

Decision No. 14687.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

TABLE MOUNTAIN IRRIGATION DISTRICT,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,  
a corporation,

Defendant.

Case No. 1998.

Raymond A. Leonard and Andrew J. Lloyd, for complainant.

C. P. Cutten and R. W. DuVal, by R. W. DuVal, for  
defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Table Mountain Irrigation District, located in Butte County near the City of Oroville, and organized for the purpose of supplying water for irrigation purposes to lands within the district, has filed a complaint against the Pacific Gas and Electric Company, a corporation, engaged in the business, among other things, of distributing and selling water in certain sections of Butte County.

The complaint alleges in effect that the Pacific Gas and Electric Company, hereinafter referred to as defendant, is wasting water during the spring months of each year from the ditch system supplying its Lime Saddle and Coal Canyon power houses in Butte County: that the quantity of water wasted varies

from about seventeen cubic feet per second in the early spring to none at all about July first of average years. It is further alleged that Table Mountain Irrigation District, hereinafter referred to as complainant, and the Thermalito Irrigation District are jointly constructing a reservoir in Butte County, called Lake Wilenor Reservoir, waters from which will be conducted for a considerable distance through defendant's ditches and power houses to the point of diversion of the Thermalito Irrigation District; that the formation of complainant district contemplates and depends for its successful consummation upon the use of this excess of surplus water and can not irrigate its lands without it; that defendant at one time agreed to sell complainant fifty-five per cent. of the surplus waters but now refuses to do so. Wherefore complainant asks that defendant be ordered to sell and supply complainant all or such part of the surplus waters as complainant may require, at a price to be fixed by the Railroad Commission.

Defendant by way of answer enters a general denial of all of the substantial allegations of the complaint, and in addition thereto alleges in effect that land owners along the defendant's ditches have made application for water, but have been refused for the reason that water is not available during the entire season; that there are lands adjacent to the ditches that are susceptible of irrigation, for which defendant must maintain a supply of water in case the owners thereof in the future desire water, whereas the lands of complainant are located from two to six miles from the ditches and are widely scattered; that any surplus water existing in the ditches is subject to demand by the Thermalito Irrigation District in accordance with an agreement dated April 25, 1923. Defendant therefore asks that the

complaint be dismissed.

Public hearings in this proceeding were held before Examiner Satterwhite at Oroville and San Francisco after all interested parties had been duly notified thereof and given an opportunity to appear and be heard.

Defendant diverts water from the West Branch of the Feather River, and conveys it through its Miocene Ditch to the Lime Saddle and Coal Canyon power houses, and thereafter through its Powers ditch to a reservoir at the City of Oroville. Water is sold for irrigation and domestic purposes from these ditches to various consumers, including the City of Oroville and the Thermalito Irrigation District, which now purchases from the defendant 364 miner's inches of water in accordance with an agreement entered into under date of April 25, 1923, which also provides for the sale of additional water to the District if such water is available.

The complainant is an irrigation district duly organized and existing under the laws of the State of California, comprising an area of approximately 2040 acres of lands which are widely scattered, some being located adjacent to the defendant's ditches and others about six miles distant.

The complainant, acting jointly with the Thermalito Irrigation District, acquired by purchase from the defendant its Concow Reservoir site and Cherokee Ditch, and constructed a dam from which water may be delivered through said Cherokee Ditch to defendant's Miocene Ditch. It was proposed, when available, to use the excess or surplus water now wasted by defendant, for irrigation purposes on the lands of the two Districts, supplementing this supply from the stored waters in the reservoir as the season advanced and the supply from surplus waters diminished. In this

way a maximum flow could be maintained through defendant's ditches and power houses, enabling the operation thereof at full capacity and at the same time allowing complete utilization of the waters heretofore allowed to run to waste.

The total expenditure of this development amounts to about \$208,000, of which fifty-five per cent. is to be paid by complainant and forty-five per cent. by the Thermalito Irrigation District. However, it appears that approval of complainant's bonds has been temporarily withheld by the Bond Certification Commission, with the result that the Thermalito Irrigation District having already acquired the distribution system in Thermalito Colony and being required to render service to its lands, found it necessary to proceed with the proposed plan alone. An agreement was therefore entered into with defendant under date of March 29, 1923, which provided for the sale of the Concow Reservoir site and Cherokee Ditch to the Thermalito Irrigation District, and also permitted the use of defendant's ditch system for the conveyance of the stored waters in Concow Reservoir, and further provided for payment by defendant for the use of the waters for the generation of electric energy in its Lime Saddle and Coal Canyon power houses. This contract also provided for complainant's participation in the rights granted to the Thermalito Irrigation District when complainant was in a position to proceed with its proposed development. However, no reference was made to surplus waters in this contract, and on April 25, 1923, another contract was entered into between defendant and Thermalito Irrigation District providing for the sale of the surplus waters in the Miocene Ditch system to the Thermalito Irrigation District, but complainant was not made a party to this contract or mentioned as having a right to participate in the use of these waters. This contract contained

a clause to the effect that the agreement should not be assignable by the District without the written consent of defendant, and that the water sold to the Thermalito Irrigation District should be used by it for sale to its consumers in the District.

