

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Petition of the City and County of San Francisco  
for a Valuation of Certain Pacific Gas & Electric  
Company Property Pursuant to Public Utilities  
Code Sections 1401-1421.

P.21-07-012  
(Filed July 27, 2021)

**THE CITY AND COUNTY OF SAN FRANCISCO'S  
BRIEF ON STANDARDS FOR JUST COMPENSATION**

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**THE CITY AND COUNTY OF SAN FRANCISCO'S  
BRIEF ON STANDARDS FOR JUST COMPENSATION**

Pursuant to Administrative Law Judge (ALJ) Lirag's November 8, 2022, *Email Ruling Granting In Part Motion for order Amending Schedule* (November Ruling), the City and County of San Francisco (CCSF) submits this brief on standards for just compensation.<sup>1</sup>

**I. INTRODUCTION**

Pursuant to Public Utilities Code Sections 1401-1421, on July 27, 2021, CCSF initiated the instant proceeding and invoked the Commission's jurisdiction to determine the value of Pacific Gas & Electric Company's (PG&E) electric system assets within and adjacent to the boundaries of San Francisco. CCSF's Petition described CCSF's intent to acquire all such assets within San Francisco and certain assets outside San Francisco that are integral to the functioning of the systems within CCSF's boundaries, including:

- All of PG&E's electric distribution assets in San Francisco, including distribution lines, transformers, distribution-level substations, metering, customer-level interconnections, and related facilities.
- All of PG&E's transmission assets in San Francisco, including substations, transmission lines, busses, transformers, and related facilities needed for operational control.
- Certain assets at PG&E's Martin Substation (located in San Mateo) that will enable CCSF to control all power flows from the Martin Substation into the City.

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<sup>1</sup> The revised schedule adopted by the November Ruling required the submission of "Simultaneous Legal Briefs on Standards for Just Compensation" by January 16, 2023. Consistent with Rule 1.15 of the Commission's Rules of Practice and Procedure, given the recognized State holiday on January 16, CCSF timely submits this brief on January 17.

- Systems, meters, telecommunications, and other equipment required to operate the assets described above.<sup>2</sup>

It has been many years since a party has invoked the CPUC’s jurisdiction to value a public utility’s assets under Public Utilities Code Sections 1401–1421. CCSF and PG&E therefore proposed, and the ALJ agreed, that the parties submit legal briefs addressing the standards for determining just compensation. As detailed below, this brief lays out the basic standards that should guide the Commission’s valuation of the PG&E assets and determination whether severance damages should be awarded and, if so, how such damages should be calculated.

## **II. DISCUSSION**

### **A. The Commission’s Role and Responsibility in Just Compensation Proceedings.**

The California Constitution vests the Legislature with plenary power to enable the Commission to “fix just compensation for utility property taken by eminent domain.” Cal. Const., art. XII, § 5. Pursuant to its constitutional authority, the Legislature enacted Public Utilities Code sections 1401–1421 (the Just Compensation Law), which provides the statutory authority and framework for the Commission to determine just compensation for a political subdivision’s acquisition of utility property. Under the Just Compensation Law, the Commission is to hold a hearing on the political subdivision’s petition to value public utility “lands, property, and rights,” where the political subdivision and the utility may present evidence on the value of the utility’s assets. Pub. Util. Code § 1409.

The Commission’s “function, like that of a jury or referee, is to hear and determine the question of values exhibited to it in connection with the various properties described in the petition,” and: (1) to fix a single sum as just compensation for the “lands, property and rights” of the public utility, and (2) *if* the Commission finds that “severance damages” should be paid, to

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<sup>2</sup> CCSF did not have a complete, detailed inventory of PG&E’s transmission and distribution assets in San Francisco when it filed the Petition. In responses to Data Requests, PG&E produced databases of assets in use in San Francisco as of the date of the responses, including some assets put in service in 2022 (after filing of the Petition). By necessity, CCSF will base its valuation on the assets that PG&E disclosed in its responses to the CCSF’s Data Requests, including some that PG&E asserts it put into service after the Petition July 2021 filing date.

adopt a separate figure fixing just compensation for such damages. *In Re Sw. Water Co.* (Sept. 12, 1972) 74 CPUC 193, rehearing denied and order modified on other grounds by *In Re City of Riverside* (Jan. 9, 1973) 74 CPUC 563 (citing Pub. Util. Code § 1411). In so doing, the Commission’s just compensation decisions emphasize that the Commission applies its “independent judgment on just compensation based on resolution of conflicting testimony and other conflicting data in records before it.” *Id.*

