

Decision No. 77583

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the CITY OF RIVERSIDE,)
a Municipal Corporation, to have)
fixed the just compensation to be)
paid for the Water System of the)
Southwest Water Company existing)
within and adjacent to the boun-)
daries of said municipality.)

Application No. 49307
(Motion to Dismiss -
Filed January 27, 1970)

Howard M. Downs and Stephen Tennis, of Howard,
Prim, Smith, Rice and Downs, for Southwest
Water Company.
Leland J. Thompson, City Attorney, for City
of Riverside.

O P I N I O N

Southwest Water Company, asserting prejudice and deprivation of its constitutional right to just compensation because of alleged dilatory tactics by the City of Riverside in bringing this case to trial, has moved to dismiss the City's petition, filed herein on April 24, 1967. In the alternative, the Company submits that the Commission's initial or supplementary award must reflect the increased value of its property alleged to be due to inflationary trends during the two and one-half year period between the filing of the petition and the commencement of the City's first significant showing on December 16, 1969.

The motion was argued and submitted on June 4, 1970, before Examiner Gregory. The record shows that the City, following presentation, on March 4, 1969, of direct testimony by the staff on studies prepared at the City's request and preliminary testimony by the City's land appraiser on his report (first made available to the parties only

that morning), requested further time to complete and distribute its other reports. The case then went off calendar and, after a tentative resetting in October, 1969, was reconvened on December 16, 1969 for resumption of the City's direct showing. After cross-examination of the staff and City witnesses during February and April, 1970, the City completed its direct presentation on April 21, 1970. The motion to dismiss was thereupon submitted, subject to later oral argument, and the case was continued to August 31, 1970 for presentation of the Company's evidence.

The Company, arguing the motion, submits that unless the Commission's award, either initially or in the supplementary proceedings provided by Section 1417 of the Public Utilities Code, reflects the alleged increased value of its property during the period between the filing of the petition and the date of the first significant commencement of the City's presentation (December 16, 1969), it will suffer prejudice and its constitutional right to just compensation will be violated as the direct result of the City's alleged failure to prosecute diligently its petition.

The City, responding to the motion, has referred to the Company's challenge to the Commission's assumption of jurisdiction of this case in the show cause proceeding, heard on July 25, 1967 following a postponement at the request of the Company's counsel, in which the Company had moved to disqualify the Commission for alleged bias and had demanded a jury trial for the ascertainment of just compensation. That motion was denied and the Commission took jurisdiction of the case on January 16, 1968 (Decision No. 73615). The City, further, points out that the studies it had requested to be made by the staff were actually commenced, after preliminary arrangements, on July 15, 1968,

and were completed and distributed on January 24, 1969, and that following the brief hearing on March 4, 1969 the City advised the staff, by letter dated June 4, 1969, that an agreed settlement of the case did not seem probable and that, accordingly, it seemed appropriate to schedule further proceedings. The City further asserts that because of illness, vacation schedules and other matters, it was agreed between the parties that proceedings would commence in October, 1969, but that due to diverse circumstances, including illness of several of the City's consultants, the City was not prepared to proceed in October and, ultimately, the date of December 16, 1969 was agreed upon for resumption of the hearings.

The City asserts it had no control over the foregoing sequence of events. It argues that as Section 1411 of the Public Utilities Code fixes the valuation date as of the date of filing the petition, Section 1249 of the Code of Civil Procedure (cited by the Company in support of its alternative request to change the valuation date to the date of hearing) and other eminent domain provisions of that Code are inapplicable to this proceeding.

Responding to the Company's other alternative request, the City urges that Section 1417 of the Public Utilities Code does not permit the Commission to consider, in the supplementary proceedings therein provided, "appreciated value" of public utility properties. The City contends that the legislature, when it enacted the statute (now Public Utilities Code, Secs. 1401-1421) providing an "alternative and cumulative and not exclusive" procedure for acquisition of public utility properties by political subdivisions, obviously had in mind, in adopting Section 1417, the unique and privileged status of a privately owned public utility, and "accordingly determined that only depreciation and deterioration was a proper

economic consideration by the Commission in applying said Section 1417" (Opposition to Motion, p. 5). The City concludes its written response with the assertion that even if Section 1417 be conceded some relevance to the question of increased value, the Company's motion, on that issue, is both premature and lacks the verification required by that section. The City requests denial of the motion to dismiss the petition and rejection of the Company's alternative request for consideration of increased value of its properties.

The Company, in its reply to the City's response, asserts that the City has tacitly admitted that the motion to dismiss is well-founded, not only by its failure to dispute the Company's contention that the value of its property has increased greatly during the period of delay and that valuation of that property as of the date of filing of the petition would result in "extreme prejudice" to the Company, but also by the City's failure to respond to numerous authorities, cited by the Company, which tend to the view that prejudice resulting from failure diligently to prosecute a condemnation action raises serious constitutional issues.

