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Decision No. 17824

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of  
PACIFIC GAS AND ELECTRIC COMPANY, a  
corporation, and NEVADA IRRIGATION  
DISTRICT, a duly created irrigation  
district, for an order of the Rail-  
road Commission of the State of  
California authorizing the former to sell  
and convey and the latter to purchase  
and acquire the properties referred to  
in this application; etc.

ORIGINAL

) Application No. 13,366

Chas. P. Cutten, for Pacific Gas and Electric Co.  
C. F. Metteer, for the Nevada Irrigation District.  
Frank R. Wehe, for the Eagle Bird Gold Mining Co.

BY THE COMMISSION:

OPINION

This is an application on the part of the Pacific Gas and Electric Company, a public utility corporation, to sell and Nevada Irrigation District to purchase certain described ditches, canals, reservoirs, conduits, tunnels, pipe lines, rights of way, and other structures and facilities, for the diversion and distribution of water under a system supplying water for agricultural, domestic and industrial purposes in the County of Nevada and within the boundaries of the Nevada Irrigation District, and also within certain areas lying adjacent to or surrounded thereby, but not included within said District, together with certain waters and the right to take and divert the same - all within the limits of Nevada County - and lying generally within the water shed of that certain

stream known as Deer Creek, which properties are definitely set forth and described in Exhibits "B" and "C" attached to the petition herein.

A hearing upon this matter was held before Examiner Wheat at Grass Valley, at which time it appeared that the properties desired to be transferred constitute the water distribution properties of the Pacific Gas and Electric Company's system located in Nevada County below that Company's Deer Creek power house. Reports dealing with the estimated value of the properties proposed to be transferred on the part of Fred H. Tibbits for the Nevada Irrigation District, and on the part of the Engineering Department of the Pacific Gas and Electric Company were filed at this hearing. It is proposed by the parties to transfer these properties for the price of three hundred and fifty thousand dollars (\$350,000.00), a sum substantially lower than the valuation set forth in the Company's report, but substantially higher than that set forth in Mr. Tibbitt's estimate.

The testimony shows that the directors of the District and the officials of the Pacific Gas and Electric Company now believe that the price of three hundred and fifty thousand dollars (\$350,000.00) above mentioned is a fair and reasonable price to be paid by the District for the properties intended to be conveyed. In our opinion the testimony disclosed that neither the consumers nor the public generally would be injured or inconvenienced by said transfer. The only protest registered at the time of the hearing, or otherwise, was that of the Eagle Bird Gold Mining Company, whose sole interest appears to be the protection of alleged water rights on the South Fork of the Yuba River. Inasmuch as neither the properties nor waters or water rights herein proposed to be transferred affect

in any manner any water rights upon the South Fork of the Yuba River, it is our opinion that claimants to such rights could not be injured nor could their position be changed or hampered in any manner by the granting of the present application. In any event, nothing that this Commission could do in the premises could deleteriously affect the right of any claimant to waters or water rights, inasmuch as it is clear that the sole province of this Commission in the present instance is to authorize or decline to authorize the sale of whatever properties may in fact belong to the selling company. We cannot authorize such a company to transfer properties which it does not own, nor could we affect the title to water rights owned or claimed by third parties.

It is our opinion that the sale herein proposed will not injuriously affect the interests of the public or any portion thereof or the consumers now served from the properties herein proposed to be transferred, and it is our further opinion that the sale herein proposed should be consummated in the public interest. Our order will therefore authorize the transfer of the properties mentioned in Exhibits "B" and "C" of the petition herein at the price stated above, which we hereby find to be a fair and reasonable price to be paid for said properties.

