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Decision 91-05-056 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company (U904G) For Issuance of an Order to Show Cause and for a Determination of Just Compensation in Eminent Domain Proceedings.

ORIGINAL

Application 90-07-057 (Filed July 23, 1990; amended November 30, 1990)

ORDER OF DISMISSAL

PROCEDURE

By this application Southern California Gas Company (SoCalGas) seeks to invoke the Commission's authority pursuant to the California Constitution, Article 12, Section 5 and Public Utilities (PU) Code §§ 701, 1351, and 1401, et seq. to fix the just compensation which shall be paid by applicant, under the law, for the taking of certain lands, properties, and rights owned by Southern Pacific Transportation Company (SPT), a public utility as defined by California Constitution, Article 12, Section 3, and by PU Code § 230.

On August 29, 1990, the Commission directed SPT to appear on December 14, 1990, and show cause why the Commission should not proceed to hear the application and to fix the just compensation to be paid for the described property.

On December 6, 1990, SPT filed a Motion to Dismiss on grounds of lack of jurisdiction and a Motion to Limit Hearing to Submission of Motion to Dismiss.

On December 10, 1990, Administrative Law Judge Orville I. Wright advised the parties as follows:

"My tentative ruling is to recommend that the Commission grant the Motion to Dismiss. It seems clear that the California Legislature has not conferred powers upon the Public Utilities Commission to hear evidence and determine just compensation in the circumstances presented by

the application (Cal. Const. Article 12, Sections 22 and 23a).

"IT IS RULED that:

- "1. The hearing set for December 14, 1990 is taken off calendar.
- "2. The parties have until Monday, January 7, 1991 to submit any additional points and authorities with respect to the tentative ruling."

On January 7, 1991, SoCalGas filed a Response to Motion to Dismiss of SPT. SPT filed no further pleadings.

Jurisdiction

In 1933, the Commission held that it is without jurisdiction to hear and determine a petition in eminent domain whereby a public utility corporation sought to condemn the property of another public utility. (The Municipal League vs. The Southern Pacific Company, Atchison, Topeka, and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, and Related Cases, 39 C.R.C. 139 (1933).) The facts of the case are virtually identical to those alleged in the instant petition, as the following excerpts demonstrate.

In The Municipal League, supra, we said:

"On October 3, 1933, the Santa Fe and Salt Lake companies filed with the Commission a petition seeking to acquire by condemnation certain undivided interests in lands owned by Southern Pacific Company and Southern Pacific Railroad Company... ."

\* \* \*

"The Commission by order of October 20, 1933, set the petition of the Santa Fe and Salt Lake companies down for argument on the question of the jurisdiction of the Commission to proceed thereunder. Argument was had on October 31, 1933, all carriers participating. The Southern Pacific companies appeared specially to object to the jurisdiction of the Commission in the premises, briefs were filed by the parties on

the question of jurisdiction, and the matter is now ready for decision.

"A study of the question presented compels the conclusion that this Commission is without jurisdiction to hear and determine the said petition in eminent domain. No State constitutional or statutory provision delegates or purports to delegate such authority to this Commission and the petition will, therefore, be dismissed. Further reference to the petition will tend to demonstrate that this conclusion on Commission jurisdiction is inescapable."

\* \* \*

"Petitioners apparently concede that no section of the Public Utilities Act expressly grants to the Commission authority to issue a decree in condemnation and effectuate the taking of property essential to the development of a union passenger terminal, as is requested in this proceeding. Petitioners rely rather on a number of general provisions of the Public Utilities Act from which it is argued that the Commission, at least impliedly, possesses the jurisdiction which they seek to invoke."

\* \* \*

"Section 47(b) grants to the Commission certain limited jurisdiction to fix the just compensation to be paid for public utility properties sought to be acquired by 'any county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or any other public corporation, each of which is \* \* \* referred to as the political subdivision \* \* \*.' This section does not apply to eminent domain proceedings initiated by private corporations.

"Section 47(a) of the act provides

"The commission shall have power to ascertain for each purpose specified in this act, the value of the property of every public utility in this state and every fact and element of value which in

its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of all additions, betterments, extensions and new construction to the property of every public utility,

"and section 70 provides the procedure to be followed by the Commission for the purpose of ascertaining the matters and things specified in section 47(a) concerning the value of the property of public utilities. These two sections, 47(a) and 70, are entirely administrative in character and neither of them carry any suggestion of a grant of power to the Commission to condemn property or to issue decrees in condemnation.

"In addition to the sections of the Public Utilities Act suggested by petitioners, above noted, we have carefully reviewed the act as a whole, as well as the provisions of the Constitution appertaining to the Railroad Commission, and find no grant of power sufficient to sustain jurisdiction in this matter.

"If the Legislature had intended to grant to the Commission broad powers of eminent domain so as to permit the condemnation of real property by public utilities for the purpose of effecting a joint improvement, such as a union passenger terminal, it would have done so in unmistakable language.

"In view of the ruling in this matter it will thus be incumbent upon petitioners to invoke the jurisdiction of the courts to acquire by eminent domain proceedings the desired interests in Southern Pacific lands."

Section 47(a) in the cited decision is now Section 1351, PU Code; Section 47(b) is now part of Chapter 8, Sections 1401, et seq. of the PU Code. Both of these sections were held not to "carry any suggestion of a grant of power to the Commission to

condemn property or to issue decrees in condemnation." (The Municipal League, supra, p. 144.)

Applicant additionally relies upon Section 701, PU Code, which provides that:

"The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

This provision, too, was contained in the code in 1933 and, we are confident, was not overlooked by the Commission as it "carefully reviewed the act as a whole" to find no grant of power to sustain jurisdiction in this matter. (The Municipal League, supra, p. 144.)

#### Finding of Fact

Applicant public utility corporation requests that the Commission fix the just compensation to be paid for property it seeks to acquire by eminent domain.

#### Conclusions of Law

1. The Commission has no jurisdiction in the premises.
2. The application should be dismissed.

IT IS ORDERED that:

1. The application is dismissed.
2. This proceeding is closed.

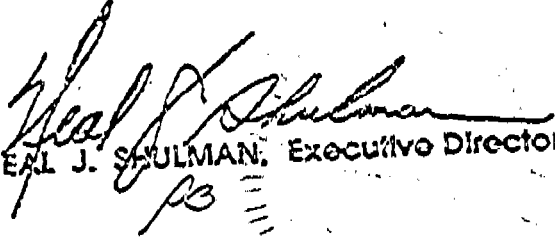
This order becomes effective 30 days from today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did  
not participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SHULMAN, Executive Director