CR.
Decision No. ✓

ORIGINAL

Decision No. 2358

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the rate for electric power supplied by UNITED LIGHT AND POWER COMPANY to SAN FRANCISCO, OAKLAND and SAN JOSE CONSOLIDATED RAILWAY and SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.	)	CASE NO. 779.

Morrison, Dunne and Brobeck, by W. I. Brobeck for San Francisco, Oakland and San Jose Consolidated Railways and San Francisco-Oakland Terminal Railways.
R. P. Henshall for United Light and Power Company.

THELEN, Commissioner.

O P I N I O N

On February 13, 1915, this Commission issued the following order:

"WHEREAS, in the course of this Commission's investigations in connection with Application No. 990, being application of San Francisco-Oakland Terminal Railways for an order authorizing the issue of notes and bonds, the Commission's attention has been directed to a contract dated December 30, 1911, between San Francisco, Oakland San Jose Consolidated Railway and United Light and Power Company; and,

"WHEREAS, it appears that the interests in control of the Railway Company were also in control of United Light and Power Company at the time said contract was entered into; and,

"WHEREAS, the evidence thus far secured by the Railroad Commission would seem to show that this contract imposed a particularly onerous and improper burden upon the Railway Company and an undue benefit upon United Light and Power Company; and,

"WHEREAS, the attention of San Francisco-Oakland Terminal Railways, as successor to San Francisco, Oakland and San Jose Consolidated Railway, has been drawn to this matter by the Railroad Commission, but said company has not secured any modification of said contract.

"IT IS HEREBY ORDERED that the Railroad Commission, on its own motion, hereby institutes an investigation into the rate paid by San Francisco-

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Oakland Terminal Railways to United Light and Power Company for electric energy, and into all contracts or other arrangements in connection therewith, and that a hearing in said matter be set for Tuesday, February 23, 1915, at 10 o'clock A. M., in the office of the Railroad Commission, before Commissioner Thelen, at which time and place all interested parties may appear and be heard.

"AND IT IS FURTHER ORDERED that the Secretary be and he is hereby directed to serve upon San Francisco-Oakland Terminal Railways, San Francisco, Oakland and San Jose Consolidated Railway and United Light and Power Company a notice of said hearing, at which time and place they may appear and show cause, if any they have, why the Railroad Commission should not proceed to establish a just and reasonable rate for said service, to which notice shall be attached a certified copy of this order."

By agreement dated December 30, 1911, San Francisco, Oakland and San Jose Consolidated Railway undertook to lease for a term of ten years, its Yerba Buena steam electric generating plant in Oakland, certain rights-of-way, the site for a proposed salt water condensation system, and adjacent land necessary to operate said plant, to United Light and Power Company (of California). The annual rental is fixed at the nominal sum of $1.00 per year. If at the end of ten years the lessor refuses to pay the lessee for all additions and improvements, the lease is automatically renewed. The terms of the lease further provide that United Light and Power Company (of California) is to install a complete salt water condensation system at a cost not exceeding $150,000; that the lessee is to make the necessary additions and improvements to the electric plant at a cost not exceeding $245,000.00 and that the lessee is to bear also all ordinary maintenance and operating expenses. All extraordinary maintenance, replacements or repairs and all depreciation are to be borne by San Francisco, Oakland and San Jose Consolidated Railway.

On the same day, December 30, 1911, and as part of the same transaction, United Light and Power Company (of California)

and San Francisco, Oakland and San Jose Consolidated Railway undertook to enter into a contract under the terms of which the power company agrees to furnish to the railway company for a period of ten years all the electric energy required by the railway company, except that covered by contract between the railway company and Pacific Gas and Electric Company. Under the terms of the aforementioned contract, San Francisco, Oakland and San Jose Consolidated Railway is obliged to pay to United Light and Power Company (of California) for energy furnished $.01125 per kilowatt hour. Upon the completion of the salt water condensation system, the rate per kilowatt hour is to be increased to $.01725. To date, the condensation system has not been installed.

Public hearings in this proceeding were held in San Francisco on March 13 and April 5, 1915, and the case is now ready for decision.