It is, of course, fundamental that the transfer of properties which are subject to public utility obligations does not put an end to these obligations, or any of them. The Irrigation District comes in this proceeding definitely accepting, and stating that it desires to accept all obligations which now or in the future might rest upon the Pacific Gas and Electric Company in connection with its public utility service of water from properties proposed to be transferred, and in this connection the Irrigation District has filed with this

Commission a Resolution reading in part as follows:

"That in the event of the Railroad Commission of the State of California making its order approving such sale of properties as is contemplated by said application No. 13366 pending before the Railroad Commission of the State of California, then upon the transfer by good and sufficient deed of all of said properties described or referred to in said application, free and clear of all liens and incumbrances, to Nevada Irrigation District said Nevada Irrigation District undertakes and agrees to assume all of the obligations resting upon said Pacific Gas and Electric Company to supply water from the said system being conveyed by the said Pacific Gas and Electric Company to Nevada Irrigation District, to all of the territory, both within and without the boundaries of Nevada Irrigation District that may reasonably be served by the system conveyed, and also to fully assume and carry out all obligations placed upon Nevada Irrigation District under and by virtue of the provisions set forth in said paragraph numbered 11 of the agreement between Nevada Irrigation District and Pacific Gas and Electric Company dated the 29th day of April A. D. 1924. "

Paragraph 11 of the Agreement above referred to reads as follows:

" 11. Subject to approval by the Railroad Commission of California, the Company will sell to the District and the District will purchase from the Company at a price to be agreed upon between them, or, if they are unable or fail for any reason to agree thereon, at a price to be determined by said Railroad Commission, in a proper proceeding to be instituted before it by the District for the purpose of having just compensation determined therefor, all of the distributing facilities of the Company that are used or useful in furnishing water service to the public in said County of Nevada below Deer Creek Power Plant, including ditches, pipe-lines and reservoirs below said Deer Creek Power Plant and the Company's water rights in and to the waters of Deer Creek and its tributaries, and, upon the consummation of such sale and purchase, the District will assume at the tailrace of Deer Creek Power Plant all obligations for water service which may attach to all waters now or in the future arriving at such point, and the Company shall thereupon be released from all present and future liability as a public utility for water service in Nevada County now being furnished by means of its Main South Yuba Canal, not including, however, any obligations to the District imposed upon the Company by this agreement."

As we stated in our Decision No. 15296, Application 12201 entitled "In the Matter of the Application of Excelsior Water and Power Company, a corporation, to sell, and Nevada Irrigation District to purchase a water system",

"It is clear that it is the duty of the Commission in passing upon requests for the transfer of public utility properties to an organization such as an irrigation district, adequately to safeguard and protect the rights of any consumers remaining outside of the boundaries of the district. This is particularly true because the Commission possesses no control or jurisdiction over irrigation districts, and there exists no state authority for the fixing of rates for such outside service."

It is our opinion that the interests of such outside consumers upon the properties herein proposed to be transferred will be adequately protected by the Resolution above mentioned, the quoted portion of which is hereby made a part hereof, and a condition of the Order which follows:

#### ORDER

Pacific Gas and Electric Company, a public utility corporation, having made application to this Commission to transfer certain properties to Nevada Irrigation District, which joins in said application, a public hearing having been held, the matter having been submitted, and the Commission being now fully informed in the matter,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company be and it is hereby authorized to transfer those certain properties in the County of Nevada to Nevada Irrigation District, which properties are more particularly described in Exhibits "B" and "C" attached to the application herein, and made a part hereof, subject to the following condition, in addition to those stated in the Opinion which precedes this Order:

The authority herein granted shall apply only to such transfer as shall have been made on or before March 1st, 1927.

IT IS HEREBY FURTHER ORDERED that Pacific Gas and Electric Company file with this Commission within thirty (30) days from and after the date hereof, a certified copy of the instrument of conveyance by which it proposed to transfer said properties to said Nevada Irrigation District.

IT IS HEREBY FURTHER ORDERED that within thirty (30) days from the date of this Order Pacific Gas and Electric Company file with this Commission a certified statement indicating the date on which it relinquished or intends to relinquish control and possession of the properties herein authorized to be transferred. The authority herein granted shall become effective on the date hereof. For all other purposes the effective date of this order shall be twenty (20) days from and after the date thereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of December, 1926.

*H. H. Burdige*  
*Al. S. ...*  
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Commissioners