GOING-CONCERN VALUE OF A PUBLIC UTILITY IN CONDEMNATION BY A MUNICIPALITY

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The phrase "value as a going concern" as employed in Arizona Revised Statutes § 9-518B is at best a nebulous concept included by the legislature as an integral element in the valuation of public utilities in eminent domain proceedings brought by a municipality. It is that amount by which the value of an operating utility plant with customers and an established revenue exceeds the value of an exactly similar plant ready to operate, but so situated that the acquisition of customers and revenue is a mere matter of time and ordinary adjustments. This excludes good will or franchise values.[1] No method or guide is given or suggested by which this value is to be determined except that the value of the utility as a whole shall be "fair and equitable."[2]

The Supreme Court of Arizona has not yet had the occasion to interpret this terminology; therefore, it is necessary that we look to the law of other jurisdictions for guidance in deriving some fair and equitable means of determining the value of a public utility as a going concern. This concept has plagued more than a few courts, and it is the purpose of this article to present some of the methods used for computing going-concern value. This article, however, does not purport to exhaust the theories of determining the said value, nor the myriad of cases concerned with calculating it.

There are two types of cases that have dealt with this problem, namely rate cases and condemnation cases. An attempt should be made to distinguish the element of going-concern value in the different proceedings.[3] Value in a rate case is the amount on which the fair return should be allowed in order adequately to compensate the investor; a reasonable net income is the fundamental requirement. In condemnation proceedings, however, it is exchange value or price that is essential, as all existing relations, property rights and

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[1] *Re* Mountain States Tel. & Tel. Co., P.U.R. 1929D, 414 (Ariz. Corp. Comm'n).

[2] "The court or jury shall ascertain the compensation to be paid for the taking of the plant and property of the public utility, which shall include the fair and equitable value of such plant and property, including its value as a going concern. . . ." ARIZ. REV. STAT. ANN. § 9-518B (Supp. 1963).

[3] Omaha v. Omaha Water Co., 218 U.S. 180 (1910); Pioneer Tel. & Tel. Co. v. Westenhaver, 29 Okla. 429, 118 Pac. 354 (1911); *cf.* Ames v. Union Pac. Ry., 64 Fed. 165 (Neb. Cir. 1894); see generally WHITTEN, VALUATION OF PUBLIC SERVICE CORPORATIONS § 643 (1912).

profits are terminated.[4] But the majority of authors draw no such distinction in discussing valuation of public utilities.[5]

The difficulty in arriving at a satisfactory method of calculating going-concern value is rationalized as an attempt to sever that which is unseverable; to segregate for separate analysis an element of value which is inextricably entwined with the value of the entire property.[6] In *Appleton Water Works v. Railroad Comm'n*,[7] the Supreme Court of Wisconsin said:

> [T]he fundamental difficulty with the attempt to set a definite sum as the measure of going value is that it is an attempt to divide a thing which is, in its nature, practically indivisible. The value of the plant and business is an indivisible gross amount. . . .[8]

Before discussing the decisions giving rise to the various methods used by the tribunals, it is important that the role of the public service commissions be set forth and the weight to be given their decisions be determined. It is at the commission level that practically all the decisions lie.

Article 15, § 3 of the Arizona Constitution provides the Corporation Commission, *inter alia*, with full power to prescribe reasonable rates to be made and collected by public service corporations. Article 15, § 14 provides, in part, that the Commission shall ascertain the fair value of the domestic property of such corporations doing business within this state.[9]. The element of going-concern value is not specifically included. Arizona Revised Statutes § 40-203 gives the Commission power to determine and prescribe rates. The Arizona Supreme Court has stated:

> The commission in exercising its rate making power of necessity has a range of legislative discretion and so long as that discretion is not abused, the court cannot substitute its judgment as to what is fair value or a just and reasonable rate. . . . The legislative duty and power to fix just and reasonable rates having been by the constitution delegated exclusively to the

[4] *E.g.*, People v. Willcox, 210 N.Y. 479, 104 N.E. 911 (1914).

[5] See generally NICHOLS, EMINENT DOMAIN (1962); POND, PUBLIC UTILITIES (1913); WOOD, PUBLIC UTILITIES (1926); Potter, *Going Value*, 24 MICH. L. REV. 232 (1925-26). For an excellent discussion of condemnation value versus rate-making value, see ORGEL, VALUATION UNDER EMINENT DOMAIN § 204 (1953). That author sustains a distinction but concludes that in practice a distinction is blurred by the procedure of tribunals in valuation cases and recognizes that the relationship is so close as to amount to approximate equality.