The Company, replying specifically to the City's contention that the alternative procedures of a change in the valuation date or the use of supplementary proceedings are not available for the purpose of showing appreciated property values, submits that the City's dilatory tactics and the consequent prejudice to the Company are

"acts" or "occurrences" that require a supplemental award.^{1/} Asserting that this case presents a unique situation that could not have been anticipated by the legislature, the Company urges that both the Commission and the Superior Court, in making condemnation awards in public utility cases, have inherent power to provide for just compensation through a "sensible interpretation" of the statute, citing, to that effect, Citizens' Utilities Co. v. Superior Court, 52 C. 2d 805, 811 (1963). Also, with respect to supplementary proceedings, the Company contends, citing City of North Sacramento v. Citizens' Utilities Co., 218 C.A. 2d 178, 191 (1963), that the Commission, in addition to its power, pursuant to Section 1417 of the Public Utilities Code, to make adjustments for "betterments", "depreciation" or "deterioration" to the system during the entire period until the City takes possession, also has full power to revise the original award upwards or downwards if it finds that, "by reason of other acts and occurrences subsequent to" the date of filing of the original petition, fairness to the parties in the award of just compensation so requires.

^{1/} Section 1417 of the Public Utilities Code provides, in substance, that within 30 days subsequent to the entry of judgment by the court in an eminent domain proceeding, following - and required to be based on - the Commission's original award, the owner and the political subdivision may file verified cross petitions with the Commission to increase or decrease the original award by reason either of specified items or of "other acts and occurrences" subsequent to the date of filing of the original petition for just compensation. The section also provides that if both such petitions are filed, the Commission may consolidate them for hearing and decision. Section 1418 provides for fixing the extent of increase or decrease in the original award, and Section 1419 provides for transmittal of the Commission's finding to the court, which is required to modify its original judgment accordingly.

The Company, both in its written and oral arguments, has emphasized that if the Commission does not dismiss the petition outright, subject to refiling by the City only on a showing that it is able and willing to proceed diligently, then it must exercise its inherent power, in order to avoid serious constitutional issues, to give effect in its award to the Company's assertion of increased value of its property since the date of the filing of the City's petition. Although the Company seems, in its request for alternative relief, to have leaned toward supplementary proceedings as the preferred procedure, both its written and oral presentation indicate that either a change in the valuation date or supplementary proceedings would be acceptable in lieu of dismissal of the petition, provided the Commission grants it some form of relief as prayed for in the motion.

There is no doubt but that this proceeding has pursued a leisurely course from its inception, on April 24, 1967, to the completion of the City's direct showing on April 21, 1970. Although the Company has pointed to the City's "dilatatory tactics" as the cause of whatever delays have occurred, its submission that "a review of the record in this case will establish that the delay has been unreasonable and has been primarily attributable to Riverside's lack of diligence" (Reply Memorandum, p. 1 - emphasis ours), permits us to infer - and our review of the record so discloses - that delays for reasons other than the City's lack of diligence have occurred.

It is not unheard of, in a case as vigorously contested as this one has been - and promises to be until its conclusion - in which substantial monetary interests and complex legal theories and issues are involved at every stage, for such a proceeding to move at a pace that some might describe as inordinately slow. This

Commission, however, is fully aware that its compensation award must be "just" if it is to escape being struck down by the constitutional mandate, which is self-executing (see Citizens' Utilities Co. v. Superior Court, supra, at p. 812).

We undoubtedly have power, as well as the duty, to provide a procedural path that will lead to an award of compensation just and fair to the parties concerned. If due to procedural delays or a record that suggests the inapplicability of certain statutory provisions the parties might be foreclosed from offering material and relevant evidence on their respective claims, we are still required, in reaching our finding of just compensation, to arrive at that result by fair and reasonable procedures.

The Company, in its motion, has suggested three possible procedures in light of the lapse of time that, admittedly, has occurred since the filing of the City's petition. All of them are based on its assertion, for which it has as yet offered no evidence, that its properties have substantially increased in value since April 24, 1967. To foreclose the offer of such evidence, either in the original or supplementary proceedings as requested by the City, in our opinion would not only lay our award open to constitutional attack, but also would largely nullify the effort and expense already incurred, as well as that which will necessarily be incurred until the conclusion of the case.

We are of the opinion that the substantial rights of the City and the Company would be preserved by allowing the Company to present evidence of what it asserts to be the increased value of its properties between April 24, 1967 and December 16, 1969 during the course of the original proceedings herein, which are now scheduled to resume on August 31, 1970. The City, and

the staff if the City so requests, will of course have full opportunity, prior to submission of the original proceeding, to challenge the Company's showing on such increased value, as well as any other evidence or argument offered by the Company in support of its claims. If, after the original award to be made herein, supplementary proceedings, pursuant to Sections 1417-1419 of the Public Utilities Code, are deemed necessary by either or both of the parties, such proceedings can take their usual course.

We conclude that the Company's motion, to the extent that it requests dismissal of the petition herein, should be denied. Insofar as the motion requests, as alternatives to dismissal, an opportunity for the Company to offer evidence, either in the original proceeding or in supplementary proceedings herein, of increased value alleged to have accrued to its property between April 24, 1967 and December 16, 1969, the motion should be granted as hereinabove indicated.

O R D E R

IT IS HEREBY ORDERED that the motion filed herein by Southwest Water Company on January 27, 1970, to dismiss the petition of the City of Riverside filed herein on April 24, 1967, is denied. Said

motion, however, is granted, in part, in accordance with Commission's conclusions set forth in the foregoing opinion.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4th day of AUGUST, 1970.

M. L. Brainin
 Chairman

August

William J. ...

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Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.