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ORIGINALDecision No. 90360 JUN 5 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of the)
 East Yolo Community Services District)
 requesting the Public Utilities)
 Commission to fix just compensation)
 for the acquisition of the public)
 utility property of Washington Water)
 & Light Company within said District.)

Application No. 57906
 (Filed March 2, 1978)

Frederick G. Girard, Attorney at Law, for
 East Yolo Community Services District,
 applicant.

Heller, Ehrman, White & McAuliffe, by
Weyman L. Lundquist and Paul H. Rochmes,
 Attorneys at Law, for Washington Water
 and Light Company; and Jack H. Grossman,
 Attorney at Law (New York), for Citizens
 Utilities Company; respondents.

O P I N I O N

By the filing of its petition on March 2, 1978, East Yolo Community Services District (East Yolo) invoked the Commission's jurisdiction under Public Utilities Code^{1/} Section 1401 et seq. to determine the just compensation for the acquisition by East Yolo of the public utility properties of the Washington Water and Light Company (Washington).

^{1/} All references hereafter to code sections are to the Public Utilities Code, unless otherwise indicated.

On March 21, 1978, the Commission issued Decision No. 88619 directing Washington to show cause why the Commission should not proceed to hear the petition of East Yolo and to fix the just compensation to be paid for the lands, properties, and rights of Washington. Pursuant to Decision No. 88619, prehearing conferences were held on April 14 and August 22, 1978, and public hearings were held before Administrative Law Judge Robert T. Baer on October 31 and on November 1, 2, 3, 27, and 28, 1978, in San Francisco.

Concurrent opening briefs were filed on January 26, 1979, and concurrent closing briefs were filed March 13, 1979. The matter is now ready for decision.

Description of Washington's
Service Area and Facilities

Washington's service area is entirely within unincorporated areas of Yolo County. It generally encompasses areas known as Bryte, Broderick, and West Sacramento. On the north and east the service area boundary is the Sacramento River, the midline of which is the border of Sacramento and Yolo Counties. The service area is bisected by the Interstate 80 freeway and includes the Interstate 80 and 880 freeway interchange. The most heavily developed part of the service area is directly across the Sacramento River from Old Sacramento. The Southern Pacific and the Sacramento Northern railroads and the Sacramento River Deep Water Canal cross the service area.

Water is furnished to the 6,067^{2/} customers from 22 wells and through approximately 455,000 feet of distribution main. Five steel tanks provide storage of approximately 1.6 million gallons. Two major treatment plants, with total capacity of 7.1 million gallons per day, treat all the water produced by six of the wells.

2/ As of March 2, 1978, service was provided to 5,224 flat-rate and 843 metered customers. The great majority of flat-rate customers are residential customers, while the metered customers are generally industrial and commercial customers.

Issues

The central issues in this proceeding are:

- (1) What standard should the Commission apply in valuing Washington's facilities?
- (2) Is the Commission bound to consider only the reproduction cost new less depreciation (RCNLD) method of valuation in arriving at its findings of just compensation, as Washington argues; or may the Commission consider that method together with the market data and capitalization of earnings approaches, as East Yolo argues?
- (3) Was East Yolo's market data and capitalized earnings evidence properly admitted?
- (4) What weight should the Commission give to Washington's evidence of value using the RCNLD method, yielding an estimate of value of \$13,007,450,^{3/} and to East Yolo's evidence using market data and capitalized earnings, yielding estimates of value ranging from \$2 million to \$2.6 million?

Discussion

The just compensation for the taking of the land, property, and rights of the condemnee is measured by the market value of such land, property, and rights. In Sacramento etc. R.R. Co. v Heilbron (1909) 156 Cal 408, 409, market value was defined as:

"...the highest price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it was adapted and for which it was capable."

^{3/} This figure includes \$11,924,800 for facilities, \$350,650 for land, and \$732,000 for the taking of Washington's service area. (Exhibit 8.)

The Commission has applied a similar definition, which appears to be derived from the Heilbron rule. In City of Riverside (1972) 74 CPUC 193, 202 the Commission stated:

"We have used, as the measure of value of the properties herein, the concept of the highest price, estimated in terms of money, that a willing buyer would pay to a willing seller for the property if exposed for sale on the open market, where each is under no unusual pressures of time or circumstance and each has knowledge of all the uses and purposes to which the property is best adapted and for which it is reasonably capable of being used."

