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Decision 92-03-010 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VISTA DEL MAR UNION SCHOOL
DISTRICT, a public school district
of Santa Barbara County,

Complainant,

vs.

CELERON PIPELINE COMPANY OF
CALIFORNIA, a Delaware corporation;
ALL AMERICAN PIPELINE COMPANY, a
Texas corporation,

Defendants.

ORIGINAL

Case 91-09-027
(Filed September 11, 1991)

OPINION

Statement of Facts

Vista Del Mar Union School District (District), an elementary school (grades K through 8) organized and existing pursuant to the California Education Code in Santa Barbara County, owned certain property in that county.

Celeron Pipeline Company of California (Celeron), a Delaware corporation, was but no longer is, an indirect subsidiary of Goodyear Tire and Rubber Company.

All American Pipeline Company (All American), a Texas corporation is owned by Goodyear Tire and Rubber Company.

On September 27, 1988, Celeron brought an action in eminent domain against District, and others, to locate an oil

pipeline across District's property.¹ In this action Celeron assertedly alleged that it was a public utility as defined by the California Public Utilities (PU) Code. After bringing the condemnation action, Celeron merged with All American and dissolved on May 31, 1989. On April 18, 1991, Celeron filed a Certificate of Surrender of its right to transact business in California.

The Superior Court matter went to trial without a jury. The Court granted amendment on July 3, 1991, to substitute All American in the stead of Celeron, and concluded that the taking was appropriated to the public use, there being clearly a public need for a pipeline at this site to transport oil products, and that District failed to show any existing public beneficial use or reasonably anticipated future need or use for the property.²

District believes that oil was first shipped on June 27, 1991. All American admits that the portion of the crude oil pipeline that runs from Santa Barbara County to Texas owned by Celeron before that corporation ceased to exist is located wholly within California, but that while it has the physical capacity for intrastate use, all shipments made have been interstate pursuant to tariffs filed with the Federal Energy Regulatory Commission (FERC). All American states that inasmuch as both it and Celeron were conducting only interstate business regulated by the FERC, there was no requirement that this Commission approve their merger.

By this complaint, District seeks an order by the Commission that Celeron has not been a public utility pursuant to the laws of California, or in the alternative, if Celeron was a

1 Celeron Pipeline Company of California vs. Vista Del Mar Union School District, Santa Barbara Superior Court Case No. 173710. The property was appropriated and the pipeline was laid and in place by March of 1989.

2 District has preserved its right to appeal the Court's ultimate ruling made on October 4, 1991.

public utility, that the All American merger was void with All American receiving no assets, rights, and privileges from Celeron; that not being a public utility, Celeron's acquisition of pipeline easements are void; that pursuant to PU Code § 2106 District be awarded its loss, damages, and injury, and if Celeron-All American's acts or omissions were willful, District be awarded exemplary damages; and that the Commission pursuant to PU Code § 2104 seek penalties against Celeron and All American.

By its answer Celeron and All American assert that the Commission lacks jurisdiction inasmuch as Celeron was and All American is engaged solely in the business of interstate shipment of oil, acting as public utilities under the jurisdiction of the FERC; that their merger was therefore exempted from the requirements of PU Code §§ 851 and 854 by PU Code § 853; and that any regulation of this interstate business by this Commission would constitute an unlawful interference with interstate commerce barred by the commerce clause of the federal constitution.

Discussion

The general rights of eminent domain within the limits of a State are vested in that State's government, in which the ultimate title to all the land within the State may be said to be. (Gilmer v. Lime Point (1861) 18 C.229.) The California Legislature by PU Code § 615 has provided that a pipeline corporation may condemn any property necessary for the construction and maintenance of its pipeline.³ It is significant in the context of the present case, that in this grant of condemnation rights no distinction has been made between pipelines engaged solely in intrastate or interstate transportation of oil.

3 Both Celeron and All American, as corporations organized to own, control, operate, or manage any pipeline for compensation within California, qualify under PU Code § 228 as a "pipeline corporation."