[6] ORGEL, VALUATION UNDER EMINENT DOMAIN § 216 (1953); see also State v. Hampton Water Works Co., 91 N.H. 278, 18 A.2d 765 (1941).

[7] 154 Wis. 121, 142 N.W. 476 (1913).

[8] *Id.*, 142 N.W. at 484.

[9] Simms v. Round Valley Light & Power Co., 80 Ariz. 145, 294 P.2d 378 (1956).

> corporation commission, the courts cannot disturb the commission's ultimate conclusion or findings of facts in arriving at such conclusion when the same is supported by substantial evidence, is not arbitrary or is not otherwise unlawful.[10]

No formula is given for determining value and the Arizona Supreme Court has declined to attempt to prescribe one.[11] Where the particular element of going-value is under consideration as a portion of total value, difficulty in determining it will not justify disregarding it.[12]

The statute is clear that in condemnation proceedings the court or jury is to determine the fair and equitable value, including value as a going concern, as compensation for taking a public utility.[13] It therefore appears that the legislature has separated the two types of valuation dealt with herein as far as *who* shall make the determination: the Corporation Commission in rate cases, and court or jury in condemnation cases. This distinction must be recognized, but its probative value is slight in attempting to ascertain a method by which either body, commission or court, may calculate this intangible value of going-concern. In the light of the discussion and authority above, it is manifest that the distinction between rate and condemnation cases, commission and court rulings, as to the method for calculating going-concern value, should be abrogated.

Opinion-Evidence Method

One view is that the determination of going-concern value rests largely in competent or expert opinion.[14] This element of value cannot readily be proved by direct evidence because of its intangible nature; therefore, opinion evidence is of importance.[15] Although a commission is not bound by opinion evidence, it would be unjustified in ignoring such evidence of going-value or of merely attaching some inappreciable importance to it.[16]

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[10] *Id.*, at 154, 294 P.2d at 384 (Citations omitted).

[11] Arizona Corp. Comm'n v. Arizona Water Co., 85 Ariz. 198, 335 P.2d 412 (1959). After stating that the Commission has the power to ascertain the fair value of property within the state of every public service corporation doing business therein, the court went on to say, "No formula is given for determining fair value, and we do not attempt to prescribe one, but the Commission must establish the rate base on the basis of fair value and that alone." *Id.*, at 202, 335 P.2d at 414.

[12] 43 AM. JUR. *Public Utilities and Services* § 140 (1942).

[13] ARIZ. REV. STAT. ANN. § 9-518B (Supp. 1963).

[14] Pacific Tel. & Tel. Co. v. Whitcomb, 12 F.2d 279 (W.D. Wash. 1926).

[15] Kings County Lighting Co. v. Prendergast, 7 F.2d 192 (E.D. N.Y. 1925).

[16] People v. Willcox, 210 N.Y. 479, 104 N.E. 911 (1914).

This method is often criticized as being too speculative and conjectural,[17] and has, therefore, been rejected.[18] The weakness of opinion evidence as to the reconstruction cost of an existing public utility plant is alluded to in *Simms v. Round Valley Light & Power Co.*,[19] wherein the Supreme Court of Arizona, speaking through Justice Windes, said:

> It is well recognized that any evidence of what is the present reconstruction cost of an existing plant is at best opinion evidence and carries the weakness of some inaccuracy. It is based upon estimates. The commission is entitled to reasonably determine the probative force of these estimates and is not compelled to find its value upon mere speculation. . . . No set, rigid formula is required to be used. Only a reasonable judgment considering all relevant factors is required.[20]

In many phases of the law the admissibility and sufficiency of expert testimony depends upon the nature of the particular case. In evaluating a public utility, the expert, in calculating going-concern value, will be confronted with the very same problems as appear in the commissions and courts. His experience in the field will facilitate his task; but he, too, must employ some method of calculation even if it be only a subconscious quantitative analysis of all the methods discussed herein. It is readily observable why this subjectivity is avoided by the majority of tribunals hearing matters of this kind.