The Heilbron rule has in turn been codified in Section 1263.320 of the Code of Civil Procedure, as follows:

- "(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- "(b) The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable."

The Commission concludes that the Heilbron rule, as variously expressed, constitutes the standard which the Commission should apply when valuing public utility property for just compensation purposes.

The RCNLD Method of Valuation

Washington contends that in valuing public utility property the Commission must apply the RCNLD method to arrive at fair market value. It cites in support of that proposition City of Riverside, supra, and certain other Commission decisions.^{4a/} Although the Commission in the City of Riverside case used the RCNLD method in arriving at its finding of just compensation, it did not hold that the RCNLD method was the only method of valuation that could be used to value public utility property. In fact, at 74 CPUC 202 the Commission stated:

"We also recognize that there is no precise formula for determination of just compensation. The Commission, in previous just compensation cases, has considered a number of value criteria, with varying emphasis, in the performance of its duty to reach an independent judgment on just compensation based on resolution of conflicting testimony and other conflicting data in records before it. Among the criteria that have been considered are: (a) original cost rate base, depreciated; (b) comparable sales; (c) capitalization of earnings and (d) present day cost; i.e., (1) reproduction cost new less accrued depreciation of physical properties; (2) market value of lands, easements and rights-of-way, (3) market value of water rights, and (4) organization costs and going concern value. The Commission has also considered record facts having an adverse effect on market value."

The other Commission decisions cited by Washington do not purport to bind the Commission to follow the RCNLD method nor do they invariably apply that method. For instance, in City of Redding (1934) 39 CPUC 193, 195 the Commission stated that "...the reproduction cost to be arrived at is not itself value but only one of several criteria of value." And in SMUD (1942) 44 CPUC 467 the Commission found that

4a/ See Washington's opening brief, pp. 4-5.

the RCNLD for a portion of PG&E's electric distribution system in the Sacramento area was \$8,318,000, but nevertheless held that the just compensation was \$10,600,000. PG&E's and SMUD's estimates of market value, based principally on earning power, were \$12,500,000 and \$9,400,000, respectively.

Washington cited PG&E v Devlin (1922) 188 C 33 for the proposition that the Commission must determine just compensation by the RCNLD method. However, Devlin does not so hold. In Devlin the only evidence of value offered was based on the RCNLD method. Thus, no issue was raised as to the appropriateness of that method or of any other method of valuing public utility properties for just compensation purposes.

Other Commission, state, and federal decisions were cited by Washington to support its contention that the Commission must apply the RCNLD method, but none of them support that position.^{4b/} ✓

As additional support for the Commission use of the RCNLD method, Washington argues that only such method provides compensation for all elements of utility property. This point refers to property acquired by the utility by contribution or by advances in aid of construction. The argument is made that because such property is not included in utility plant for ratemaking purposes, the earnings of the utility do not reflect its existence and thus it is ignored by capitalized earnings studies. We believe, however, that this is largely a specious issue. It is tantamount to arguing that, because the capitalized earnings method is not the RCNLD method, it may not be employed. The question is not whether the capitalized earnings methodology involves an accounting of each item of utility property as does the RCNLD method. Rather the question is whether capitalized

^{4b/} In U.S. v 564.54 Acres of Land, No. 78-488, decided May 14, 1979, the United States Supreme Court held that allowing respondent the fair market value of its property, rather than the cost of substitute facilities, is consistent with the principles of fairness underlying the Just Compensation Clause of the Fifth Amendment.

earning is a valid means of estimating just compensation, or fair market value, which is used by reasonable buyers and sellers of properties to arrive at negotiated sales prices and which is recognized by the courts and the legislature as an appropriate valuation tool. This question will be addressed with more particularity, infra.

East Yolo squarely addressed the issue of contributions and advances in its closing brief. It first stipulated that it would assume the liability of Washington's unrefunded advances, thus making it unnecessary to compensate Washington for the property represented by those advances. Of course, the property represented by refunded advances is presumably in rate base and is thus reflected in capitalized earnings studies.

