

Decision 01-06-029 June 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lodi Gas Storage, L.L.C., a Delaware Limited Liability Company,

Complainant,

vs.

Perman Family, L.P., a California Limited Partnership; James G. Firpo; Joanne Firpo Watson; Michele Firpo-Cappiello; Gregory Firpo and Meri Firpo,

Defendants.

(EDM)
Case 01-01-004
(Filed January 4, 2001)

**ORDER GRANTING REQUEST FOR DISMISSAL
PURSUANT TO SENATE BILL NO. SBX1 28**

Downey Brand, Seymour and Rohwer, L.L.P.,
by Dan L. Carroll, Attorney at Law,
for Lodi Gas Storage, L.L.C., complainant.
Freeman, D'Aiuto, Pierce and Gurev, by
John W. Viss, Attorney at Law, for
Perman Family, L.P., defendant.

1. Summary

This order grants the request of Lodi Gas Storage, L.L.C., a Delaware Limited Liability Company (Lodi) for the immediate dismissal of this proceeding as required by Senate Bill X1 28.

2. Factual Background and Procedural History

On January 5, 2001, Lodi filed a complaint against the Perman Family, L.P., a California Limited Partnership (Perman); James G. Firpo; Joanne Firpo Watson; Michele Firpo-Cappiello; Gregory Firpo; and Meri Firpo (Defendants), seeking to condemn property interests owned by Perman (the Perman property) for a gas storage project located primarily in San Joaquin County (the project) pursuant to Public Utilities Code Section 625 (Section 625).¹ The Commission has previously granted Lodi a certificate of public convenience and necessity (CPCN) for the project in Decision (D.) 00-05-048. The Perman property is located in unincorporated San Joaquin County.

As required by Section 625, the Commission timely commenced a hearing in the City of Manteca, County of San Joaquin on January 26, 2001², after giving

¹ Section 625, enacted by the passage of Senate Bill No. 177, became effective on January 1, 2001. Under Section 625, a public utility that wishes to condemn property for the purpose of providing competitive services must first file a complaint or petition with the Commission and obtain a Commission finding that the proposed condemnation would be in the public interest. If, applying the criteria stated in Section 625, the Commission finds that the proposed condemnation would be in the public interest, the public utility may then commence an eminent domain action in superior court.

² The Commission is required to commence hearings on a complaint or petition filed by a public utility pursuant to Section 625 within 45 days of the filing of the complaint, unless the respondent establishes that an extension of not more than 30 days is

Footnote continued on next page

notice to the parties, the City of Manteca and the County of San Joaquin. At the conclusion of the January 26, 2001 hearing, the Administrative Law Judge (ALJ) continued the hearing until a date to be set by subsequent ruling.

On March 6, 2001, Perman filed a demurrer and an answer to the complaint. Pursuant to the ruling of the administrative law judge (ALJ) on the demurrer, Lodi filed and served an amended complaint on March 30, 2001, and Perman filed and served an answer to the amended complaint on April 3, 2001.

Continued hearings on law and motion issues were held on March 13, March 15, March 20, March 26, April 12, and April 13, 2000.³ Continued evidentiary hearings were held on April 17, 18, 19, 20, 27, 30 and May 1, 2001 in Manteca, California.

The parties filed and served opening briefs on May 9, 2001 and reply briefs on May 15, 2001.

On May 10, 2001, the Legislature passed Senate Bill X1 28 (Sher) as urgency legislation. Governor Davis signed the bill on May 22, 2001.

Lodi requested dismissal of this proceeding pursuant to Senate Bill X1 28 through a letter to the assigned Commissioner and the ALJ on May 22, 2001. A copy of this letter was served on counsel for Perman. On May 25, 2001, Perman notified the ALJ by e-mail that Perman is also requesting dismissal of this proceeding because the parties have reached settlement.

necessary for discovery or other hearing preparation, or the rendering of a decision requires environmental review under the California Environmental Quality Act (CEQA).

³ These continued hearings on law and motion issues were held by teleconference.

3. Discussion

Section 12 of Senate Bill X1 28 states:

- a. Notwithstanding Section 625 of the Public Utilities Code, from the effective date of this section to June 1, 2002, inclusive, a gas corporation public utility may exercise the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure, to condemn any property for the purpose of competing with another entity in the offering of natural gas and services related to natural gas.
- b. The Public Utilities Commission may not make a finding on a petition or complaint pending on the effective date of this section that was filed pursuant to Section 625 of the Public Utilities Code by a gas corporation public utility to condemn any property for the purpose of competing with another entity in the offering of natural gas and services related to natural gas. The Public Utilities Commission shall dismiss the petition or complaint.
- c. This section shall become inoperative on June 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute that is enacted before January 1, 2003, deletes or extends the dates on which it becomes inoperative or is repealed.
(Emphasis added.)

This legislation authorizes Lodi to file an eminent domain action in superior court to condemn the Perman property for the project, because Lodi is a gas corporation public utility that is offering services related to natural gas, e.g., gas storage. The legislation also requires the Commission to dismiss the complaint filed by Lodi in this proceeding.

As an urgency measure, Senate Bill X1 28 takes effect immediately.⁴

⁴ Section 15 of Senate Bill X1 28 provides: “This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.”

For these reasons, we grant the request of Lodi to dismiss the complaint filed in this proceeding pursuant to Senate Bill X1 28, effective immediately.

4. Waiver of Public Review and Comment on Draft Decision

We waive the 30-day period for public review and comment on this decision pursuant to the Commission's Rules of Practice and Procedure, Rule 77.7(f)(2), because there is no longer any dispute (i.e., the parties agree the complaint should be dismissed), and we are granting the requested relief (i.e., dismissal of the complaint).

Findings of Fact

1. Lodi filed a complaint seeking to condemn the Perman property for a gas storage project.
2. The Commission granted Lodi a CPCN for the project in D.00-05-048.
3. On May 10, 2001, the Legislature passed Senate Bill X1 28 (Sher) as urgency legislation.
4. On May 22, 2001, Lodi requested dismissal of this proceeding pursuant to Senate Bill X1 28 through a letter to the assigned Commissioner and the ALJ. A copy of Lodi's May 22, 2001 letter was served on counsel for Perman.
5. On May 25, 2001, counsel for Perman notified the ALJ by e-mail that Perman is also requesting dismissal.

Conclusions of Law

1. As urgency legislation, Senate Bill X1 28, which was adopted by the Legislature on May 10, 2001 and signed by Governor Davis on May 22, 2001, takes effect immediately.
2. Senate Bill X1 28 applies to Lodi because Lodi is a gas corporation public utility that is offering services related to natural gas, e.g., gas storage.

3. Senate Bill X1 28 requires the Commission to immediately dismiss the pending complaint in this proceeding.

4. The Commission may waive the 30-day period for public review and comment on this decision under Rule 77.7(f)(2) because this matter is now uncontested, and the decision grants the dismissal, as requested by the parties.

O R D E R

IT IS ORDERED that the complaint in this proceeding is dismissed.

This order is effective today.

Dated June 14, 2001, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
GEOFFREY F. BROWN
Commissioners

Commissioner Carl W. Wood, being necessarily absent, did not participate.