Comparative-Plant Theory or Business-Reproduction Method

Going-concern value is allowed on the theory that a prospective purchaser would pay more for a live and developed business than for the bare bones of the utility plant.[21] Initially, it might appear that one way of evaluating a public utility would be to determine the cost of reproducing the plant. This is generally referred to as the comparative-plant theory or business-reproduction method and proceeds on the assumption that a new plant is to be built with immediate construction and the hypothetical concern (or conceptual plant, as it is sometimes called) will gradually take over the business of the existing operation. It neglects to account for the dif-

[17] Atlantic City Sewerage Co. v. Public Util. Comm'rs, 128 N.J.L. 359, 26 A.2d 71 (1942).

[18] Pacific Tel. & Tel. Co. v. Thomas, 13 P.U.R. (n.s.) 337 (Ore. Cir. Ct. 1936). The court stated that opinion evidence as to value, if entitled to some weight, has no such conclusive force that there is error of law in refusing to follow it, most particularly as to going-concern value where speculation is piled upon inference to reach the result. In *Re* Chicago Rys., P.U.R. 1919D, 573 (Ill. Pub. Util. Comm'n), it was held that an allowance on account of going value should be based on evidence of fact, rather than opinion.

[19] Simms v. Round Valley Light & Power Co., 80 Ariz. 145, 294 P.2d 378 (1956).

[20] *Id.* at 153-154, 294 P.2d at 383-384 (citations omitted).

[21] ORGEL, VALUATION UNDER EMINENT DOMAIN § 216 (1953).

ference between a dead plant and a live one.[22] In the purchase case of *National Water Works v. Kansas City*,[23] the city sought to restrict compensation to the value of the physical property. The court said: "Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city."[24]

The business-reproduction method has had some following,[25] but a far greater number of commissions reject it.[26] The Arizona Corporation Commission found this method inadequate for rate purposes where a plant had been built to serve three thousand and was only being used by two-hundred consumers.[27]

Accumulated-Deficits or Unrequited-Costs Theory

If the amount designated as going-concern value is merely that figure representing the cash actually expended by the utility in developing the business, the accumulated-deficits or unrequited-costs method would serve as an excellent means of calculating it. This process calls for the cumulative addition to the capital-base of the amounts by which earnings during a reasonable development period fail to cover all costs including depreciation and a fair return to investors. Subsequent surplus earnings are customarily regarded as offsets against accumulated deficits. Again, only a few tribunals have given credence to this method.[28] It has been rejected by the majority considering it.[29]

No allowance for going-concern value would be made if early

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[22] Omaha v. Omaha Water Co., 218 U.S. 180 (1910).

[23] 62 Fed. 853 (8th Cir. 1894).

[24] *Id.*, at 865.

[25] *Re* Racine Water Co., P.U.R. 1917D, 277 (Wis. R.R. Comm'n); Smith v. City Water Co., P.U.R. 1916B, 1068 (Wis. R.R. Comm'n).

[26] Illinois Commerce Comm'n v. Chicago Tel. Co., P.U.R. 1924A, 213 (Ill. Commerce Comm'n); *Re* Central Union Tel. Co., P.U.R. 1920B, 813 (Ind. Pub. Serv. Comm'n); Rich v. Biddeford & Saco Water Co., P.U.R. 1917C, 982 (Me. Pub. Util. Comm'n); *Re* Grafton County Elec. Light & Power Co., P.U.R. 1916E, 879 (N.H. Pub. Serv. Comm'n).

In commenting on the comparative plant method, Lewis, *Going Value and Rate Valuation*, 26 MICH. L. REV. 713 (1927-28), states that to reach an exact measure of going-value, arbitrary assumptions and predictions must be made with a mathematical precision which quite belies their true character. Guesses take on the garb of facts and the fanciful results of the imaginary operation of a "paper" concern are made the basis of actual charges to existing consumers.

[27] *Re* Huachuca Water Co., 9 P.U.R. (n.s.) 317 (Ariz. Corp. Comm'n 1934).

[28] *Re* Speedway Realty Co., P.U.R. 1929A, 305 (Ind. Pub. Serv. Comm'n).