With regard to contributed property East Yolo argues:

"...these contributions are in fact water utility facilities that were constructed and paid for by the water users. The water users were then required to donate those facilities to Washington ... Why should the water users now be required to pay Washington...for those same facilities? We submit [that] the proper valuation for contributions is to recognize that they are in fact donated to the utility company subject to a trust or a third party beneficiary contractual obligation that they be used for utility purposes. Putting it another way the only interest that the utility company has in the contributed facilities is a possessory interest which must be assumed by the acquiring public agency. Certainly the law of just compensation does not contemplate or require that the water users build and pay for say a \$200,000 treatment plant, then be required to donate it to the private utility and then when the water users elect to condemn the private utility pay the private utility another \$200,000 for that treatment plant which the water users paid for and were required to donate in the first instance.

"Frankly, we know of no case which has considered the point but we submit that the proper approach to contributed property is that it is in essence held by the private utility as a trustee for the benefit of the water users, and that the interest of the private utility in that contributed facility is a nominal interest and that in essence the public agency that acquires that contributed facility acquires it subject to the trust or third party beneficiary contractual responsibility.

'We submit that the valuation of contributions or contributed facilities should be treated differently than other utility property. The facilities represented by contributions were required to be donated by the water users. A valuation approach which recognizes this fact is in essence a ... method of valuation that is just and equitable' (Code of Civil Procedure, Section 1263.320(b)). It is certainly not 'just and equitable' to require the water users to buy back from the utility company the same property that they were previously required to donate to that utility company." (East Yolo's closing brief pp. 22-24.)

The foregoing quotation expresses the correct view on the issue of valuation of contributed facilities. The Commission concludes that it is not bound to employ only the RCNLD method, either on the basis of the authorities cited by Washington or on the basis of the argument that only such method compensates Washington for all valuable elements of utility property.

Admissibility of Capitalized Earnings and Market Data Evidence

Washington contends that evidence of capitalized business income is inadmissible under California law, citing Evidence Code Section 819.^{5/} However, East Yolo cites the case of South Bay Irr. ✓

^{5/} "When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the capitalized value of the reasonable net rental value attributable to the land and the existing improvements thereon (as distinguished from the capitalized value of the income or profits attributable to the business conducted thereon)."

Dist. v California-American Water Co. (1976) 61 CA 3d 944, which holds that such evidence is admissible, relying upon Section 814 of the Evidence Code.^{6/} (See 61 CA 3d at 980.) The Court in South Bay reasoned that since capitalization of the income of a condemned public utility is not a matter included in Evidence Code Section 819, it may be a basis for an opinion or determination of the market value of the condemned public utility. ✓

We conclude that the South Bay case states the correct rule on the admissibility of evidence of capitalized earnings of a public utility in a just compensation case.^{7/}

Washington's arguments concerning market data evidence are basically directed to the weight of that evidence, and not its admissibility. The following discussion of the evidence will address those arguments.

Discussion of the Evidence

The following table summarizes the evidence of value offered in this proceeding:

6/ "The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property, including but not limited to the matters listed in Sections 815 to 821, inclusive, unless a witness is precluded by law from using such matter as a basis for his opinion."

7/ The Commission does not concede that the Evidence Code or the Code of Civil Procedure and District Court of Appeal decisions interpreting those codes necessarily govern the admissibility of evidence in its proceedings. (See Section 1701 of the Public Utilities Code.) However, such statutory and case law will be considered persuasive authority.

<u>Witness</u>	<u>Valuation Method</u>	<u>Result</u> <u>-000-</u>	<u>Opinion</u> <u>Of Value</u> <u>-000-</u>
Rhodes, for East Yolo	Capitalization of Earnings	\$ 1,636 - 2,235	\$ 2,000
	Sales Comparison	2,635	
	Cost Approach	1,641 - 2,242	
*Powell, for East Yolo	Capitalization of Earnings	2,800	2,600
	Market Approach	2,840	
	RCNLD	8,200 - 9,400	
Clendenen, for East Yolo	RCNLD	9,570	None
Stone, for Washington	RCNLD	11,924.8	11,924.8

*Ex. 3, pp. 12-13 indicates ratebase
of \$2,840,000 as of March 2, 1978.

East Yolo stated in its opening brief, p. 2:

"In our view it is of little moment whether the reproduction cost new estimate is \$9,570,000 as testified to by Mr. Clendenen (Vol. 1, RT pp. 117-1120) or \$11,924,800 as testified to by Mr. Stone (Exhibit 5, p. 12) or some other sum, and we don't feel that it would serve any useful purpose to discuss in detail the specifics of the respective reproduction cost new less depreciation estimates."

