

ORIGINAL

Decision No. 80913

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 boundaries of said
municipality.

Application No. 49307
Petition for Rehearing
(Filed September 29, 1972)

ORDER MODIFYING DECISION NO. 80480 AND DENYING REHEARING

In Decision No. 80480 dated September 12, 1972, the Commission discussed the numerous issues which arose during the course of this protracted proceeding. The decision set forth findings on just compensation and severance damages. Because of the nature of the proceeding, no order was necessary.

On September 29, 1972 the City of Riverside (City) filed a petition for rehearing of Decision No. 80480. In its petition, City summarizes:

"The City recognizes that historically granting of petitions for rehearing have been the exception not the rule; that presumably all of the arguments and citations contained herein have been the subject of previous assertion and analysis; nevertheless we again urge that impact of the determined just compensation is such that the Commission should re-examine and reconsider the Decision position."

City's request for a careful reexamination of Decision No. 80480 is reasonable. Pursuant to that request, we have considered each and every allegation in City's petition, but have found only two which require discussion. They are:

- (1) At this stage of the proceeding, the date upon which the valuation of the property of Southwest Water Company (Southwest) should be fixed is April 24, 1967, rather than December 16, 1969.
- (2) Additional discussion is warranted as to the rationale for the relative weight given to the various valuation methods present in the record.

Neither of the two aforementioned subjects require additional evidence or argument.

Valuation Date

The findings in Decision No. 80480 established the values of Southwest's properties subject to acquisition by City. The effective date of the valuations was December 16, 1969, for reasons discussed at some length in the opinion.

Regardless of any consideration of the equities involved, the establishment of the December 16, 1969 valuation at this stage of the proceeding is procedurally incorrect. Section 1411 of the Public Utilities Code requires that, initially:

"The just compensation shall be fixed by the commission as of the day on which the petition was filed with the commission."

If Southwest wishes to claim additional just compensation based upon acts of City and the occurrence of undue delay subsequent to April 24, 1967, that claim should be made pursuant to Section 1417 of the Public Utilities Code. That section provides, in part:

"At any time within 30 days subsequent to the entry of such judgment (by a court of competent jurisdiction, fixing as just compensation the amount determined by the Commission), 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 filing of the original petition with the commission...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 finding increasing such compensation..."
(Emphasis and parenthetical elaboration added.)

Valuation Method

City takes exception to the Commission's reliance in Decision No. 80480 on the so-called RCNLD approach. After a thorough review of petitioner's arguments, we hereby reaffirm our previous position.

This Commission has in many instances relied heavily on the detailed appraisal of the individual components of a utility's property in fixing just compensation. The use of reproduction cost (less accrued depreciation) as a major or sole criterion in determining value is solidly based in precedent (P.G.&E. v Devlin (1922) 188 C 33, Sacramento Municipal Water District (1942) 44 CRC 467, City of Redding (1934) 39 CRC 193, 27 Am. Jur. 2d 172).

On the other hand, use of the capitalized earnings approach has been the subject of much criticism. Indeed this approach has been rejected in the past as being too unstable a measure of value (City of Los Angeles (1932) 37 CRC 117, City of San Francisco (1929) 33 CRC 202, City of Los Angeles (1929) 32 CRC 579, City of Redding (1921) 19 CRC 267).

Initially it must be recognized that the income theory of value in California is based on original cost, due to the use of an original cost rate base in setting rates. As such, it has little or no relationship to present market value. In addition, it is premised on various assumptions with respect to earnings, interest, and time. In 1929 this Commission stated its objections to capitalized earnings as follows:

" . . . It [the income theory] is based upon adopted constants which are in fact variables. It assumes for the indefinite future that this Commission will not change the rate of return; that the net return, the losses and the risks incurred will remain the same; that there will be a definite future program of building with depreciation charges and prices remaining the same; that future cost of financing will follow the present; that there will be a certain future population; that no other form or mode of heat, light or power will transplant, modify or compete differently with the present electric service; that certain estimated but unknown revenues and operating and maintenance expenses will accrue; and that many other intangible things will come to be realities." (City of Los Angeles, supra, 32 CRC 582.)

The capitalized earnings approach is deficient in failing to recognize and take into consideration possible tax benefits accruing to a willing buyer. The uses and advantages to which a utility's assets are adaptable are properly considered in the determination of fair market value and should not be ignored.

Finally, the income theory of valuation fails to take into consideration certain assets that will be acquired. Contributions in aid of construction are omitted from the utility's rate base. As such, they are omitted from the capitalized earnings studies. We are convinced that these assets have value and cannot be excluded from our finding of just compensation.