[29] Galveston Elec. Co. v. Galveston, 258 U.S. 388 (1922); *Re* Michigan State Tel. Co., P.U.R. 1923A, 30 (Mich. Pub. Util. Comm'n); *Re* Lincoln Traction Co., P.U.R. 1924B, 741 (Neb. State Ry. Comm'n).

deficits have been equaled or exceeded by later surpluses, thus rendering the present and prospective profitableness of the plant wholly immaterial. This method assumes that the past losses are indicative of present values. Therefore, according to this theory, the more unprofitable a utility has been, the greater its going-concern value, thereby placing a premium on inefficient operation. Extravagant and wasteful management would tend to increase this value.[30] Referring to the accumulated-deficits method, it has been said: "The present case is one which reduces it to an absurdity because the greater deficits which a concern has experienced the greater the apparent value indicated by the computation."[31]

Development-Cost Theory

Closely akin to the deficit method discussed above is a development-cost theory which sets the going-concern value at that amount representing the expense accrued in the development of the business, in addition to the reproduction cost new. Having a reasonable proof as to utility-development cost — which should not be confused with early losses — and evidence clearly indicating that the plant is in successful operation, rendering efficient service, a fair allowance for going value may be determined.[23] It may merely be an element to be considered in determining going-concern value.[33]

The weakness of this method lies in the possibility of crediting a value based upon prior cost which may have been incurred because of poor management, extravagant spending, and inefficient operation. Development costs have no direct bearing on the going-value of a utility property as it may exist years later.[34] Also, a utility going into a densely populated area will show less development costs than one in a sparsely populated or less congested area, although the former actually has a greater value as a going-concern than the latter.

Stock-Dividends Method

Going-concern value has also been determined by analyzing the

[30] 12 McQUILLIN, MUNICIPAL CORPORATIONS § 34.173 (3d ed. 1950).

[31] *Re* City of Washburn, P.U.R. 1924D, 368, 378 (Wis. R.R. Comm'n).

[32] *Re* Red River Power Co., P.U.R. 1923E, 534 (N.D. Bd. of R.R. Comm'rs); *In Re* Western Tel. Co., P.U.R. 1915F, 290 (Ore. Pub. Serv. Comm'n).

[33] Clearfield v. Clearfield Water Co., P.U.R. 1928B, 630 (Pa. Pub. Serv. Comm'n); Knoxville v. South Pittsburgh Water Co., P.U.R. 1928B, 204 (Pa. Pub. Serv. Comm'n). But it is said that promotion costs should not be used as a basis for calculating going value. Aluminum Goods Mfg. Co. v. Laclede Gas Light Co., P.U.R. 1927B, 1 (Mo. Pub. Serv. Comm'n); *Re* Alexandria Water Co., P.U.R. 1932C, 342 (Va. State Corp. Comm'n); *cf.* Harris v. South Side Gas & Elec. Co., P.U.R. 1915F, 747 (Ariz. Corp. Comm'n), where the direct costs of establishing the plant as a going concern were met by profits resulting from unregulated operation during a period prior to the purchase of the property by the defendant utility company.

[34] *Re* Haines Canyon Water Co., P.U.R. 1928D, 545 (Cal. R.R. Comm'n).

stock dividends and surplus of the utility,[35] although the market value of the capital securities has been rejected as a fair index of the property taken.[36] Evidence bearing on the market value of the capital stock of the utility is admissible in ascertaining the value of the company,[37] and it appears that the common stock when sold should reflect any appreciation in the value of the plant, the equity of which is represented by the stock.[38]

The inadequacy of this approach is obvious. The amount of dividends paid out to shareholders lies in the discretion of the board of directors. If the said directors decide not to declare a dividend, but rather to put the surplus into improvements of the company, this method will show no going value for the prosperous, expanding company. Also, the market value of certain securities often is a poor indication of the actual worth and status of the company represented. Fluctuations in prices of listed securities may occur for numerous reasons, including many social, political and economic factors having little or no bearing on the condition of the utility in question.

Historical-Cost Method

Another means known as the historical- or original-cost method suggests that an amount be added to the actual construction cost of the completed plant equal to the difference of the operating expenses plus the fair return less the operating revenues. If there is such a balance, it represents the going-conern value.[39] This method fails to allow for going-concern value where the utility is operating at a profit. If the revenues of the company equal or exceed the expenses and the anticipated fair return, the going business is without a going value.[40]

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[35] *Re* Home Tel. Co., P.U.R. 1928A, 445 (Ind. Pub. Serv. Comm'n). The Commission did not, however, support this position with any authority or reasons.

[36] Bardstown & Louisville Turnpike Co. v. Nelson County, 117 Ky. 674, 78 S.W. 851 (1904). In this case, valuation of a road was in issue, the court holding the market value of the stock did not enter into the question.