The Commission must fix just compensation as of the date the petition was filed (here, July 27, 2021),<sup>3</sup> but may authorize amendment of the Petition at any time prior to its just compensation finding to modify the description of the land, property, and rights. Pub. Util. Code § 1410. Further, pursuant to Pub. Util. Code § 1417, both the political subdivision and the utility may petition the Commission after final judgment is entered on condemnation of the utility’s assets to seek increases or decreases to the compensation originally set by the Commission. *See City of North Sacramento v. Citizens Utilities Co. of Cal.* (1963) 218 Cal.App.2d 178, 190-191 (holding that under Public Utilities Code section 1401 et seq., “increases or decreases in the original award covering the period after the filing of the petition and until the condemner takes possession shall be made exclusively by the commission under section 1417-1419”).

## **B. Burden of Proof**

The Commission has held that “[w]hatever the order of presenting testimony may be, the burden of showing the value of the property sought to be condemned rests in the first instance on its owner.” *In Re Sw. Water Co.* (Sept. 12, 1972) 74 CPUC 193. Similarly, with respect to severance damages, the property owner carries the burden of proving it is entitled to severance damages. *Re City of Fresno* (Feb. 20, 1986) 20 CPUC 2d 502. While not controlling in Commission proceedings, under the Eminent Domain Law,<sup>4</sup> appellate courts have determined that the *property owner* carries the “burden to produce evidence” on the issue of compensation, but that neither party carries the “burden of persuasion.” Code Civ. Proc., § 1260.210; *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th

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<sup>3</sup> See Pub. Util. Code, § 1411.

<sup>4</sup> Code Civ. Proc., § 1230.010 et. seq.

954, 970 (interpreting “burden of proof” under Section 1260.210(b) as the “burden of persuasion”).<sup>5</sup>

### **C. Standards for Fixing Just Compensation**

#### **1. The Commission Must Fix Compensation for PG&E’s Assets Based on Their Fair Market Value.**

The Commission has adopted “fair market value” as the measure of compensation for a utility’s assets. *Re Vandenberg Vill. Cmty. Services Dist.* (July 29, 1987) 25 CPUC 2d 20 (recognizing definition of “fair market value” as codified under the Eminent Domain Law).

Pursuant to the Eminent Domain Law, “fair market value” is defined as:

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.

Code Civ. Proc., § 1263.320(a).

The Eminent Domain Law recognizes that certain properties, including utility properties, may have no “relevant market” and further states that the “fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.” Code Civ. Proc., § 1263.320(b).<sup>6</sup> As

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<sup>5</sup> While Code Civ. Proc., § 1260.210(b) states that neither plaintiff nor defendant has the burden of proof on the issue of just compensation, this section is controlling only in eminent domain proceedings. Indeed, the Eminent Domain Law expressly states, “[n]othing in this title affects any other statute granting jurisdiction over any issue in eminent domain proceedings to the Public Utilities Commission.” Code Civ. Proc., § 1230.060. The Commission has also found that, while instructive in certain contexts, it is not strictly bound by any section of the Eminent Domain Law. See e.g., *Re Vandenberg Vill. Cmty. Services Dist.* (July 29, 1987) 25 CPUC 2d 20 (noting, “the optional just compensation procedures available to the public agency condemnor under P.U. Code Section 1401 et seq. provide for specific proceedings (Sui generis, i.e., constituting a class alone) to which the rules governing condemnation proceedings generally are not necessarily applicable.”); *id.* at n. 10.

<sup>6</sup> Notably, the Senate Committee Comments explain that a 1975 amendment to this section added Section 1263.320(b) and deleted “in the open market” from Section 1263.320(a), in recognition that there “may be no relevant market for some types of special purpose properties such as

further discussed below, in reaching a just and equitable valuation for utility assets, the Commission typically looks to valuation methodologies that turn on market information, income or cost.