Accordingly, the Commission will accept Washington's figure of \$11,924,800 as the RCNLD of Washington's facilities (exclusive of the land value and other items of damages claimed).

Mr. Stone, Washington's valuation witness, was of the opinion that RCNLD equalled just compensation. He considered no other valuation method in making his study. Thus, his opinion of value must stand or fall on the validity of the proposition that RCNLD equals just compensation, i.e., that no other valuation methodology is appropriate in this case.

The evidence in this proceeding supports a finding that there is a relevant market for water companies in California. Admittedly, sales of water companies do not occur as frequently as sales of raw acreage or three bedroom houses. However, such transactions do occur with sufficient regularity for us to conclude that evidence of those sales would shed light upon the value of the subject property. However, regardless of whether there is a relevant market for property "[T]he Evidence Code provides that... its fair market value may be determined by reference to matters of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property including where appropriate, but not limited to, (1) the market data (or comparable sales) approach, (2) the income (or capitalization) method, and (3) the cost analysis (or reproduction less depreciation) formula." (Legislative Committee Comment to Code of Civil Procedure Section 1263.320.)

We are convinced that an expert in forming an opinion as to the value of the subject property could not reasonably consider solely the RCNLD method of valuation.

We are impressed by East Yolo's argument with respect to the total price tag Washington has placed on its operation.

"Looking at the bottom line Washington Water & Light Company and Citizens Utilities Company contend that they are entitled to 'just compensation' of \$14,773,408, [8/] for the taking of utility property that has produced over the last twelve years average annual net income of only \$43,670 (see Exhibit 2-C)."

* * *

". . . . No knowledgeable prospective purchaser of utility property would just ignore income and market data and in essence buy a water utility for a price that is 338 times the average annual net income that has been obtained from the utility property...

"Bluntly stated any knowledgeable purchaser would look at the Washington Water & Light Company and Citizens Utilities Company's price tag of \$14,773,408 and conclude that he could invest that sum in high grade bonds or certificates of deposit and realize an annual income of about \$1,477,340 (10%) and that it would be silly to spend \$14,773,408 to acquire a water utility that had been able to generate only \$43,670 of [average] annual net income. In other words a knowledgeable purchaser would realize that a conservative investment of the \$14,773,408 in high grade bonds or certificates of deposit would result in an annual income that was thirty (30) times higher than the annual net income that the water utility property had been able to produce.

8/ The sum of \$14,773,408 includes \$11,924,800 for facilities, \$350,650 for real property, \$575,335 for severance and related damages, \$1,190,623 for loss of the Port Sacramento Industrial Park (PSIP) System, and \$732,000 for loss of the undeveloped service area. (Exhibit 8.)

"Taking that into account, and considering that this water utility will require major expenditures of about \$10,500,000 to correct water pressure and water quality deficiencies (Exhibit 1, p. 37; Vol. 1, RT pp. 87-88, 113-116) and additional sums to replace 'Material Parts of Washington's system' which are approaching 'the probable end of their service lives' (Vol. 4, RT pp. 417-419), no one in his right mind would even consider paying the \$14,773,408 price that Washington Water & Light Company and Citizens Utilities Company contend that they are entitled to receive for this water utility property." (Opening Brief, pp. 106-107.)^{9/}

That Mr. Stone did not apply the Heilbron standard (as codified in Code of Civil Procedure Section 1263.320(a), supra) is clear from his own testimony. Mr. Stone was asked:

"Q: And I take it, then, you didn't appraise this property, then, to determine the highest price estimated in terms of money which the land would bring if exposed for sale in the open market, with a reasonable time allowed in which to find a purchaser, buying with full knowledge of the uses and purposes for which it was adopted and for which it was capable?"

"A: It might represent that. But I didn't use that as any theorem of my appraisal." (Vol. 3, RT pp. 395-396.)

We have determined that it is reasonable in this instance to apply the Heilbron standard (as codified, supra) in valuing Washington's property. It has also been determined that willing buyers and sellers of such property would not look merely to an appraisal using the RCNLD method to arrive at the price.

^{9/} Mr. Powell, one of East Yolo's appraisers, testified to the same effect. (Exhibit 3, pp. 17-18.)

