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Decision 92-09-056 September 2, 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)

ORDER GRANTING REHEARING OF D.92-03-010

An application for rehearing of D.92-03-010 has been filed by the Vista Del Mar Union School District (District). In D.92-03-010 the Commission dismissed with prejudice a complaint (C.91-09-027) filed by the District against the Celeron Pipeline Company of California (Celeron) and the All American Pipeline Company (All American). The complaint related to two actions undertaken by the companies. On September 27, 1988 Celeron brought an action in eminent domain in Santa Barbara Superior Court against the District, and others, to locate an oil pipeline across District's property. After bringing the condemnation action, Celeron merged with All American and filed a Certificate of Surrender of its right to transact business in California. The Court granted an amendment to substitute All American in place of Celeron, and concluded that the taking was appropriated to the public use. By its complaint, District sought an order by the Commission that Celeron had not been a public utility so its

acquisition of pipeline easements was void, or in the alternative, if Celeron was a public utility, the District sought an order that the merger with All American should be declared void, because accomplished without Commission approval, as required under Public Utilities Code Sections 851 and 854.

We have carefully considered all of the allegations in the application and are of the opinion that rehearing should be granted. The gist of the District's main argument on rehearing is that Celeron did not have any power to condemn under California law unless it was a public utility and, if it was a public utility, the purported merger was void because not approved by the Commission. Upon reconsideration, it is concluded that further analysis of these issues is warranted. To assist the Commission in more fully analyzing these issues, we have ordered the parties to brief several issues on rehearing.

We specifically note that the complaint filed by the District was dismissed with prejudice. When a complaint shows on its face that the utility complained of has not violated any provision of law or Commission order but that defendant has acted in compliance with the applicable law, the complaint may properly be dismissed for failure to state a cause of action (Nissen v. Pacific Gas & Electric Company (1963) 60 CPUC 663). The complaint in the instant case, however, asserts facts which, if true, may establish a violation of the Public Utilities Code. Accordingly, it is concluded that the District should be given a full opportunity to prove its claims. We remind the District, however, that as the complainant in this matter, it has the burden of demonstrating that a violation of the Code has occurred.

Therefore, good cause appearing,
IT IS ORDERED that:

1) Rehearing of D.92-03-010 is granted. This rehearing shall specifically include consideration of the question whether Celeron and/or All American was involved in any intrastate transportation of oil.

2) To assist the Commission in its reconsideration of this matter, both complainant and defendants shall also brief the following issues, within such time as shall hereafter be determined by the Administrative Law Judge:

a) whether a Superior Court's determination in an eminent domain proceeding that a corporation is a public utility is binding on the Commission; and

b) whether the power of eminent domain provided by Public Utilities Code Section 615 applies to pipeline corporations engaged solely in the interstate transportation of oil.

3) The District shall also submit copies of the records of the Superior Court in the eminent domain proceeding brought by Celeron (Case No. 173710), within such time as shall hereafter be determined by the Administrative Law Judge. This submission shall include the following: copies of the request to substitute All American for Celeron, all pleadings filed by the parties, and all rulings and decisions by the Superior Court relating to this action.

This rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be designated.

The Executive Director shall provide notice of this rehearing to all parties in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

C.91-09-027

L/rys

This order is effective today.

Dated September 2, 1992, at San Francisco, CA.

DANIEL WM. FESSLER
President

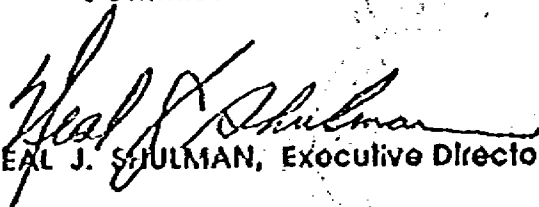
JOHN B. OHANIAN

NORMAN D. SHUMWAY

Commissioners

Commissioner Patricia M. Eckert, being necessarily absent, did not participate.

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


NEAL J. SCHULMAN, Executive Director