## 2. The Commission May Fix the Fair Market Value of PG&E's Assets Based on Several Valuation Methodologies.

The Commission has looked to all three of the generally accepted approaches to estimate value—market (comparable sales), income, and cost—in fixing the fair market value of a utility's assets. Indicative of this is the Commission's *Vinton Sanitary District* decision, in which the Commission considered evidence based on multiple valuation methodologies, including: comparable market sales, capitalized earnings, “reproduction (or replacement) cost new less depreciation” (RCNLD), original cost less depreciation (OCLD), rate base, and a hybrid method.<sup>7</sup>

Based on all the facts presented through expert testimony, the Commission decides how much weight to give to party's evidence regarding the value of assets. *In Re Sw. Water Co.* (Sept. 12, 1972) 74 CPUC 193. Indeed, depending on the facts of each case and the evidence presented, the Commission considers all of these approaches and then assigns varying degrees of weight to each of these methodologies. See *Re Vandenberg Vill. Cmty. Services Dist.* (July 29, 1987) 25 CPUC 2d 20.

As summarized below, Commission decisions fixing the value of utility assets have typically focused to a greater or lesser degree on a combination of the valuation methodologies noted below.

**Comparable Sales:** The comparable sales methodology falls under the market valuation approach. The Commission has described that the comparable sales approach “relies upon a comparison of other reasonably current, consummated, good faith sales of sufficiently similar properties to the subject property to shed light upon the value of the subject property. ... Once

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schools, churches, cemeteries, parks, **utilities**, and similar properties.” Code Civ. Proc., § 1263.320 (Westlaw, Editor's Notes) (emphasis added).

<sup>7</sup> See *In the Matter of the Petition of the Vinton Sanitary Dist. Requesting the Pub. Utilities Comm'n to Fix Just Comp. for the Acquisition of the Pub. Util. Prop. of Vinton Water Co., Inc.* (Aug. 7, 1984) 16 CPUC 2d 123 (*Vinton Sanitary Dist.*).

reasonably comparable transactions are ascertained, comparisons can be made by computing unit price per customer and the ratio of sales price to book value in each instance.” *Re Vandenberg Vill. Cmty. Services Dist.* (July 29, 1987) 25 CPUC 2d 20.

**Capitalization of Earnings:** The capitalization of earnings methodology is the principal income approach. The Commission has described that the capitalization of earnings method “is premised principally upon the economic value of the productiveness of the utility properties taken as an entity, i.e., their earning capacity. Using this approach, an income stream for the entity is derived and then capitalized at an appropriate interest rate to determine a productivity value.” *Re Vandenberg Vill. Cmty. Services Dist.* (July 29, 1987) 25 CPUC 2d 20. Commission decisions have previously noted the importance of the capitalization of earnings methodology, finding that productiveness of the property is a “necessary element” in ascertaining its market value. *Southern California Edison Co. v. Railroad Commission of California* (1936) 6 Cal.2d 737, 751; *South Bay Irr. Dist. v. California-American Water Co.* (1976) 61 Cal.App.3d 944, 981.

**Reproduction Cost New Less Depreciation (RCNLD):** The RCNLD methodology falls under the cost valuation approach. RCNLD is described in the Evidence Code as “the value of the property or property interest being valued as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.” Evid. Code, § 820.<sup>8</sup> While the Commission may consider evidence of RCNLD in valuing a utility’s assets, the Commission has suggested that in forming an opinion as to the value of the subject property an expert should not rely exclusively on the RCNLD methodology. See, *In Re E. Yolo Cmty. Services Dist.* (June 5, 1979) 1 CPUC 2d 474, Order ¶ 3 (“It is not reasonable to consider solely the RCNLD method of valuation in this proceeding.”).

**Original Cost Less Depreciation (OCLD) and Rate Base.** The OCLD (also referred to as Historical Cost Less Depreciation (HCLD)) is another value methodology under the cost approach. The OCLD represents the net “book value” of the subject utility assets. *In Re PG&E*

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<sup>8</sup> While the Commission is not bound by the technical rules of evidence (see Pub. Util. Code, § 1701), it has found that “such statutory and case law will be considered persuasive authority.” *In Re E. Yolo Cmty. Services Dist.* (June 5, 1979) 1 CPUC 2d 474.

Co. (Mar. 2, 1983) 10 CPUC 2d 789. The Commission has previously approved the municipal acquisition of utility assets valued based on only the OCLD methodology. *Id.* (approving CCSF’s acquisition of PG&E facilities for a purchase price representing the “net book value (historical cost less depreciation) of the equipment”); *see also, Re Aldercroft Heights County Water Dist.* (June 22, 1965) 60 P.U.R.3d 227 (relying exclusively on the OCLD methodology to fix just compensation for water utility’s assets).