Mr. Stone did not apply the Heilbron standard. He did not consider any other valuation methodology in making his appraisal. He conceded that the income of property was a "very important element in the purchase of property", but that he gave absolutely no weight or consideration to that factor.^{10/} Washington is asking the Commission to place a value on its property without considering that very important factor of income. However, the Commission cannot fail to consider income and still apply the Heilbron standard. Thus, the RCNLD method cannot be considered to define or govern our finding of just compensation in this proceeding. ✓

The Market Data Approach

Both witnesses Rhodes and Powell for East Yolo used market data in arriving at their opinions as to the fair market value of the facilities to be taken. ✓

Mr. Powell used data for nine sales of water companies or separate divisions of water companies to nonpublic agency buyers. The sales took place between 1962 and 1976 and the sales prices exceeded \$0.8 million. Upon analysis of these sales Mr. Powell concluded that the sales prices generally approximate rate base. The departure from rate base ranged from a discount of one percent to a premium of 42 percent. The sale with the 42 percent premium

10/ "Q. . . . Would any knowledgeable buyer of any income-producing property, including public utilities, ever even attempt to arrive at the value of what he's going to pay for that property if he didn't know what the income might be?

"A. That's a very important, very important element in the purchase of property. No question about it.

"Q. And that's something that you gave absolutely no weight or consideration to?

"A. Not for this appraisal, for condemnation purposes."
(Vol. 3 RT pp. 401-402.)

included 1,800 acres of land which the buyer considered developable. Excluding that sale and another sale (where the premium was 23 percent), involving special circumstances not present here, the range was from a discount of one percent to a premium of eight percent of rate base.

Mr. Powell also analyzed the sale of Washington to Citizens Utilities Company in 1967 and found that the purchase price was at a premium of about 19 percent over rate base, again in the general range of the rate base rather than at a multiple of rate base. He testified that such sale "shows that replacement cost new less depreciation was not a significant factor in determining the amount paid by Citizens Utilities for the property." (Exhibit 7, p. 15.)

Mr. Rhodes, an appraiser for East Yolo, also used market data in arriving at his opinion of fair market value. He analyzed four sales occurring between 1969 and 1976 and determined that the price paid per service connection is a reasonably common denominator. The price per service connection ranged from \$365 to \$507. Each of the four sales was analyzed by comparing it to the subject property on the basis of the general condition of the physical plant, the amount of accrued depreciation, and the proportion of equity involved in the price. Mr. Rhodes then adjusted each price to give effect to the three factors. After adjustment the prices ranged from \$273 to \$407 per service connection. Based on this range Mr. Rhodes concluded that Washington was worth \$400 per service connection. The witness then multiplied 6,588 connections^{11/} times \$400 per connection to arrive at his rounded market data estimate of \$2,635,000.

Washington criticizes East Yolo's market data evidence on the basis that the sales selected are not comparable, that the number of sales of water companies are insufficient to establish a market, and that the sales did not reflect the most significant part of the market sales to public entities.

^{11/} Washington's figures on connections are 6,595 connections, including 487 public fire hydrants and 42 private fire protection connections. (Exhibit 4, p. 9.)

None of these contentions are meritorious. First, Mr. Powell's study avoids the criticism of lack of comparability. He does not state that because utility A sold for \$2,000,000; therefore, Washington must sell for \$2,000,000. It would, concededly, be difficult to find two water companies whose facilities were so similar in type and quantity that a recent sale of one could be said to establish the value of the other. What he does state is that sales of water companies between private parties occur at a price approximating rate base,^{12/} and that, therefore, rate base can be used as an indication of market value.

Mr. Powell's study screens out factors which would eliminate particular sales as noncomparable, factors such as sales dates remote in time, involving locations far from the subject property, and facilities vastly different from those of the subject property.

12/ Mr. Stetsen, an expert appraiser for Washington, supported this conclusion in his "rebuttal" testimony:

- "Q. As I understand your testimony...you indicated... that the...sales [between private utilities] are generally based on rate base. . . .
- "A. I didn't say that. I said valuation of private sales usually indicates that they are sold at a value approaching rate base.
- "Q. So, in essence, those sales show that they are transferred, purchased and sold at a price approximating rate base?
- "A. Yes, or a multiplier of rate base, a small multiplier." (Vol. 6 RT, p. 657.)