In California the provisions of the Eminent Domain Law govern all acquisitions by eminent domain except to the extent that specific provision is otherwise made by statute (for example, see PU Code §§ 1206-1218 and 1401-1421, where this Commission may determine just compensation in some proceedings). And the basic rule is that eminent domain proceedings are conducted in the Superior Court. (Code of Civil Procedure (CCP) § 1250.010)

Here, Celeron, a Delaware corporation qualified to do business in California until it surrendered that right on April 18, 1991, in the course of its business determined to locate its segment of a crude oil pipeline that runs from Santa Barbara County to Texas across property owned by District and others. In pursuit of that objective, on September 27, 1988, Celeron brought an action in eminent domain in Santa Barbara Superior Court. The Superior Court assumes jurisdiction of the res in condemnation actions when the condemnation complaint is filed. It did so in this matter and allowed Celeron to take possession. The pipeline was constructed. On May 31, 1989, Celeron was merged into All American. No prior Commission approval for this acquisition was required because, according to the verified statement of the executive vice president and chief operating officer of All American, successor in interest to Celeron, neither Celeron nor All American has shipped oil other than interstate pursuant to tariffs filed with the FERC, and neither has ever sought or been issued a tariff or engaged in intrastate shipment of oil.

And, as All American points out in its answer to the present complaint, the provisions of PU Code §§ 851 and 854 relating respectively to the requirement of prior authorization from this Commission before sale of utility property, or acquisition or assumption of control of a public utility doing business in this State, are expressly exempted by PU Code § 853 when the corporations involved are not transacting business subject to this Commission's regulation.

For the reasons set forth above, the Commission concludes that the Superior Court has exclusive jurisdiction over this eminent domain action,⁴ and as neither Celeron nor All American has been shown to have done or omitted to have done anything in violation of any law or order or rule of this Commission, the matter must be dismissed.

Findings of Fact

1. Both Celeron and All American, public utility pipeline corporations pursuant to PU Code § 228, were or are engaged in the business of transporting crude oil by pipeline in interstate commerce under tariffs filed with the FERC.

2. Neither Celeron nor All American have filed a tariff with this Commission for the intrastate shipment of oil, nor has either pipeline ever been engaged in intrastate shipment of oil.

3. PU Code § 615 gives pipeline corporations eminent domain power in California without regard to whether or not they are engaged in intra- or interstate transportation of oil.

4. In 1988, Celeron initiated an eminent domain action in Santa Barbara Superior Court to condemn and take a portion of District's property for purposes of construction of a segment of a Santa Barbara County to Texas pipeline.

5. With the Superior Court's approval, Celeron subsequently was substituted by All American in that eminent domain proceeding after Celeron was merged into All American on May 31, 1989.

6. The Superior Court permitted the requested taking of a portion of District's property, the pipeline segment across it was constructed, and oil was transported as of June 27, 1991.

4 A judgment in an eminent domain proceeding may be attacked in the same manner as judgments in civil actions generally. The provisions regulating appeals in civil actions apply generally to eminent domain proceedings.

7. With certain exceptions not applicable to this matter, the Superior Court has exclusive jurisdiction over eminent domain proceedings.

8. The District has failed to set forth any act or thing done or omitted to be done by Celeron or All American, in violation of any provision of law or of any order or rule of the Commission.

Conclusions of Law

1. Prior authorization of this Commission was not required for the merger of Celeron and All American as PU Code § 853 specifically exempts corporations which transact no business subject to Commission regulation, and these two corporations were or are engaged solely in interstate transportation of oil under the FERC's regulation.

2. The Superior Court has exclusive jurisdiction over the eminent domain issues sought to be raised by District, and District must look to the judicial system for relief, not this Commission.

3. District having failed to set forth any act or thing done or omitted to be done by Celeron or All American in violation of any provision of law or of any order or rule of the Commission, as required pursuant to PU Code § 1702, the complaint should be dismissed.

O R D E R

IT IS ORDERED that Case 91-09-027 is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated March 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director