

**ORIGINAL**Decision No. 68136

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the MONTEREY PENINSULA )  
 MUNICIPAL WATER DISTRICT to have )  
 fixed the just compensation to be )  
 paid for the water system of EAST )  
 MONTEREY WATER SERVICE existing )  
 within and adjacent to the bound- )  
 aries of said district. )

Application No. 41485

Martin McDonough, Myron B. Haas, and C. T. Mess, for Monterey Peninsula Municipal Water District, petitioner.

George D. Pollock, in propria persona, one of the owners of East Monterey Water Service; Charles O'Gara, Hudson, Martin, Ferrante and Street, and Albert T. Henley, for Loretta Pollock, one of the owners of East Monterey Water Service; and Almon B. McCallum, for Crocker-Anglo National Bank, respondents.

J. T. Phelps, William Roche, Walter Cavagnaro and Parke L. Boneysteele, for the Commission staff.

O P I N I O N

On September 14, 1959, Monterey Peninsula Municipal Water District, hereinafter sometimes called District, filed its petition setting forth the District's intention to institute such proceedings as may be required to submit to the voters of the District a proposition to acquire the water system properties of East Monterey Water Service, hereinafter sometimes called EMWS, in the Seaside area of Monterey County under eminent domain proceedings and requesting the Commission to fix the just compensation to be paid for said properties. EMWS was named in the petition as a sole proprietorship owned and operated by George D. Pollock. Subsequently, by Decision No. 59146 dated October 13,

1959, the Commission authorized the District to amend the petition to show George D. Pollock and Loretta M. Pollock, his wife, as owners of EMWS and Crocker-Anglo National Bank as a creditor of EMWS under a mortgage and under a deed of trust.

After hearing on the Order to Show Cause issued on October 6, 1959, the Commission issued Decision No. 59424, on December 21, 1959, noting that no cause had been shown why the Commission should not proceed to hear the petition and fix just compensation and ordering that further hearings be held.

The petition was further amended by Decision No. 61884, issued April 25, 1961, and by Decision No. 67259, issued May 26, 1964.

Further hearings were held in the matter on October 9, 10, 11, 16, 17, and 18, 1963, and on January 2, and 3, 1964. Evidence was introduced at the hearings by the Commission staff which had made certain studies at the request of the District, by witnesses for the District, and by witnesses for EMWS. Twenty-five exhibits were marked for identification and twenty-one were admitted into evidence. Apparently, through an oversight, Exhibit No. 15 produced by the real estate witness for EMWS was not offered in evidence, but it has been treated by the parties hereto as having been admitted in evidence. Said Exhibit No. 15 is therefore received in evidence at this time.

The matter was taken under submission subject to the filing of concurrent briefs, the last of which was filed on February 20, 1964.

One of the owners of EMWS, Loretta Pollock, evidently is urging that the just compensation for the properties of said water system as of September 14, 1959, be fixed at \$887,753 which

is the sum of the reproduction cost new estimates of the Commission staff less equal annual cost or sinking fund depreciation plus the fair market value of lands, easements and rights of way. The other owner, George D. Pollock, testified that the fair market value of said properties is \$750,000. The District urges that the Commission fix just compensation in a sum not to exceed \$510,000.

This proceeding is a companion to Application No. 41463, which was filed by the District to request the Commission to determine the just compensation for the water properties of California Water and Telephone Company on the Monterey Peninsula.

The issues presented in this case are as follows:

1. Is the proper measure of just compensation in an original just compensation proceeding principally determined by the earning power of the properties sought, as contended for by the District, or, is it the summation of reproduction costs and market value of the separate assets, depending on their nature, as contended for by one of the owners?
2. To the extent that reproduction cost is a factor in just compensation, is the most appropriate method of depreciating reproduction cost new the sinking fund--present worth--equal annual cost--method employed by witness for one of the owners, or the straight-line method as employed by witnesses for the District and the Commission staff?
3. Should an estimate of reproduction cost include cost of paving of mains where historically no such paving occurred?
4. What is the fair market value of the property, in the sense that just compensation is thereby determined?

5. Insofar as reproduction cost new is a factor in determining just compensation, should the Commission rely principally on the estimate of its staff or on the estimate of the District's witness?

6. Among the three estimates of accrued depreciation applicable to reproduction cost new produced by the staff, the District, and the Company, which is entitled to the greatest weight on the basis of assumed lives and related allowances?

