

Decision No. 10982.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
TRUCKEE RIVER POWER COMPANY, a cor-
poration, for a certificate of
public convenience and necessity
authorizing applicant to extend its
electric service into the Town of
Truckee, California.

Application No. 14556.

Orrick, Palmer & Dahlquist, by T. W. Dahlquist,
for Applicant.
T. L. Chamberlain, for Truckee Public Utility
District, interested party.
Devlin & Brookman, by Douglas Brookman, for
Truckee Electric Light & Power Company and
Paul M. Doyle, Protestants.

BY THE COMMISSION:

O P I N I O N

This is an application by Truckee River Power Company, a corporation, requesting this Commission to grant applicant a certificate of public convenience and necessity to extend its electric service into the Town of Truckee and to amend a certain agreement dated April 7, 1924, between applicant and Truckee Electric Light and Power Company and Paul M. Doyle.

Truckee River Power Company, has since the filing of this application, changed its name to Sierra Pacific Power Company, and this latter title will therefore be used throughout this opinion and order.

Hearings were held before Examiner Gannon in the Town of Truckee, on May 17th, and June 4th and 5th, 1928, at which time testimony was introduced and the matter submitted on brief. Applicant desires to extend its electric service into the Town of Truckee for the purpose of supplying energy to Truckee Public

Utility District. Truckee Electric Light and Power Company and Paul M. Doyle protested the granting of the application, while Truckee Public Utility District intervened in favor thereof.

A brief history of the circumstances surrounding this application may be pertinent at this point. It appears that Truckee Electric Light and Power Company has been, for many years, the sole agent supplying electric energy to the people in and around the Town of Truckee, and that due to alleged excessive rates and inadequate service, a public utility district was formed by the people of Truckee for the purpose of distributing and selling electric energy in competition with the company. It also appears that this Commission, in its Decision No. 13784, dated July 8, 1924, granted applicant a certificate of public convenience and necessity to exercise certain rights and privileges of franchise in the County of Nevada, (Ordinance No. 226), but expressly excluded service to the Town of Truckee, except to such degree as was necessary to deliver power to the Truckee Electric Light and Power Company. Prior to the granting of this certificate applicant entered into an agreement with Truckee Electric Light and Power Company and Paul M. Doyle, covering such sale and purchase of electric energy.

The testimony shows that applicant has made an investment of approximately \$20,000.00 to serve Truckee Electric Light and Power Company and that if the Truckee Public Utility District is not permitted to purchase power from it that its investment will be jeopardized, as the district will, in that event, generate electric energy by a diesel plant. The utility district has already built its distribution system and has received applications for service representing approximately 95% of the consumption in Truckee, exclusive of the Southern Pacific Company load.

It is clear from the record that rates, public rela-

tions and service in Truckee have been far from satisfactory and it is also of record that no complaint of service or rates was pressed with this Commission, although correspondence afforded ample opportunity for and invited such action.

We have then a unique situation. A public utility district has been formed and a distribution plant has been constructed without any assurance that this source of energy would be available. The usual method of resorting to eminent domain proceedings to acquire the existing utility's property has been disregarded in the apparent confidence, on the part of the district officials, that this Commission must extricate the district from its difficulties. Had not the applicant been moved to protect its interests and seek modification of the order above referred to, it would seem that the district would now be faced with a very serious situation.

Denial of the application would force the district to a more expensive source of energy, which will react to the detriment of applicant, and incidentally, to the detriment of the district and the benefit of protestants. We feel that applicant, and applicant alone, merits our consideration. Protestants have forfeited their right to special consideration through failure to render a proper service and while Mr. Doyle, testifying for the protestant company, outlined a program of improvement which would apparently put his service upon a higher plane, his promises come too late. The principle laid down by this Commission in an early case (Oro Electric Corporation, 2 C.R.C. 770) is here directly applicable:

"We wish to be distinctly understood as announcing that we will not, except under the most unusual circumstances, permit an existing utility which has not done

its duty to the public to keep its field to itself by agreeing that it will henceforth improve its service or lower its rates or more completely serve the field or in any other respect comply with its full duty to the public."

The Commission does not feel any obligation resting upon it to protect the investment of a utility which is not doing its full duty to the public.

It is apparent with all the facts before us, that the application for modification of the certificate should be granted. It follows that the contract between applicant and protestants should be modified, both as to minimum revenue guarantees and demand charges, as transfer of load to the utility district which can be expected will materially alter conditions from those that have existed in the past and under which the present contract has applied. Such modification of the contract will be covered in the order.

It is not incumbent upon the Commission to determine whether or not the utility district has complied with all the requirements of the law in the organization of such district and this question is in no way involved in this proceeding.

O R D E R

Sierra Pacific Power Company having applied to the Railroad Commission to make its order granting applicant a certificate of public convenience and necessity to extend its electric service into the Town of Truckee, and amending a certain agreement dated April 7, 1924, between applicant and Truckee Electric Light and Power Company and Paul M. Doyle, public hearings having been held, the matter being submitted and now ready for decision,

The Railroad Commission of the State of California hereby certifies and declares that public convenience and necessity require and will require the amendment and modification of the

Commissioner's Order of July 8, 1924, Decision No. 13784.

IT IS HEREBY ORDERED that the second paragraph of the order issued under Decision No. Thirteen Thousand, Seven Hundred and Eighty-four (13784) be and the same is hereby changed to read as follows:

"The Railroad Commission of the State of California hereby declares that public convenience and necessity require and will require the exercise by Sierra Pacific Power Company of the rights and privileges granted under Ordinance No. 226, County of Nevada, in that portion of Nevada County lying east of the summit of the Sierra Nevada Mountains, but expressly excluding the Town of Truckee, except to such degree as may be necessary to deliver power to the Truckee Electric Light and Power Company and the Truckee Public Utility District."

IT IS HEREBY FURTHER ORDERED that,

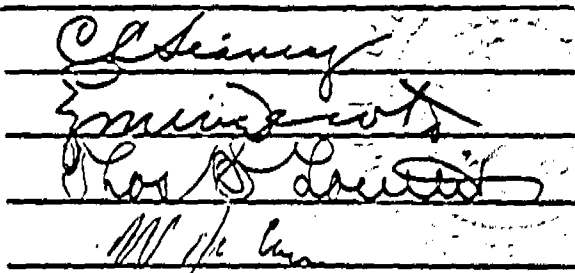
(1) That portion of the contract, dated April 7, 1924, between applicant and protestants requiring protestants to guarantee a certain minimum gross annual revenue for the year beginning April 7, 1928, and ending April 7, 1929, be and it is hereby cancelled.

(2) That portion of the contract rate providing that applicant shall bill protestants for demand charges based on 50% of the greatest demand occurring during the eleven (11) preceding months, be and the same is hereby cancelled.

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 hereof.

Dated at San Francisco, California, this 7th day of July, 1928.



 (Commissioners)