Rate base is the value of utility property on which the utility is allowed to earn a specified rate of return, in accordance with rules set by the Commission. *See* CPUC Website (definition of rate base), available at <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/historical-electric-cost-data/rate-base>. For rate regulated utility property, the OCLD value of the utility’s assets is generally the largest component in rate base for ratemaking purposes.

**D. PG&E Carries the Burden to Prove that It is Entitled to Severance Damages.**

While “severance damages” is undefined in the Just Compensation Law, the Commission has generally adopted the standard described under Eminent Domain Law. *See Re City of Fresno* (Feb. 20, 1986) 20 CPUC 2d 502 (citing C.C.P. § 1248 [now C.C.P. §§ 1263.410, 1263.420]). Under Eminent Domain Law, severance damages are measured by comparing the fair market value of the remainder before and after the taking. (C.C.P. §§ 1263.410, 1263.420; *City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1466; *City of Carlsbad v. Rudvalis* (2003) 109 Cal.App.4th 667, 679; *In re East Yolo Community Services Dist.*, 1 CPUC 2d 474, 1979 WL 50263, at \*10 [noting that “severance damages represent the decline in value of the property of the owner left after a partial taking...”]; *In re Southwest Water Co.*, 74 CPUC 193, 1972 WL 30110, at \*4 [noting that separate from the value of assets to be acquired “the measure of severance damages, if any, would be the loss in market value of the remainder.”]).

As discussed above, PG&E carries the burden to prove severance damages (*Re City of Fresno*). In addition, the Commission and courts have applied the following standards in reviewing claims for severance damages.

- **Demonstration of Unity of Title, Contiguity, and Unity of Use.** An award of severance damages is generally conditioned on proof of “three unities” between the property taken and the remainder: “unity of title, contiguity and unity of use.” *South Bay Irr. Dist. v. California-American Water Co.* (1976) 61 Cal.App.3d 944,

1002. In *South Bay Irrigation District*, for example, the court held that while there existed unity of title between two commonly owned water systems, for purposes of awarding severance damages they were not part of a single parcel; thus, the “unity of the two water systems [did] not equate the unity required of two parcels of land forming a single parcel for purposes of determining severance damage.” *Id.* at 1003.<sup>9</sup>

- **Demonstration of Direct and Proximate Causation.** PG&E must demonstrate that any loss in market value claimed directly and proximately flows from the taking. *City of Carlsbad v. Rudvalis* (2003) 109 Cal.App.4th 667, 679. Recovery may not be based on “speculative, remote, imaginary, contingent, or merely possible” events. *Id.* at 679.<sup>10</sup> See *In Re E. Yolo Cmty. Services Dist.* (June 5, 1979) 1 CPUC 2d 474 (rejecting as speculative, severance damages for the future potential of the service area and loss of business opportunity from the taking of utility facilities).
- **Offset of Benefits.** In determining PG&E’s entitlement to severance damages, both special and general benefits to the remainder may offset any severance damages. C.C.P. § 1263.410(b) (“Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder”); *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 718 (holding that fact-finder should on remand consider all “competent evidence relevant to any

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<sup>9</sup> Similarly, the Commission denied severance damages where the real property and plants of three commonly owned water companies were physically separated from each other, were not interconnected, and each held separate operating authority from the Commission with separate tariffs and rates. *Re City of Fresno* (Feb. 20, 1986) 20 CPUC 2d 502. Specifically, the Commission rejected the contention that the three water companies “should be considered as parts of an overall larger entity” for purposes of determining severance damages and held that no severance damages would be allowable for any alleged “loss of efficiencies” to water company owner’s remaining water companies. *Id.*; see also *In Re E. Yolo Cmty. Services Dist.* (June 5, 1979) 1 CPUC 2d 474 (finding that because the municipality was taking all the utility’s facilities, there was “nothing left to be damaged.”).

<sup>10</sup> See also, *City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 748 (discussing cases that document Court’s “historical and well-founded antipathy to speculative damages” in eminent domain context.)

conditions caused by the project that affect the remainder property's fair market value," including whether property's proximity to transit line proposed on condemned property provided benefit to owner's remainder property.)

### III. CONCLUSION

CCSF appreciates the opportunity to file this brief.

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Respectfully submitted,

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