7. To the extent that fair market value of fee lands and easements are relevant to just compensation, should the estimate of the District's witness Gimmy or the Company's witness Gash be utilized?

We shall discuss the issues in the order listed above except that issue 4 will be considered last.

In City of North Sacramento, 56 C.P.U.C. 554 at 561, this Commission stated: "In determining just compensation the Commission should consider those matters which would be considered by a willing seller and by a willing buyer each of whom has knowledge of all the uses and purposes to which the property is best adapted and for which it is capable of being used." This statement is closely related to the definition of market value urged by the District in the companion proceeding hereto as the proper measure of just compensation which states that market value is "the price which would be paid by an informed and agreeable purchaser to an informed and agreeable seller, neither being under any unusual pressures as to time or circumstance." Such definitions establish the proper measure of just compensation in this proceeding.

As in the decision of the companion proceeding hereto the Commission will take official notice of the following facts and finds that an informed purchaser and an informed seller would be aware of such facts:

1. EMWS has dedicated the properties involved in this just compensation proceeding to the public use and is lawfully operating such properties as a public utility water corporation in the Seaside area of Monterey County.

2. Properties dedicated to the public use must continue to be so used until abandoned to the public or until some other use is authorized by this Commission.

3. No other private entity may operate as a public utility water corporation within the service area of EMWS unless it obtains a certificate of public convenience and necessity from this Commission, and this Commission can grant such a certificate only after making a finding that public convenience and necessity require or will require the construction of the system required for such operation.

4. The District may parallel the lines of EMWS without authorization from this Commission.

5. The rates which this Commission has authorized EMWS to charge for its service are rates which this Commission has found will allow EMWS an opportunity to earn a reasonable return on the original cost of its properties (less the reserve) plus an allowance for working capital and deducting advances for construction.

Both a prospective seller and a prospective buyer of the properties for which just compensation is to be fixed in this proceeding would undoubtedly consider the present day cost, i.e., the sum of (1) reproduction cost new less depreciation of physical properties other than lands and rights of way, (2) the market value

of lands and rights of way, (3) the market value of water rights, and (4) organization costs and going concern value; the original cost less depreciation; the rate base, and the capitalization of the earnings of the properties as factors affecting market value. Such a buyer would expect to be able to earn a reasonable return on his investment and not likely be willing to pay much in excess of the present day cost of the properties in view of the possibility of the water system being paralleled or condemned by a public agency. A willing buyer and a willing seller would also consider the fact that public agencies as well as private concerns are in the market for utility properties.

In determining the method of depreciation to be used in developing accrued depreciation for a reproduction cost new study, we recognize the extreme dollar differences that result from the two methods in this proceeding. The sinking fund--present worth--equal annual cost method produces considerably lower amounts for accrued depreciation than the straight-line average life method. Only as plant reaches the end of its life span do the two methods produce comparable results. This difference is caused by the injection of an interest factor into the age life relationship. We are in this proceeding concerned primarily with an attempt to measure the dollar loss in service value as related to a reproduction cost new study. While an interest factor may be appropriate in certain types of economic studies, in a proceeding of this type it has to be considered in relation to the type of appraisal involved. This loss in service value is the end result of a considerable number of physical and functional elements of depreciation which do not lend themselves to precise quantitative measurement. As between the two methods we find that the straight-line method will produce the most reasonable result, and we therefore conclude that the straight-line method should be used in conjunction with the reproduction cost new studies in this proceeding.

If a public agency were to parallel the water system . involved in this proceeding it would have to replace nonhistorical paving rather than historical paving. Therefore, we conclude that the estimate of reproduction cost should include the cost of paving mains wherever such paving was in existence as of September 14, 1959.

Also since a public entity can parallel the system, whereas a privity entity could not except in special circumstances which have not been shown to exist in this proceeding, we conclude that the reproduction cost estimate to be used in this proceeding should be that of a public rather than a private entity.

The reproduction cost new estimate of the Commission staff for a public entity including nonhistorical paving was \$1,031,164, whereas such estimate of the District's witness for a public entity including nonhistorical paving was \$783,171. Both estimates were prepared at the instance of the District.

Summaries of the record respecting these estimates and the positions taken by the parties to this proceeding relative thereto are well-stated in the briefs of the District, the Commission staff and EMWS. We have considered the qualifications of the witnesses, the thoroughness of the respective studies and the testimony of the witnesses regarding the reproduction cost new estimates. The Commission is convinced that the construction period and pricing methods used by the Commission staff are more realistic than those of the District's witness. The Commission finds that the reproduction cost new estimate of \$1,031,164 submitted by the Commission staff is reasonable and should be adopted in this proceeding.

