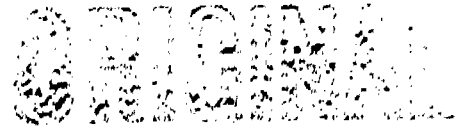


Decision No. 24536

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 TRUCKEE ELECTRIC LIGHT & POWER COMPANY,
 a corporation, and SIERRA PACIFIC POWER
 COMPANY, a corporation, for an order
 authorizing the Truckee Electric Light
 & Power Company to sell to said Sierra
 Pacific Power Company an electric light
 system in the Town of Truckee, State of
 California, and other property.



Application No. 17623

Paul M. Doyle for Truckee Electric Light
 & Power Company.
 Orrick, Palmer and Dahlquist, by Hillyer Brown
 and C. M. Jenks, for Sierra Pacific
 Power Company.
 T. L. Chamberlain and R. C. McKellips for
 Truckee Public Utility District,
 protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, as amended by the petition filed December 1, 1931, the Commission is asked to enter its order authorizing Truckee Electric Light & Power Company, hereinafter sometimes referred to as the Truckee Company, to sell and Sierra Pacific Power Company, hereinafter sometimes referred to as the Sierra Company, to purchase and operate the properties of said Truckee Electric Light & Power Company at the rates set forth in the schedule of rates heretofore filed with the Railroad Commission by said Truckee Electric Light & Power Company.

In the original petition filed August 25, 1931, Sierra Pacific Power Company also asked the Commission to modify its order in Decision No. 13784, dated July 8, 1924 (Vol. 25 Opinions and Orders of the Railroad Commission, page 144), as modified by its order in

Decision No. 19982, dated July 3, 1928 (Vol. 32 Opinions and Orders of the Railroad Commission, page 72), so as to read:

"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 (should be No. 126), County of Nevada, in that portion of Nevada County lying east of the summit of the Sierra Nevada Mountains."

The present orders of the Commission permit the Sierra Pacific Power Company to exercise the rights and privileges granted by Ordinance No. 126, 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 & Power Company and the Truckee Public Utility District.

A hearing was had on the original application on September 10th. Protestant at that time attacked the sufficiency of applicants' petition because it had not been prepared in accordance with the rules of procedure of the Commission. On December 1st an amended application was filed in which the request for a modification of the Commission's order in said Decision No. 13784 and its order in said Decision No. 19982 was omitted. Hearings were had on the amended application on January 8th and January 22nd. This matter was submitted on briefs and is now under submission and ready for decision.

Under date of July 31, 1931, Truckee Electric Light & Power Company agreed to sell all of its properties to Sierra Pacific Power Company and further agreed that it would cause Paul M. Doyle, principal stockholder and manager of the Truckee Company, to convey to Sierra Pacific Power Company the properties described in Exhibits "C" and "D" attached to the amended petition. In general, the properties which the Truckee Company has agreed to sell consist of

an electrical distributing system, and those of Paul M. Doyle consist of some 25 acres of land along the Truckee River, a dam, flume, two turbine wheels, power plant and machinery, together with the water right on the premises.

Sierra Pacific Power Company agreed to pay for the Truckee Company properties and the properties of Paul M. Doyle the sum of \$20,000.00. Geo. A. Campbell, president of the Sierra Company, testified that he assigned \$12,000.00 of the purchase price to the Truckee Company properties and \$8,000.00 to the properties of Paul M. Doyle. All of these properties are to be transferred free and clear of all indebtedness.

It is of record that Truckee Electric Light & Power Company desires to sell its properties because Paul M. Doyle no longer resides at Truckee and wishes to withdraw from all public utility business at Truckee. He has not been able to operate the properties during the last few years at a profit.

The purchaser is engaged in selling electricity to the Truckee Public Utility District and to the Truckee Company and to consumers residing in the vicinity of Truckee. It has a substation in Truckee and has a man stationed at Truckee at all times who is in charge of the company's operations around Truckee. If it acquires the aforesaid properties, it will expend approximately \$6,000.00 to repair and improve the same.

The granting of this application is opposed by the Truckee Public Utility District, which built an electric distributing system during May, June and July of 1928 and since then has been operating in competition with the Truckee Electric Light & Power Company.

It is contended by the Truckee Public Utility District that the Truckee Electric Light & Power Company has no franchise and

no right to operate a utility business in the town of Truckee, and therefore has no property of any value to convey; that the Sierra Pacific Power Company likewise has no valid franchise or right to serve the town of Truckee; that the sale price is excessive; and that public convenience and necessity do not require the transfer.

