

ORIGINAL

G. SPECIALE,

Complainant,

vs.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant.

Case No. 742.

Orvis Speciale for complainant.
Chas. P. Cutten for defendant.

DEVLIN, Commissioner.

O P I N I O N.

This is a complaint by Mr. G. Speciale, an orchardist of Almaden Road, Santa Clara County, California, against the Pacific Gas & Electric Company to compel defendant to sell complainant electric energy for pumping purposes, and to execute a contract for that purpose.

The complainant alleges, in effect, that he is an orchardist residing on the Almaden Road, County of Santa Clara, State of California; that on December 22, 1911, he entered into a three-year contract with defendant to purchase electric energy for a 20 Horse Power motor for irrigation purposes from the defendant and to pay it an annual minimum of \$120.00; that during the first year the consumption was in excess of the minimum charge, but that during 1913 the pumping plant failed, due to drought and he was prevented from using the minimum of \$120.00 worth of energy, the energy bill being only \$25.90; that the water rose in the well in 1914, but he was prevented from using the minimum, owing to the defendant's disconnecting his service on June 25, 1914, and refusing to connect service unless he paid the minimum for the 1913 season.

The complainant further alleges that the failure of the water supply was an act of God, that the matter should be put aside for a court to decide, and prays that the Commission compel the Pacific Gas & Electric Company to supply power and execute a contract for that purpose.

The defendant in its answer to the complaint, admits that a contract was entered into with complainant for service to a 20 H.P. motor; that the total consumption for the third year was thirty-two and 70/100 dollars (\$32.70); that on June 23, 1914, it removed complainant's meter and discontinued service, and has refused and still refuses to enter into a contract to furnish power until the complainant has paid the minimum of \$127.10 due. Defendant denies that complainant tendered the sum of \$32.70 in payment of or as a credit on, the minimum, for the year 1914; denies that complainant was prevented from fulfilling his contract with defendant by an act of God and an unavoidable accident; and denies that it is under obligation to furnish power to the complainant or to enter into contract with complainant until complainant shall have paid the amount due under the terms of the contract.

The hearing in this case was held at San Jose on February 19, 1915.

The evidence shows that complainant entered into a three-year contract with defendant on the 22nd day of December, 1911, whereby defendant promised to sell and deliver and complainant promised to purchase all of the electricity required to operate the 20 H.P. pumping plant located on Almaden Road, Santa Clara County, California. The annual minimum guarantee payment under the above contract is \$6.00 per H. P. of the rated capacity of the motor, or \$120.00 per year. To render service to complainant, defendant invested \$265.10 in local extension, including transformers and meters. Service was first rendered on March 19, 1912, and during the first year the consumption amounted to

\$155.55, which amount was paid by complainant to defendant.

During the year ending March 19, 1914, complainant's consumption amounted to only \$25.90, ~~due to inability on the part of complainant to obtain water, owing to dry season.~~ / ~~Of this amount \$25.60 was paid.~~ Complainant refused to pay the difference of \$94.10 to make the minimum payment in full, as agreed in his contract, and on June 23, 1914, after the consumption for the third season had equalled the sum of \$32.70, defendant removed the meter and discontinued the service to the complainant's motor. Under the contract there is still due \$127.10.

It appears that complainant had a centrifugal pump installed in his well in a pit about 30 feet deep; that during 1913, which was a season of less than average rainfall, the water level in his well lowered to such a point that complainant could not pump. Complainant, in an attempt to obtain water, lowered his well pit 20 feet, at an expense of about \$200.00, but failed to obtain water, and thereafter purchased water from his neighbor, Mr. Adrian. During the following winter, the precipitation was above the average, and the water again rose in the well so that irrigation could be carried on from it.

The evidence further shows that during 1913 there was a lowering of the water in the wells in the district surrounding complainant's well, and that other pumps had to be lowered, but there is no evidence of complete failure of water in other wells in that vicinity.

The complainant did not request the defendant to discontinue his service when he was able to obtain water, and defendant therefore continued in readiness to serve complainant and to meter and bill him for such energy as was consumed. A record of the consumption of the neighboring plants shows that the water supply apparently did not fail entirely.

Complainant's monthly bills were as follows:

May	1913	\$19.00
June	"	2.10
July	"	.60
August	"	.80
September	"	----
October	"	----
		\$22.00

I think that the question whether or not the failure on the part of the complainant to fulfill his part of the contract was due to an act of God is one not necessary to be considered by this Commission in this proceeding but should be decided by the courts.

Pending such determination by the courts, or, if defendant waives its right to sue for the amount it claims to be due, it appears to be but fair that complainant should be required to guarantee defendant any future bills, and in order to do so, should pay in semi-annual payments, in advance, his minimum bill, and I recommend that such be the order of this Commission.

After a careful consideration of the evidence in this case, I find that complainant is entitled to receive service, and that defendant should serve him under conditions which are specified in the order herein.

I submit the following form of order:

O R D E R.

A public hearing having been held in the above entitled proceeding, and the case having been submitted and now ready for decision,

IT IS HEREBY ORDERED that Pacific Gas & Electric Company, within twenty (20) days after date of this order, shall reconnect complainant's pumping service and furnish complainant with electric power for pumping.

Provided, that it may require G. Speciale to pay in advance, semi-annually each year, a sum equal to one half of the annual minimum bill under the terms of such contract; provided, that if the defendant sue for said \$127.10 and final judgment in such suit is in favor of complainant herein, then such advance payments to cease.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of March, 1915.

Max Thelen
W. H. Ireland
Edwin O. Edgerton
John R. Quinn
Commissioners.