> The company may have been overcapitalized, or may pay unnecessarily large salaries to useless officers, all of which would have affected the market value of this stock, and yet have no just effect whatever upon the value of its road. While the value of the road would likely have affected the value of the stock, the market value of the stock could not possibly have affected the actual value of the road. . . . 78 S.W. at 855.

[37] *In re* Monogahela Water Co., 223 Pa. 323, 72 Atl. 625 (1909); Mifflin Bridge Co. v. Juniata County, 114 Pa. 365, 22 Atl. 896 (1891).

[38] *Re* Southwestern Bell Tel. Co., 2 P.U.R.3d (Houston, Texas, City Council 1953).

[39] Briggs v. Peaks Island Corp., P.U.R. 1917E, 750 (Me. Pub. Util. Comm'n); Rich v. Biddeford & Saco Water Co., P.U.R. 1917C, 982 (Me. Pub. Serv. Comm'n).

[40] Harris v. South Side Gas & Elec. Co., P.U.R. 1915F, 747 (Ariz. Corp. Comm'n).

Capitalization Method

One method that has been uniformly rejected by the tribunals for measuring going-concern value is capitalization of prospective earnings.[41] To capitalize earnings at 8% would take 12.5 years at a constant net earnings. Therefore, by way of illustration, if the annual earnings are ten thousand dollars ($10,000) and the capitalization rate 8%, the going-value would be $10,000 × 12.5, or $125,000. An increase in the capitalization rate results in a decrease in the going-value. In condemnation cases this procedure fails to take into account the fact that the earning life of the plant in question is terminable by those particular proceedings.[42] It cannot be adopted as a sufficient or satisfactory test of present value, for it would set at the present time a specific value which would continue as a fixed and unvarying source of income no matter how conditions may change,[43] an untenable position in view of the high degree of control exercised over public utilities. Only evidence of realized earnings is admissible, but the tribunals have failed to define clearly the function of this evidence in the determination of just compensation.[44]

Per-Cent Method

> It must be apparent that establishing the cost of going concern value on a per cent of the entire property involved is not partitcularly scientific or illuminating, but this method seems to have been sanctioned by engineering usages and court decisions.[45]

This quotation is indicative of a long line of authority accepting the per-cent method of calculating going-concern value.[46] As admitted by the Ohio Public Utilities Commission, this method entails little scientific or mathematical calculations. For these and other

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[41] National Water Works Co. v. Kansas City, 62 Fed. 853 (8th Cir. 1894); Kennebec Water Dist. v. City of Waterville, 97 Me. 185, 54 Atl. 6 (1902); *Re* Red River Power Co., P.U.R. 1923E, 534 (N.D. Bd. of R.R. Comm'rs); see generally ORGEL, VALUATION UNDER EMINENT DOMAIN §§ 216, 218 (1953).

[42] *Re* Racine Water Co., P.U.R. 1917D, 277 (Wis. R.R. Comm'n).

[43] *Re* City of Los Angeles, P.U.R. 1916F, 593 (Cal. R.R. Comm'n); Kennebec Water Dist. v. City of Waterville, 97 Me. 185, 54 Atl. 6 (1902); see generally BONBRIGHT, VALUATION OF PROPERTY chs. XVI, XXXI (1937).

[44] *Re* City of Oroville, P.U.R. 1922E, 451 (Cal. R.R. Comm'n); *Re* City of Redding, P.U.R. 1921C, 1 (Cal. R.R. Comm'n); Village of Whitehall v. Northern States Power Co., 27 P.U.R. (n.s.) 477 (Wis. Pub. Serv. Comm'n 1938).

[45] *Re* Ohio Bell Tel. Co., P.U.R. 1931B, 46, 58 (Ohio Pub. Util. Comm'n).

