaries.

The amended petition requests that the Commission issue an order to show cause directed to every owner or claimant of the sought property and that it proceed to fix the just compensation to be paid by petitioner therefor.

Petitioner filed points and authorities in connection with the order to show cause at the adjourned hearing held March 6, 1964. Also, at that hearing, Natomas filed its answer to the First Amended Petition, in which it makes substantially

the same averments as those contained in its answer to the original petition. Other averments, concerning petitioner's lack of authority to acquire a "very substantial portion" of the sought property, the lack of public necessity for including the company's outside properties in the proposed taking, and the adverse effect of such taking on the ability of the company or Southern California to serve the remainder of the certificated service area, are consonant with those set forth in Natomas' answer to the original petition, as is its request for dismissal of the petition as amended.

The company, at the hearing on March 6, 1964, withdrew its objection to assumption of jurisdiction by the Commission. It contends, nevertheless, that the Commission does not have power to fix just compensation for the properties which lie outside the boundaries of the city because such properties are not an integral part of the properties within the city and, in any event, the city does not have the right to acquire such outside properties by eminent domain. Counsel for both the city and the company appeared to be in agreement with the proposition that it would be the duty of the court, in an eminent domain proceeding, to determine the right to take.

The question of adequacy of the description of the properties appears to be settled, at least for the purpose of taking jurisdiction and proceeding with the case, by the contents of the amended petition. It is not unusual, in matters of this kind, for amendments to the petition, relating to description of the sought properties, to be presented and authorized from time to time during the course of the proceeding. The question for

determination here is not whether there are minor uncertainties or ambiguities, nor whether amendments may be permitted in certain other respects, but whether there is such a sufficiency of description that the Commission may order that the matter proceed (City of North Sacramento, 55 Cal.P.U.C. 494, 496). We hold that the description of the sought properties set forth in the First Amended Petition is sufficient for the purpose of taking jurisdiction and going forward with this proceeding.

The motion to dismiss will be denied.

INTERIM ORDER

IT IS ORDERED that:

1. Leave to amend the petition herein by the First Amended Petition is granted.
2. The motions by Natomas Water Company to dismiss the original and First Amended petitions herein are and each of them is denied.
3. The Commission take jurisdiction of this proceeding and fix the just compensation to be paid by petitioner for the properties described in the First Amended Petition herein, and for such other or additional properties as may hereafter be described by appropriate amendment to said petition, and that further proceedings be held herein, at times and places to be

fixed and upon due notice, for the purpose of determining the just compensation to be paid by petitioner for such properties.

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

Dated at San Francisco, California, this 10<sup>th</sup> day of JUNE, 1964.

William M. Bennett  
President  
Robert L. Mitchell  
Charles H. Long  
George H. Hoover  
Frederick B. Holbrook  
Commissioners