

Decision No. 20005 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Pacific Gas and Electric Company,
a corporation, and California
Telephone and Light Company, a
corporation,

Complainants,

vs.

Great Western Power Company of
California, a corporation,

Defendant.

Case No. 2613.

C. P. Cutten, for Complainants.

Chaffee E. Hall, for Defendant.

BY THE COMMISSION:

O P I N I O N

Pacific Gas and Electric Company and California Telephone and Light Company, complainants, ask the Commission to make its order directing and compelling Great Western Power Company of California, defendant, to remove certain of its lines in Sonoma County and directing it to cease making electric extensions into any part of the territory being served by complainants and requiring defendant to show cause before this Commission why it has made certain extensions in violation of an express order of the Commission, the order referred to being Decision No. 107 of this Commission, dated June 18, 1912.

Public hearings in this matter were held in San Francisco before Examiner Rowell on December 12th and 28th, 1928.

This complaint involves, primarily, the determination of just what territory was reserved exclusively to California

Telephone and Light Company by the Commission in its order of June 18, 1912, Decision No. 107 (consolidated proceedings Case No. 269 and Application No. 35) but, for the purpose of this proceeding only, was confined to that area into which defendant recently extended its lines and paralleled those of complainants; namely, that particular rural territory in Sonoma County southeast of the Town of Sebastopol, designated on Exhibit No. 1 as Todd School Road and Llano Avenue and extending approximately eight thousand (8,000) feet from Phillips Avenue to the L. C. Chopius house. The portion of the order that has to do with this complaint reads as follows:

"1. The application of Great Western Power Company for a certificate under the provisions of section 50a of the Public Utilities Act, that the present or future public convenience and necessity require or will require the construction specified in its petition in Application No. 35, is hereby granted as to all the sections of Solano County outside of incorporated cities and towns, except the territory now served by the Vacaville Water and Light Company; all sections of Napa County outside of incorporated cities and towns other than the district now served by the Napa Valley Electric Company; all sections of Sonoma County outside of incorporated cities and towns other than the districts served by the Cloverdale Light and Power Company, and the California Telephone and Light Company except the southern end of the Sonoma Valley in and about Shellville; also the cities or towns of Napa, Santa Rosa, Sebastopol, Petaluma, Dixon, Suisun and Fairfield and the city of Vallejo in so far as affects the sale of light or power to the city for municipal purposes and to the Vallejo Electric Light and Power Company; also other incorporated cities and towns, if any, in the territory affected as are not now supplied with light and power.

"2. The application of Great Western Power Company for such certificate is hereby denied, without prejudice to a further application, as to the county of Marin, the district now served by the California Telephone and Light Company (except the southern end of Sonoma Valley in and about Shellville, as to which the certificate is granted), the district now served by the Cloverdale Light and Power Company, the district now served by the Napa Valley Electric Company, the district now served by the Vallejo Electric Light and Power Company except in so far as affects the sale of light or power to the city for municipal purposes and to the Vallejo Electric Light and Power Company, to which extent the application is granted, and the district now served by the Vacaville Water and Light Company and any other portions of Sonoma, Napa and Solano counties as to which the application is not granted."

Considerable controversy resulted over the proper interpretation to be given to the words "district now served by the California Telephone and Light Company" as used in the Commission's order of June 18, 1912, and if the issues before us in this proceeding are to be decided it is necessary to determine the meaning of these words.

We are aided in this by reviewing Decision No. 214, dated September 7, 1912, (1 C.R.C. 507) wherein the Commission expressed itself on a similar matter. It appears that one Phillip Duffy, in behalf of himself and neighbors, residing in Napa Valley, Napa County, in the general vicinity of where both Napa Valley Electric Company and Great Western Power Company were operating, petitioned the Commission for an interpretation of that portion of its order in Case No. 269, Pacific Gas and Electric Company vs. Great Western Power Company, which grants to Great Western Power Company permission to transmit and distribute electrical energy in the City of Napa and in all other sections of Napa County outside of incorporated cities and towns other than the "district now served by Napa Valley Electric Company." The Commission in passing on the proper interpretation to be given to the words "district now served by Napa Valley Electric Company," among other things, stated as follows:

"In defining the language used in this Commission's order of June 18, 1912, the Commission is not to be understood as limiting the district served by the Napa Valley Electric Company to the actual consumers of electricity from its lines on June 18, 1912. A person who on that date was not taking electricity might nevertheless be living in the general district which was served by said company. This district consists of the Napa Valley, with certain limits to the north and to the south."