The District and the staff both computed accrued depreciation through the use of the straight-line remaining life method. EMWS used the equal annual cost or sinking fund method. For the reasons previously stated the straight-line remaining life method is the method which should be used in this proceeding. As pointed out in the brief of the District, as between the staff and the District, the percentage of accrued depreciation is very close. The District used slightly longer remaining lives and somewhat less salvage. The choice between results of the District and the staff depends largely on the base selected. The Commission has adopted the reproduction cost new estimate of the staff, and it will also adopt the accrued depreciation of the staff. The Commission finds that accrued depreciation in the amount of \$273,164 reasonably should be deducted from the reproduction cost new estimate of \$1,031,164 to arrive at reproduction cost new less accrued depreciation of \$758,000.

The witness for EMWS in his appraisal of land included two parcels which were acquired after the date the petition herein was filed and omitted one parcel which the District does seek to acquire. In addition the witness for EMWS did not include an amount for easements. EMWS's appraisal adjusted by reasons of these omissions and additions is \$87,846. The District's appraisal of land and land rights is \$77,500. We are convinced that the appraisal of the District is the result of a more thorough investigation of the properties and is more reliable than that of EMWS. We find that for purposes of determining the present day cost of the system in this proceeding, the land and land rights reasonably should be included at a value of \$77,500.

We further find that the present day cost of the system involved in this proceeding is reasonably the sum of \$758,000 and \$77,500, or \$835,500.



There is no dispute as to the original cost of the properties depreciated and the rate base. We find the rate base components of the properties involved in this proceeding as of September 14, 1959, are as follows:

Original cost of utility plant, exclusive of land and land rights .....	\$391,439
Less depreciation reserve .....	<u>85,016</u>
Subtotal .....	306,423
Original cost of land and land rights .....	<u>13,021</u>
Subtotal .....	319,444
Less advances for construction .....	<u>52,357</u>
Rate base .....	\$267,087

Other evidence in this proceeding shows that George D. Pollock offered to sell the properties during the summer of 1963 both to the District and to California Water & Telephone Company for \$750,000, but that both rejected the offer. George D. Pollock testified that he thought \$750,000 was a reasonable amount to be paid for the properties. Pollock refused to sell the properties to California Water & Telephone Company for \$500,000.

The Municipal financial consultant for the District testified that in his opinion a fair market value of the properties as of September 14, 1959, was \$510,000. In making his estimate this witness relied principally on the earning power or the productiveness of the property, as the principal dominant element bearing on the question of fair market value. He took into account and considered the extent, type, and stability of the territory served by the system, the adequacy of the sources of water supply for present and future requirements, the possibilities for expansion, the reasonableness of rates in effect as of September 14, 1959, the stability of the enterprise,

and the past earnings of the property as reported in the annual reports to the Commission. In addition he examined certain actual transfers of water properties to determine the relationship of the sale or condemnation price to the depreciated plant book cost. The ratios ranged from about 99 percent to a high of 164 percent of depreciated plant book cost with about 70 percent of the transfers taking place at less than 140 percent of depreciated plant book cost. The amount of \$510,000 is about 160 percent of the original cost of the properties less depreciation and approximately 190 percent of the rate base of \$267,087. We find that the value of the properties based principally on the capitalization of earnings is \$510,000.

The following is a tabulation of the preliminary findings on which our finding of just compensation is based:

Present Day Cost .....	\$835,500
Original Cost .....	319,444
Rate Base .....	267,087
Capitalization of Earnings .....	510,000

ULTIMATE FINDING AND ORDER

The Commission finds that the total just compensation to be paid by the Monterey Peninsula Municipal Water District for the taking of the lands, properties and rights described in the District's petition, as amended, is the sum of \$550,000.

The Secretary is directed to cause certified copies of this order to be served upon the parties, and the effective date of this order, as to any party, shall be twenty days after service upon such party.

Dated at San Francisco, California, this 27th day of OCTOBER, 1964.

*We dissent. In our opinion, an award based on capitalized earnings in the amount of \$510,000 (as found by the Commission) would be adequate.*  
 George T. Grover  
 Friedrich B. Holzloff

Ed. J. McLaughlin President  
Walter A. [Signature]  
Halleman [Signature]  
 Commissioners