This Commission's exhibit No. 1 in this proceeding, prepared by A. F. Bridge of the electrical engineering department of this Commission, shows that the United Light and Power Company (of California) has invested for the purpose of carrying out the aforementioned contract the sum of $23,023.63.

The Exhibit further shows the following cost of service to United Light and Power Company (of California):-

	1913	1914	Mean
Operating Expenses	$94,128.46	$98,910.22	$ 96,519.34
Fixed Costs	6,674.32	6,674.32	6,674.32
Sub-totals	$100,802.78	$105,584.54	$103,193.66
Taxes	3,390.04	6,791.42	5,090.73
Totals	$104,192.82	$112,375.96	$108,284.39
Annual Output - K.W.H.	14,800,826	13,455,161	14,127,995
Cost per K. W. H.	$.007040	$.008352	$.007665
Revenue at 1.125¢ - KWH	$166,509.29	$151,370.56	$158,939.94
Profit	$ 62,316.47	$ 38,994.60	$ 50,655.15

Mr. Bridge estimated that the total cost of service to San Francisco-Oakland Terminal Railways (successor to San Francisco,

Oakland and San Jose Consolidated Railway) under present conditions to be $.018932 per K.W.H. The following items enter into his calculations:

INVESTMENT COSTS
Based on C.R.C. Estimate of Cost to Reproduce.

Land		$77,100.00
Buildings		57,389.14
Steam Plant Equipment		740,885.07
Storage Batteries		94,783.00
Total		970,157.21
Interest at 8%		77,612.58

DEPRECIATION (Sinking Fund Basis)

Buildings	$57,389.14	....	197.65
Steam Plant Equipment	740,885.07	....	20,140.64
Storage Batteries	55,000.00	....	2,362.95
Total			22,701.24
Total Fixed Costs			100,313.82
Per K.W. Hr. (15,000,000 K.W.H. Output)			.006688
Purchase Price per K.W.H.			.01125
Total Cost to Railway Company			$.017938
Increased for Taxes			.018932

In the above estimate, Mr. Bridge uses an 8 per cent. interest return on the investment. The cost could be more accurately expressed by taking the actual interest requirements on the investment, which probably are not greater than 6 per cent. To this extent, the estimate of Mr. Bridge is subject to modification.

Mr. Bridge estimated also that the railway company could generate its own power and me et all possible costs entailed at the very material saving of $.004 per killowatt hour.

A representative of United Light and Power Company (of California) at the time the contract here in question was entered into testified that the price per kilowatt hour was based on the contract between Oakland Traction Company and Pacific Gas and

Electric Company. The circumstances surrounding these two contracts, however, are so entirely different that the rate paid under the Pacific Gas and Electric Company contract cannot possibly be used as a justification for the rate paid to United Light and Power Company (of California).

Under the Pacific Gas and Electric Company contract, Oakland Traction Company pays $.01125 per kilowatt hour, and that is practically the entire cost to the consumer. However, in the case of the contract between San Francisco, Oakland and San Jose Consolidated Railway and United Light and Power Company (of California), the railway company not only pays the power company the $.01125 per kilowatt hour, but in addition is obliged to pay the interest upon its investment in the Yerba Buena Power Station, the depreciation charges and extra maintenance and replacements, and is obliged further to furnish transmission lines, transforming devices, sub-stations and labor.

It is at once obvious, and must have been obvious to the parties who made the contract, that it imposed onerous burdens upon the railway company. There is before this Commission further testimony in regard to the improper nature of this contract in the form of the report of J.G. White & Company. This report was filed in connection with J.G. White & Company's appraisal of the properties of San Francisco-Oakland Terminal Railways. In this connection, J.G. White & Company reported as follows:

> "The lease of the Yerba Buena Station and agreement for the purchase of power produced by the Lessee, we do not believe to be so drawn as to be for the best interests of the Company. The price under the conditions surrounding the delivery of power is not as favorable as the Company's other power contracts, and the provision for increase in rate on account of extensions to power plant apparatus does not appear defensible. Further a rate of $.01125 at Yerba Buena Station for alternating current, we consider excessive, as the consumer is obligated to furnish and maintain all transmission lines, transforming devices, substations and labor, in addition to interest and depreciation charges, which will probably result in an ultimate power cost of at least double the price the company is now paying other power producers.
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becoming a fact, the United Properties Company, as the owner of the majority of the capital stock of the parties to the lease and contract, passed a resolution on July 12, 1912, to indemnify the Company from loss by reason of said agreement and lease, and we understand that as a matter of fact power is being billed the Company at much less rate than named in the contract. We are not clear, however, as to how this adjusted rate has been arrived at nor are we satisfied that if the United Properties Company should dispose of its stock interest in either or both of the parties to the lease and agreement, that the purchaser would be obligated by this action of the United Properties Company. We have not taken legal counsel in regard to these several agreements, but we believe that the matter could be greatly simplified by the cancellation of the documents now in effect and the execution of modified agreements setting forth in unmistaken terms the implied purpose that the Company shall continue to receive its power from the Lessee upon terms fully as favorable as while operation of the power plant was in its own hands."

The evidence in this case shows that this burdensome contract has continued in force and is still in force at the present time. It further appears that The United Properties Company of California has not lived up to its agreement and that it has not protected the railway company from loss under this contract.

It also appears that this contract between United Light and Power Company (of California) and San Francisco, Oakland and San Jose Consolidated Railway was made at a time when both the power company and the railway company were under control of The United Properties Company of California, or in other words, when the control of the two contracting parties were in the same hands.

I cannot escape the conclusion, therefore, that this contract was entered into for the purpose of improperly deflecting the earnings of the railway company into the treasury of the power company.

The evidence at hand before this Commission establishes that this contract imposed a particularly onerous, improper and unfair burden upon the San Francisco, Oakland and San Jose Consolidated Railway and its successor San Francisco-Oakland Terminal Railways, and that it conferred an improper benefit upon the United Light and Power Company (of California). The figures indicate that the railway company has been deprived of approximately $183,000.

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The evidence at hand before this Commission establishes that this contract imposed a particularly onerous, improper and unfair burden upon the San Francisco, Oakland and San Jose Consolidated Railway and its successor San Francisco-Oakland Terminal Railways, and that it conferred an improper benefit upon the United Light and Power Company (of California). The figures indicate that the railway company has been deprived of approximately $183,000.

as a result of this contract. The estimates of the extra burden heretofore imposed on the railways under this contract are as follows:

1912, ...	$55,000
1913, ...	60,000
1914, ...	53,000
First 4 months of 1915, ...	15,000
Total, .	$183,000

These railway properties were entitled to the very best that the interests in control of them could do for them. Instead, I find that, with apparently deliberate design, the railway company through the veiled subterfuge of a contract, has been compelled to divert from its funds, improperly and unfairly, more than $50,000 per year. These sums have been diverted at a time when, both for the protection of its stockholders and creditors and in the interest of the public, it was mandatory that San Francisco, Oakland Terminal Railways husband its every resource.

The parties responsible for this contract have not yet undone the wrong which the making of the contract involved. It should be stated that the contract in question was made under a former management and not by the present operating head of the San Francisco-Oakland Terminal Railways.

This contract was discovered by this Commission during the hearings upon Application No.990, and the Commission's investigations have continued up to this time.

It should be stated also that the present management of San Francisco-Oakland Terminal Railways, in response to the inquiries of this Commission, reported under date of January 11, 1915, its opinion that the contract is unjust and oppressive, and stated that it had contemplated legal proceedings for its abrogation. This report, signed by Mr. George K. Weeks, at this time President of San Francisco-Oakland Terminal Railways, is in part as follows:

"I have for acknowledgement your communication of the 8th instant requesting early advices as to whether the contract heretofore filed with your Commission in Applications No. 990 and 1152 covering the purchase of power from the United Light & Power Company is still in force; also requesting a complete record of all other power contracts under which this company is purchasing power.

"Answering the first part of your inquiry, I regret to be obliged to advise you that this company is still operating under the terms of the lease and agreement for the purchase of power purported to have been entered into on December 30, 1911 between the San Francisco, Oakland, San Jose Consolidated Railway and the United Light & Power Company of California.

