

Decision No. 90767

AUG 28 1979

ORIGINAL

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)

ORDER MODIFYING DECISION NO. 90360
AND DENYING REHEARING

The Washington Water and Light Company (Washington) has filed a petition for rehearing of Decision No. 90360. In that decision, the Commission determined the amount of just compensation to be paid to Washington for its utility properties and rights upon acquisition through the exercise of the power of eminent domain by the East Yolo Community Services District (East Yolo). The Commission has also received two amicus briefs and two letters supporting Washington's petition for rehearing, and one letter opposing rehearing.^{*/} The Commission has carefully considered all of the allegations and arguments raised in Washington's petition and these other documents, and is of the opinion that sufficient grounds for granting a rehearing have not been shown. However, these documents have alerted us to several ambiguities in Decision No. 90360 which we take the present opportunity to clarify.

We reiterate at the outset that our valuation was based on all of the evidence submitted. No one method of valuation formed the sole basis for our finding on just compensation. In the context of the facts of this case, which must necessarily provide

^{*/} Briefs were filed by Pacific Gas & Electric Company and the National Association of Water Companies; letters supporting rehearing were submitted on behalf of the California Water Association and the Water Utility Service Company; the letter opposing rehearing was filed by Stanley G. King, a member of the public.

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the primary framework for determining just compensation, the reproduction cost new less depreciation (RCNLD) method and the valuations it produced were not as persuasive to us as the valuations based on both the capitalized earnings and market data approaches. Washington had ample opportunity to present its own testimony on these two methods, but chose to rely entirely on RCNLD.

As part of its challenge to the adopted method of valuation, Washington strenuously objects to what it alleges to be our refusal to compensate it for its contributed properties. It argues in essence that because the capitalized earnings method would not consider this category of property, only the RCNLD method properly compensates a private utility for all of its property. It is true that we do not allow contributed property to be included in rate base, and that a valuation derived directly and solely from rate base would not include a specific category of compensation for contributed property. However, the point is that itemization of utility property per se is irrelevant; the crucial question is whether the chosen method of valuation has resulted in just compensation. Moreover, we point out that in arriving at our valuation figure, the capitalized earnings method was only one source of input. Evidence was also presented using market data and RCNLD, both of which would have taken contributed property into consideration.

Washington does raise what we consider to be a legitimate point relating to our statement on page 8 of Decision No. 90360, to the effect that we consider East Yolo's position on the valuation of contributed property to be the correct view on this issue. East Yolo's position is that contributed property should not be compensated for when a private utility's property is acquired by a public agency, but rather should be treated as being held in trust for the benefit of the water users. East Yolo argues that this property was required to be contributed by developers, that users have already paid for such property because the developers have passed on their costs to the users, and that therefore compensation at the time of acquisition by a public agency would result in double payment by the users.

This issue, it is true, is currently one of several issues being considered in Case No. 9902, an investigation into possible modifications of our main extension rules for water utilities. Washington has interpreted our statement in Decision No. 90360 as prejudging the outcome of this issue in Case No. 9902. While this interpretation is incorrect and does not properly reflect the Commission's intent, we realize that our own inartful language is at fault. By way of clarification, we wish to stress that in principle we agree with East Yolo's position. Where the facts show that contributions have been required to be provided by the developer and he has recouped his losses from the water users, it would be inequitable to charge them again, through requiring the public agency which is acquiring the water company to pay compensation for the contributed property. Such compensation also results in a windfall to the water utility. These potential inequities underlie several recent actions taken by the Commission in approving deviations from tariff rules on main extensions. The Commission has approved deviations which allow the water utility to enter into contracts for certain new facilities to be contributed by developers rather than requiring them to be provided as unrefunded advances in aid of construction, subject to the express proviso that upon acquisition by a public agency, the water utility would not seek compensation for the contributed facilities. (See Resolution No. W-2522, June 5, 1979; Resolution No. W-2550, July 31, 1979). Therefore, the Commission's agreement in principle with East Yolo's position, while not specifically applied in this case, is merely a slight variation of policy which has been articulated in the context of these deviation proceedings.

We also wish to correct a reference in Decision No. 90360 to the evidence presented by Washington concerning public agency buyers. On page 17 we state that Washington offered no evidence of sales to public agencies. In the sense that Washington's only expert valuation witness did not consider market data, and therefore did not submit evidence of sales to public agencies, our statement is accurate. Washington did sponsor a rebuttal witness who briefly discussed one sale to one public agency, the sale of the San Gabriel Valley Water District to the City of Pico Rivera.

However, we do not believe this evidence carries much weight. It represents one sale in the public sector, presented by a witness who was not giving expert valuation testimony on comparable sales. This evidence is insufficient to make a case that the public sector is, as alleged by Washington, the most significant portion of the market. Furthermore, were the Commission bound by the technical provisions of the Evidence Code, the specifics of this sale would be precluded from our consideration. (Evidence Code Section 822.) Admittedly the market data evidence we considered was primarily from the private sector, and we hereby modify Finding No. 5 to accurately reflect this; however, even that evidence indirectly considered the impact of public sales on the private market.

Finally, we stress that with all condemnation proceedings, the determination of just compensation, including the determination of which methods of valuation should be accorded most weight, is an art rather than a science. A case-by-case approach is absolutely essential; factors of importance to buyers and sellers in one instance will not necessarily assume the same importance in other cases. This should to some extent assuage Washington's oft-repeated fear that this case will have far reaching and disastrous consequences for the public utility industry in this state. We do not expect that every case will present us with the unique facts found here. By way of example, in this case East Yolo's consultant estimated that some \$10 million would have to be spent to correct water pressure deficiencies and otherwise improve Washington's facilities and service. Such an estimate no doubt would materially affect the price a willing buyer would pay for Washington's system and certainly raises serious questions as to the propriety of relying exclusively upon RCNLD as the formula by which just compensation should be fixed.

IT IS ORDERED THAT the above discussion modifies and supplements Decision No. 90360.

IT IS FURTHER ORDERED THAT Finding No. 5 of Decision No. 90360 is modified to read:

"5a. The evidence indicates that in the private market, water companies are often bought and sold at prices approximating rate base."

IT IS FURTHER ORDERED THAT Washington's request for oral argument and petition for extension of the deemed denied date are hereby denied.

IT IS FURTHER ORDERED THAT Washington's petition for rehearing of Decision No. 90360 as modified herein is hereby denied.

The date of this order is the date hereof.

Dated AUG 28 1979, at San Francisco, California.

*I dissent, I would grant re-hearing
Gerron L. Steeger*

John E. Bayon

President

Richard D. [unclear]

[unclear]

Lawrence W. [unclear]

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.