Actually, Mr. Powell's study states no more than what should be obvious to anyone familiar with the utility business in California. Public utility earnings are regulated by this Commission. The basis of those earnings is an original cost, depreciated rate base. The sale price of a utility's facilities does not determine its earnings, since, under this Commission's regulation, the new owner may not inflate rate base to reflect a sale price in excess of the original cost, depreciated rate base. No informed and reasonable private sector buyer, absent special circumstances, would pay two, three, or four times the rate base for a hypothetical utility earning 10 percent on rate base, since he would earn only 5 percent, 3.33 percent, or 2.5 percent, respectively, on his investment.

Second, the limited number of sales evidence herein provides sufficient evidence of a market, as we have previously concluded. Although not regularly traded, a few sales of these properties would be a valid indication of the value of similar property precisely because of the Commission's regulation.

Third, the sales selected were from the private sector only. None of the sales involved a public agency purchaser. East Yolo's witnesses did not include such sales in their study because, in their view, such data is inadmissible under Section 822 of the Evidence Code.^{13/} Even assuming Section 822 is inapplicable, the lack of data on sales to public agencies merely affects the weight of the evidence. Since, Washington offered no evidence of sales to public agencies, we are not called upon to weigh such evidence against the evidence of sales in the private sector.

13/ Evidence Code, Section 822 states in relevant part:

"Notwithstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and is not a proper basis for an opinion as to the value of property:

"(a) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain."

Evidence Based on Capitalization of Earning

In his capitalization of earnings study Mr. Powell used Washington's "earning power", rather than its actual earnings to arrive at a fair market value. In other words he assumed that Washington's rates produce dollar earnings equivalent to its authorized rate of return multiplied by its rate base. Under this assumption, market value is equal to rate base. Accordingly, Mr. Powell concluded that, since Washington's rate base is \$2,840,116, the capitalization of earnings approach would indicate a market value of the facilities being appraised in the amount of \$2.8 million as of March 2, 1978.

Mr. Rhodes used a different methodology in arriving at market value based on capitalized earnings. First, he obtained his capitalization rate by examining four sales of water companies occurring between 1969 and 1976. For each of the four sales he mathematically computed the relationship between net operating revenue and the sale price in percentage terms and found that the net operating revenue as a percentage of sale price ranged from 5.2 percent to 6.69 percent after adjustment. He selected 5.5 percent^{14/} as the capitalization rate he would use for further calculations.

Next he developed three net operating revenue figures (\$90,000; \$122,950; and \$104,160) using three different methods. When divided by the capitalization rate of 5.5 percent, market values of \$1,636,000, \$2,235,000, and \$1,894,000 resulted. From this range of market values Mr. Rhodes concluded that his capitalization of income methodology indicated a market value of \$2,000,000.

^{14/} The average of the four figures, 5.2 percent, 6.2 percent, 6.69 percent, and 5.3 percent, is 5.9 percent. However, the use of the figure 5.5 percent benefits Washington.

Just Compensation

In arriving at a finding of just compensation we have discounted the evidence of value based on the RCNLD method. As indicated above, we do not believe any reasonable, willing buyer would for a moment consider using such a valuation methodology to determine the price he would pay for the facilities, rights, and properties of a utility company such as Washington. On the other hand, the evidence of value based upon capitalization of earnings, market data, and rate base places the value of Washington's property consistently in the range of \$2,000,000 to \$2,840,000. We find that the just compensation for the taking of Washington's lands, properties, and rights is \$3,000,000^{15/} as of March 2, 1978. ✓

Severance and Other Damages

Washington claims that in addition to compensation for loss of its physical plant and land in the sums of \$11,924,800 and \$350,650, respectively, it is also entitled to damages of \$575,335 for severance and related damages, of \$1,190,623 for loss of the PSIP System, and of \$732,000 for loss of its undeveloped service area.

With respect to the item of \$1,190,623 for loss of the PSIP System it is sufficient to note that there is no evidence of Washington's ownership of the PSIP System. Certainly there is no reason in law or equity to compensate Washington for the taking of property it did not own on the valuation date of March 2, 1978.^{16/}

^{15/} This finding of value is based on the assumption that when it acquires the properties of Washington, East Yolo will also assume Washington's obligation for unrefunded advances for construction which totaled \$1,267,024 (Exhibit 3-A) as of December 31, 1977.