The record shows that the Truckee Electric Light & Power Company commenced operation in about 1890 and has since continuously served the town of Truckee. Its right to continue such service, therefore, cannot be questioned by this Commission. Section 50 (a) of the Public Utilities Act expressly permits it to continue operation as a public utility without the necessity of obtaining a certificate of public convenience and necessity. Nor can it be questioned that it has thus acquired a valuable property right of which it cannot be deprived by either the local authorities or by this Commission. Russell vs. Sebastian, 233 U. S. 195; Pereria vs. Wallace, 129 Cal. 397. Such a right is transferable, subject only to the requirement of Section 51 of the Public Utilities Act that the approval of the Commission be first obtained.

It is not necessary, therefore, to determine whether the Sierra Pacific Power Company now possesses a valid franchise to occupy the highways or a certificate from this Commission to serve within the same territory. It was not essential for the purpose of this proceeding that the Sierra Pacific Power Company seek also an enlargement of its certificate. If it is found that public convenience and necessity require that the transfer be permitted, the purchaser will succeed to whatever rights the seller may have acquired and may continue to operate as the seller might have done.

Coming to the matter of the reasonableness of the purchase price, to-wit, \$20,000.00, the Commission has not heretofore

taken upon itself to fix the price which may be paid by the purchasers of public utility property. (Decision No. 19467, dated March 12, 1928, Vol. 31 C.R.C. 327.) It is doubtful whether the Public Utilities Act confers any such jurisdiction on the Commission. There is no doubt, however, that the Commission has authority to determine what part of such purchase price should be financed through the issue of securities, or be charged to fixed capital accounts, or included in a rate base. Here, neither the issue of securities, nor the fixing of a rate base is involved. Counsel for the Sierra Company stipulated during the course of the hearing (transcript page 148) that any values mentioned during the hearing, or the sale price, or the figures set up in the application or amended application, will not be used in connection with any rate hearings or any applications for adjustments of rates. The amount which the purchaser may charge to fixed capital accounts is the present value of the land acquired, plus the actual or estimated historical cost of the physical properties offset by an appropriate credit to the reserve for accrued depreciation. This policy the Commission has followed for many years past.

It is urged that the Truckee Public Utility District with a nominal expenditure can furnish electric service to all of the consumers now attached to the Truckee system and that therefore there is no public need served by transferring the properties to Sierra Company at a cost of \$20,000.00, plus an additional expenditure of \$6,000.00 for improvements. The District now has about 328 consumers and the Truckee Company 58. While there is some evidence showing that if the properties of the Truckee Company are transferred to the Sierra Company some of the Truckee Company consumers will request service from the District, there is nothing in the record which warrants the conclusion that all of the consumers of the Truckee

Company will do so. It is the intention of the Sierra Company to improve the distributing system of the Truckee Company and render a better service. Its ability to do so is unquestioned. The purchase of the properties does not require the enlargement of the operating staff of the Sierra Company, either at Truckee or at its general office. We cannot order the Truckee Company to discontinue its operations nor refuse it the right to transfer its properties when it clearly appears that the purchaser is willing and able to render better service than the Truckee Company has rendered. The consumers of the Truckee Company are entitled to this improved service.

We are not at this time passing on the question as to whether there will result locality discrimination contrary to the Statutes of 1913(p. 508) if Sierra Company continues in effect the Truckee Company rates.

ORDER

Truckee Electric Light & Power Company having asked permission to sell the properties described in Exhibits "C" and "D" attached to the amended petition filed in this proceeding, to Sierra Pacific Power Company, and the latter having asked permission to purchase and operate such properties, public hearings having been held on this application before Examiner Fankhauser, the Commission having considered the evidence submitted at such hearings and being of the opinion that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED, that Truckee Electric Light & Power Company be, and it is hereby, authorized to sell to Sierra Pacific Power Company, after the effective date hereof and prior to August 1, 1932, the properties described in Exhibits "C" and "D" attached to the amended petition filed in this proceeding on December 1, 1931, and said Sierra Pacific Power Company be, and it is hereby, authorized to acquire within said time limits said properties and operate the same after their acquisition.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the following conditions:

1. The consideration which Sierra Pacific Power Company may pay for the aforesaid properties shall not be urged before this Commission as determining the value of said properties for any purpose other than the transfer herein authorized.

2. If the Sierra Pacific Power Company pays for said properties more than the present market value of the lands described in said Exhibits "C" and "D" and the estimated historical cost of the other properties described in said Exhibits "C" and "D", less the accrued depreciation, said Sierra Pacific Power Company must charge such excess purchase price to its corporate surplus account.

3. The authority herein granted will become effective twenty (20) days after the date hereof.

DATED at San Francisco, California, this 29th day of February, 1932.

C. C. Deane
Leon C. White
M. J. Linn
M. B. Harris
Fred G. Stewart
Commissioners.