Defendant contends that according to this contract of April 25, 1923, the surplus waters which complainant desires are subject to demand by the Thermalito Irrigation District; that with the limited supply of water now existing on the Miocene Ditch system, defendant's first obligation is to supply the lands immediately contiguous to its ditches, rather than dedicate and sell water to complainant, whose lands are distant from defendant's ditches and outside of its service areas. In support of these contentions it was maintained that approximately 2000 acres of land are susceptible of irrigation from the defendant's ditches and located within the service area of the ditch system. However, the evidence indicates that there is comparatively little demand for this surplus water for the reason that it is not available throughout the entire growing period, and there are therefore very few crops which can be matured thereby with any certainty.

On October 26, 1923, complainant and the Thermalito Irrigation District entered into a contract whereby the surplus waters which the latter acquired the right to purchase from defendant under the terms of the above mentioned agreement of April 25, 1923, were to be divided upon the basis of delivering 45% thereof to Thermalito Irrigation District and 55% to complainant. Defendant was not made a party to this contract, and apparently refused to give its consent to the sale of water outside the boundaries of the Thermalito District as required under the terms of its contract with the District. From the terms of the agreement made by and between the two irrigation districts and from the other

evidence presented in this matter it is clear that the plans of organization of both districts from their inception contemplated the joint use of these surplus waters upon the basis of their actual requirements. The Thermalito District at the present time can not use more than 45 per cent. of these waters. To permit the continued idle waste of 55 per cent. of these valuable waters, which the complainant Table Mountain Irrigation District so vitally needs and which it is now ready and willing to put to immediate and beneficial use, for no better reason than vague possibilities of indefinite demands for service which may or may not be made upon the defendant in the future, would be not only unreasonable but also a gross miscarriage of justice.

A careful consideration of the testimony leads to the conclusion that it is to the best interests of all parties concerned to allow complainant the use of such of the above mentioned surplus waters as are not used by the Thermalito Irrigation District or subject to the demand and actual use by defendant's other consumers on the Miocene Ditch system. It necessarily follows that any existing contracts or agreements heretofore approved by the Railroad Commission and which contain provisions in conflict herewith shall be considered as modified to the extent necessary to comply with the decision in this matter.

Very little testimony was introduced relative to the rate to be charged for this water. The contract between defendant and Thermalito Irrigation District provides for a wholesale rate of six cents per miner's inch day, which covers the sale of 364 miner's inches of water throughout the season, and also for the sale of excess water when it is available. Consumers along the ditch are charged ten cents per miner's inch for season flow and also for the excess or surplus waters. As complainant will take the water from defendant's ditches under practically

the same conditions as Thermalito Irrigation District, it is entitled to the same rate, and the rate of six cents per miner's inch per twenty-four hours will be provided for in the following order.

O R D E R

Table Mountain Irrigation District having filed a complaint as entitled above, requesting that the Commission order the Pacific Gas and Electric Company, a corporation, to sell to said District the available excess or surplus waters that are wasted from the Miocene Ditch system during the spring months, and for the establishment of a reasonable rate to be charged for this water, public hearings having been held, the matter having been submitted, and being now ready for decision,

It Is Hereby Found as a Fact that Table Mountain Irrigation District is entitled to participate in the use of such excess or surplus waters as exist or may exist in the Miocene Ditch system of Pacific Gas and Electric Company, a corporation, and that a fair and reasonable rate to charge said District for this water is six cents (6¢) per miner's inch for twenty-four hours.

Basing its order upon the foregoing finding of fact and upon the further statements of fact contained in the preceding opinion,

**IT IS HEREBY ORDERED:**

1. That Pacific Gas and Electric Company, a corporation, be and it is hereby authorized and directed to deliver at a point or points to be mutually agreed upon, to Table Mountain Irrigation District upon demand, such excess or surplus waters as exist or may exist in the Miocene Ditch system after such waters have passed

through Lime Saddle and Coal Canyon power houses and which waters are not required or necessary to supply said Pacific Gas and Electric Company's water consumers in the amounts to which they are entitled, actually pay for and put to reasonable and beneficial use.

2. That Pacific Gas and Electric Company, a corporation, be and it is hereby authorized and directed to file with the Railroad Commission within twenty (20) days from the date of this order the following rate to be charged for all said excess or surplus waters delivered to Table Mountain Irrigation District from the Miocene Ditch system under the authority granted herein.

Per miner's inch for twenty-four hours six cents (6¢).  
One miner's inch shall be taken to be the equivalent of one fortieth ( $1/40$ ) of a cubic foot per second.

3. Any contract or other agreement heretofore approved, accepted for filing, or otherwise authorized by this Commission which may be in conflict with the terms and provisions of the order herein is hereby declared to be modified to the extent of such variance with this order.
4. The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 23<sup>rd</sup> day of March, 1925.

H. B. Bondig

C. Seaver

Ernest Shore

George D. Squires

Commissioners.