^{16/} We are informed by the parties that Washington purchased the PSIP System on November 30, 1978. Section 1417 provides that the owner may file a petition for augmentation of just compensation to reflect expenditures made after the filing date of the original petition. ✓

Washington also claims damages of \$732,000 for loss of its undeveloped service area. However, we believe that such a claim is not a proper subject of severance damages. Washington asks this Commission to speculate upon the future potential of the service area and to judge Washington's loss of business opportunity from the taking of its facilities therein. Washington's citations in support of its claim are not persuasive and the factual basis for the claim, resting as it does on Mr. Stradley's projections of significant customer growth in the future, is not entitled to much weight in light of Mr. Stradley's contrary projections in a recent rate proceeding.

The last item of \$575,335 for severance and related damages is a composite of several different items. Severance damages to Washington are calculated as follows:

(1) Deferred debit, Account No. 146	\$102,133
(2) Preliminary Survey Charges, Account No. 142	6,334
(3) Transfer, storage, sale, and disposal expenses	8,151
(4) Lease payments	6,500
(5) Mortgage prepayment penalties	3,593
(6) Additional interest costs	<u>38,007</u>
TOTAL	\$164,718

In addition to damages of \$164,718 to Washington, Citizens Utilities Company and its affiliated companies also claim \$159,617 for lost allocated charges, consisting of:

(7) Administrative and general expenses	\$103,246
(8) Insurance premiums	2,232
(9) Data processing expenses	3,766
(10) Salaries and wages	1,838
(11) Retraining and relocating expenses	<u>48,535</u>
TOTAL	\$159,617

Finally, as related damages Washington claims \$251,000 for the following items:

(12) Legal fees	\$150,000
(13) Real estate valuation fees	12,000
(14) Stone and Webster fees	70,000
(15) Cost for company witnesses	14,000
(16) Other company expenses	<u>5,000</u>
TOTAL	\$251,000

To summarize, Washington claims:

Severance damages to Washington	\$164,718
Severance damages to Citizens, et al.	<u>159,617</u>
TOTAL SEVERANCE DAMAGES	\$324,335
RELATED DAMAGES	<u>251,000</u>
GRAND TOTAL	\$575,335

It would unduly lengthen this opinion for the Commission to discuss each of these 16 items of alleged severance and related damages. Suffice it to say that severance damages represent the decline in value of the property of the owner left after a partial taking by the condemnor. Since East Yolo is taking all of Washington's utility facilities, there is nothing left to be damaged. Thus, items one through eleven are inappropriate items of severance damages.

Attorney fees and costs of suit are recoverable when a statute so provides. Washington has cited no statute to support its claim for damages in items twelve through sixteen.

We are convinced that no award or finding should be made with respect to the sixteen items of severance and related damages.^{17/}

^{17/} For an extended discussion of each of the sixteen items see East Yolo's opening brief, pp. 108-120.

Conclusions of Law

1. The Heilbron rule should be applied in valuing public utility property for just compensation purposes.
2. The Commission is not compelled, as a matter of law, to employ only the RCNLD method in arriving at fair market value in a just compensation proceeding.
3. Capitalized earnings and market data evidence was properly admitted into evidence.

Findings of Fact

1. There is a relevant market for water companies in California.
2. Evidence of sales of other water companies sheds light upon the value of the subject property.
3. It is not reasonable to consider solely the RCNLD method of valuation in this proceeding. ✓
4. Willing buyers and sellers of water companies in California would not look merely to an appraisal using the RCNLD method to arrive at the price they would pay or accept for such property. |
5. Water companies are bought and sold in California at prices approximating rate base.
6. It is reasonable in valuing the property of Washington Water and Light Company for just compensation purposes to accord the greatest weight to evidence of capitalized earnings, market data evidence, and rate base, and the least weight to evidence of value based upon RCNLD.
7. The just compensation to be paid by East Yolo Community Services District for the lands, property, and rights of Washington Water and Light Company is the sum of \$3,000,000 as of March 2, 1978, the day on which the petition was filed with the Commission. ✓

8. No severance damages should be paid.

9. No related damages should be paid.

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

Dated at San Francisco, California, this 5th day of JUNE, 1979.

John E. Guyer
President

Richard D. Smith
Commissioners

I dissent
Vernon L. Sturgeon