It is clear, from the foregoing opinion, that the Commission had in mind at the time of its order of June 18, 1912, that the area served by California Telephone and Light Company was not.

limited to the actual consumers of electricity from its lines on that date, but embraced also those prospective consumers in the "general district" of the company's operations. It is apparent, then, that if service was being rendered by California Telephone and Light Company on or before June 18, 1912, within the "general district" which includes the area in dispute in this proceeding, namely, that area heretofore described as being along the Todd School Road and Llano Avenue extending from Phillips Avenue to the L. C. Cnopius house, such "general district" was closed to Great Western Power Company under the provisions of the Commission's order of said date.

Testimony in the earlier proceeding (Case No. 269 and Application No. 35, Tr. p. 571) made a part of the evidence in this proceeding (Tr. p. 95, L. 17 to p. 96, L. 2) shows that California Telephone and Light Company had electric facilities in operation as far south as Hessel Station by March 23, 1912. Also, testimony in the present proceeding shows that California Telephone and Light Company extended its electric facilities on Friesen Lane (road entering into Todd School Road and designated as such on Exhibit No. 1) to serve Mr. Friesen at or about the same time the extension of facilities was made to Hessel Station, that is, during the winter of the years 1911 and 1912 (Tr. p. 90, L. 12, to p. 91, L. 25; p. 92, L. 5 to 16, and p. 96, L. 17 to 29, inclusive). Careful consideration of the evidence presented in this case leaves no doubt in the mind of the Commission but what service was being rendered on Friesen Lane on or before June 18, 1912. That Friesen Lane is in the same "general district" as the above mentioned area in dispute cannot be denied.

We find, from the evidence presented in this proceeding, that the territory along Todd School Road and Llano Avenue, from

Phillips Avenue to the L. C. Cnopius house, is within that territory for which a certificate of public convenience and necessity was denied to Great Western Power Company by the Commission's order of June 18, 1912, (Decision No. 107) and that Great Western Power Company proceeded in violation of said order in extending its facilities, on or about August 28, 1928, into said area along Todd School Road and Llano Avenue, from Phillips Avenue to the L. C. Cnopius house. The order herein shall provide that Great Western Power Company remove its electric facilities from and immediately cease making extensions into such above described area.

O R D E R

Pacific Gas and Electric Company and California Telephone and Light Company having filed a complaint with this Commission against Great Western Power Company and having asked this Commission to make its order directing and compelling Great Western Power Company to remove its electric lines from, and cease making extensions into, the area along Todd School Road and Llano Avenue to the L. C. Cnopius house; public hearings having been held and the Commission finding as a fact that such area is a part of the district served by California Telephone and Light Company on or before June 18, 1912, and, basing its conclusions on the foregoing finding of fact and on the further findings and statements specified in the opinion which precedes this order,

IT IS HEREBY ORDERED that Great Western Power Company of California immediately cease and desist from making extensions into the area described herein as along the Todd School Road and Llano Avenue from Phillips Avenue to the L. C. Cnopius house, approximately eight thousand feet.

IT IS HEREBY FURTHER ORDERED that Great Western Power Company of California remove its electric lines from said above described area within a period of not less than sixty (60) days from the date of this order except that this shall not apply to any of such facilities that California Telephone and Light Company may purchase from defendant for the rendering of service to consumers or prospective consumers in this area.

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 18th day of April, 1929.

Frank D. Lott

C. L. Sweeney
Edward C. ...

W. J. ...

Commissioners.