"The present officers of this company are of the opinion that the arrangement established by the documents referred to is unjust and oppressive to this company in that the Yerba Buena steam power plant owned by this company, the interest on the investment in which is paid by this company and the depreciation of which must ultimately be borne by this company, is by this arrangement purported to be leased for a nominal consideration while at the same time this company is paying the United Light & Power Company at the rate of $.01125 per KWH. for current, the generation of which according to the best figures in our possession has cost the United Light & Power Company from $.02½ to $.005 less than the contract price.

"The present management of this company on assuming the responsibilities of office last September seriously proposed to institute legal proceedings for the abrogation of this contract and have postponed doing so solely for the reason that there seemed to be ground for believing that amicable arrangements might be made which would afford relief from the inequitable provisions of this contract more expeditiously and with greater certainty than through recourse to the courts."

Until Mr. Weeks assumed the presidency of these properties, no responsible official connected with the railway company had sought through this Commission the abrogation of these contracts.

In passing upon this matter, I feel obliged to call into serious question the good faith of that type of promoter or financier, who, posing as the protector and savior of public utility property in the State of California, is at the same time faithless to the interests of the very public utility properties which he is paid to protect. This same type of promoter holds it to be his privilege to divert to his own advantage the public utility funds that come within the purview of his trust, regardless of the injury worked

upon the bondholders, the stockholders or the public; and when the mischief he has wrought reduces the utility to the brink of bankruptcy, he insists, -still posing as the savior of the utility he has betrayed, -that this Commission should restore through inflated findings of value, the financial strength which he has sapped from the utility.

Fortunately there are few remaining of this type of financial wreckers in the public utility field in the State of California.

It is only occasionally that this Commission still encounters a situation, such as is found in the power contract heretofore referred to. The public utility business of this State is now being conducted on a high plane, and, as in this case, we find that public utility men working with high purposes are among the foremost to set themselves in opposition to practices such as those which are represented by this objectionable power contract.

In view of these facts, as heretofore recited, I find as a fact that the rate for power charged by United Light and Power Company (of California) to San Francisco-Oakland Terminal Railways under the contract called into question in these proceedings is unjust, unfair and unreasonable in that it imposes an improper burden upon San Francisco-Oakland Terminal Railways. Accordingly I recommend that the parties be directed to confer with a view to submitting to this Commission a new rate for power which shall be just and reasonable.

In Application No. 1542, being the application of United Light and Power Company(of California) and subsidiary corporations for an order authorizing certain acts in connection with a proposed reorganization,a proposed contract for the sale of electric power to San Francisco-Oakland Terminal Railways was presented by Consolidated Electric Company, the proposed successor of United Light

and Power Company (of California). This contract was not signed by San Francisco-Oakland Terminal Railways. Consideration will be given to such contract as may be signed by the parties of such instrument.

I recommend the following form of Order:

O R D E R

The Railroad Commission having on its own initiative instituted an investigation into the rate paid by San Francisco-Oakland Terminal Railways to United Light and Power Company (of California) for electric energy, and into all contracts and other arrangements in connection therewith, and public hearings having been held and this case being now ready for decision,

The Railroad Commission hereby finds as a fact that the rate paid by San Francisco-Oakland Terminal Railways to United Light and Power Company (of California) for electric energy is unjust and unreasonable and imposes an unfair and unjust burden on San Francisco-Oakland Terminal Railways . Basing its conclusinn upon this finding of fact and on the further findings of fact contained in the opinion which precedes this Order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that San Francisco-Oakland Terminal Railways and United Light and Power Company (of California), or its successors in interest immediately take up the question of an agreement upon a new, just and equitable rate to be paid for electric energy supplied by United Light and Power Company (of California), or its successors in interest to San Francisco-Oakland Terminal Railways, and that said companies report to this Commission on or before May 20, 1915, their conclusions with a copy of such new contract, if any, as they may have executed in the premises, subject to the Railroad Commission's approval. Such supplemental order as may seem appropriate will then be made.

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 10th day of May, 1915.

Max Thelen

H. T. Rowell

Alex Gordon

Edwin O. Edgerton