For the reasons described hereinabove, it is clear to the Commission that the capitalized earnings approach to valuation is appropriate to review in a proceeding such as this, but is not the sole basis available for valuation. It is, in fact, too unreliable to be considered as a realistic measure of fair market value in the case at hand. The fixing of just compensation is not a matter of precise calculation but, rather, requires the substantial use of informed judgment. Based on our evaluation of the evidence and arguments presented, we are convinced that the RCNLD approach affords the proper basis for determining the fair market value of Southwest's property.

Findings

1. The initial petition in this proceeding was filed by City on April 24, 1967.
2. Section 1411 of the Public Utilities Code requires that, at this stage of a just compensation proceeding, the just compensation shall be fixed by the Commission as of the day on which the petition was filed.
3. Decision No. 80480 fixed the just compensation as of December 16, 1969.
4. Appendix B to Decision No. 80480 shows the Commission's value opinions as of both April 24, 1967 and December 16, 1969.

IT IS ORDERED that:

1. Rehearing of Decision No. 80480 is denied.
2. The findings in Decision No. 80480 are modified to read as follows:

"1. Just Compensation

The Commission, having considered this record and having weighed the opinions and conclusions of the several witnesses and arguments of counsel concerning the value of the La Sierra District Water System of Southwest Water Company, situated in Riverside County, California, hereby finds that the just compensation, as of April 24, 1967, which Southwest Water Company is entitled to be paid for the taking, by eminent domain or otherwise, by the City of Riverside, California, of the lands, property, and rights comprising the La Sierra District Water System (including the Daly Water Company, a corporation), is the sum of \$4,801,000.

"2. Severance Damages

Should the City of Riverside not take the lands, property, and rights of Daly Water Company, we find that the just compensation, as of April 24, 1967, which Southwest Water Company is entitled to be paid, as severance damages for the City's failure to take these properties, is the sum of \$211,000.

- "3. Total Just Compensation and Severance Damages
The total just compensation and severance damages, as of April 24, 1967, which Southwest Water Company is entitled to be paid for the taking by the City of Riverside of the lands, property, and rights comprising its La Sierra District Water System (excluding Daly Water Company), is the sum of \$4,801,000."

3. To the extent any portion of the opinion in Decision No. 80480 is inconsistent with the above revised findings it is overruled.

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

Dated at San Francisco, California, this 9th
day of JANUARY, 1973.

Vernon L. Sturgeon
President

Thomas M. M...
William Symons, Jr.
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

I dissent
William Symons, Jr., Commissioner

J. P. VUKASIN, JR., Commissioner, dissenting.

I dissent.

The decision of the majority approves substantial money modifications in our original Decision No. 80480, dated September 12, 1972, and denies the opportunity for rehearing and litigation of disputed issues.

In the instant decision two allegations in the petition for rehearing by the City of Riverside are discussed. The first issue of the Reproduction Cost New Less Depreciation approach to valuation is reviewed and reaffirmed. While it is admitted that other theories, such as capitalized earnings, are appropriate for consideration, the RCNLD approach is accepted as the proper basis for determining the fair market value.

The date upon which valuations of the property of Southwest Water Company should be fixed is set forth as the other subject of Commission re-examination. It is concluded that Decision No. 80480 is in error and should be modified to establish the effective date of valuations as of April 24, 1967, instead of December 16, 1969. The just compensation awarded to Southwest Water Company is thereby reduced from \$5,541,000 to \$4,801,000. In addition, with the enactment of the April 24, 1967, date the severance damages to Southwest Water Company are reduced from \$247,000 to \$211,000.

Section 1708 of the Public Utilities Code, as amended in 1971, reads as follows:

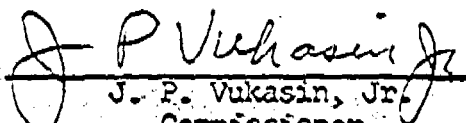
1708. The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.
(Amended 1971, Ch. 514.) (Emphasis added.)

Formerly, notice of a change in a Commission decision was required only "to the public utility affected." It is apparent that the Legislature in revising Section 1708 desired to inform all parties to a Commission proceeding of any substantial revision contemplated by the Commission in its original order. Indeed, the Section refers to the same opportunity for hearing as provided in the case of complaints. Section 1704 is explicit in the procedure to be followed for hearing complaints. (See also Section 1705)

1704. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than 10 days before the time set for such hearing, unless the commission finds that public necessity requires that such hearing be held at an earlier date. (Former Sec. 60, last 3 sents.)

While the action of the majority may attain, in their opinion, a fair and equitable result, nonetheless we should honor the procedural safeguards established by the Legislature. For this reason I would recommend rehearing on the issues described above.

The crucial issue here is that the Commission has before it a petition for rehearing, not a petition for modification or amendment. Yet the majority have arbitrarily and unilaterally chosen to treat this petition for rehearing as a motion to modify our prior order and proceeded to modify it substantially without affording the aggrieved party an opportunity to speak to the issues.


J. P. Vukasin, Jr.
Commissioner

San Francisco, California

January 9, 1973