[46] Georgia Ry. & Power Co. v. Railroad Comm'n, P.U.R. 1925A, 546 (D. Ga.); Worcester Elec. Light Co. v. Atwill, P.U.R. 1929B, 1 (D. Mass.); Elizabeth Water Co. v. Board of Pub. Util. Comm'rs, P.U.R. 1929C, 531 (D.N.J.); *Re* Carolina Power & Light Co., 2 P.U.R. (n.s.) 263 (S.C.R.R. Comm'n); *Re* Nashville Ry. & Light Co., P.U.R. 1929A, 664 (Tenn. R.R. & Pub. Util. Comm'n).

reasons it has been rejected by many considering it.[47]

Facility in application is the key to this method. A designated percentage of the reproduction cost new less depreciation is taken, and that figure is denominated going-concern value.[48] The Arizona Corporatiton Commission has found that by including going-value in the form of a lump sum in a reasonable and customary amount, calculated by the per-cent method, its purpose would be as well served as by any extensive or detailed analysis.[49]

The per-cent method circumvents many of the difficulties encountered in the other theories discussed above. It reduces the task of the expert to evaluating tangible property, leaving the intangible going-concern value to be figured in terms of what he determines the physical value of the plant to be. Going-concern value is a present one, not to be based upon costs of labor and materials years ago. The lesser degree of efficiency and the less experienced management of the past are not elements of the present worth of the active utility and should not be considered, as in the unrequited-costs method or the development-cost theory. The going-concern value based upon a percentage of the tangible assets of the utility is not distorted by past monetary deficiencies in operation or future complications. If previous deficits have been recouped or the business is operating at a profit, a going business would be without any going value.

The problem with the per-cent method, of course, is the need to determine what percentage is to be used. Each case has to be considered on its own merits in determining value, and percentages from other cases are not precedents except to demonstrate the trend of decisions.[50] A perusal of the cases adopting this method will show ten per cent to be the most prevalent figure.[51]

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[47] City of Charleston v. Public Serv. Comm'n, 110 W. Va. 245, 159 S.E. 38 (1931); *Re* Cambridge Home Tel. Co., P.U.R. 1930E, 65 (Ohio Pub. Util. Comm'n); *Re* Racine Water Co., P.U.R. 1917D, 277 (Wis. R.R. Comm'n).

[48] Salisbury v. Salisbury Light, Heat & Power Co., P.U.R. 1918E, 331 (Md. Pub. Serv. Comm'n); *Re* Kahoka Tel. & Constr. Co., P.U.R. 1926D, 701 (Mo. Pub. Serv. Comm'n).

[49] *Re* Flagstaff Elec. Light Co., Ariz. Corp. Comm'n, Docket No. 5936-E-495, Decision No. 7923 (April 24, 1935).

[50] New York & Richmond Gas Co. v. Prendergast, 10 F.2d 167 (E.D.N.Y. 1925).

[51] *Re* Mountain States Tel. & Tel. Co., P.U.R. 1929D, 414 (Ariz. Corp. Comm'n). The Commission stated:

> The average of practically all of the conclusions on going concern value as viewed by the Supreme Court of the United States, is somewhere around 10 per cent, and that percentage is applied to what they find is a fair value of the physical property. The amount which this Commission will include in its appraisal as going concern value is 10 per cent of the reproduction cost of the property less depreciation. P.U.R. 1929D at 421-422.

It is a fundamental and well-established rule of law that the burden of proof as to the amount of damages in condemnation proceedings is upon the property owner.[52]

Conclusion

As the cities of Arizona continue to expand, the municipal governments will be forced to centralize the utility services in their respective communities to meet the demands of the people for quality and economy. If no satisfactory figure is arrived at for the purchase of the private utility company, the city may proceed in condemnation. The physical valuations submitted by engineers for both parties will probably show little variance. The amount assessed as the going-concern value of the particular utility is dependent on its source. The condemning authority will employ that method resulting in the lowest figure; the utility will attempt to capitalize its prospective earnings or use some other way to show a very high intangible value.

It is the familiar conflict of public and private interests, the two generally being irreconcilable. It is the hope of this writer that the foregoing article will shed some light on this current problem and facilitate the task of the court in its determination of the going-concern value of a public utility.

[52] Federal Power Comm'n v. Natural Gas Pipeline Co. of America, 315 U.S. 575 (1942); Town of Williams v. Perrin, 70 Ariz. 157, 217 P.2d 918 (1950); City of St. Louis v. Kisling, 318 S.W.2d 221 (Mo. 1958); Atlantic City Sewerage Co. v. Public Util. Comm'rs, 128 N.J.L. 359, 26 A.2d 71 (1942); Finley v. State *ex rel.* Dep't of Highways, 377 P.2d 596 (Okla. 1962); 29 C.J.S. EMINENT DOMAIN § 271 (1941).