

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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W. T. Ogden et al., )  
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 Complainants, )  
 )  
 vs. )  
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 Pacific Gas & Electric Company, )  
 and Oro Water, Light and Power )  
 Company. )  
 )  
 Defendants. )

Case No. 658.

Edward Elliott for complainants  
Charles P. Cutton for defendant,  
Pacific Gas & Electric Company.

EDGERTON, Commissioner.

OPINION

Complainants herein ask that defendants, Pacific Gas & Electric Company and Oro Water, Light and Power Company, be compelled by order of this Commission to produce and maintain a continuous and adequate water service in that territory in and around the Town of Paradise, Butte County, California.

Defendant Oro Water, Light and Power Company, or its successors, own and operate a ditch called the Nickerson Ditch, but the evidence in this case shows that the principal cause of such complaints of service as have been made is the interference with the water supply of this company by a mining company. Since the filing of this complaint this defendant company has obtained an injunction against the mining company in the matter of the interference with this water, and, therefore, it appears that this complaint should be dismissed as far as this company is concerned.

If complaint is hereafter made of bad service the matter can then be considered.

Defendant, Pacific Gas & Electric Company, contends that it is under no obligation to furnish water to complainants except at such times and in such amounts as it had water in excess of that required to generate electricity at what is called the De Sabla power plant.

The ditch serving the complainants, called Cherokee Ditch or Canal, runs from a point in another ditch which taps De Sabla Reservoir. De Sabla Reservoir is fed by still another ditch to the north. The water in De Sabla Reservoir is used largely for power purposes and after running through the power house the water is turned into a ditch over which defendant has no control.

The testimony is that the Cherokee Ditch was first used for the purpose of conveying water for hydraulic mining. Apparently De Sabla Reservoir did not exist during the early mining days. Mr. W. P. Lynch, a witness for defendant, testified that in 1903 there was a small use of water from this ditch, principally for gardening, by settlers who owned adjacent land. About 1903, defendant acquired the Cherokee Ditch.

William Hendrix testified that he owned property 18 or 19 years ago on which he received water from the Cherokee Ditch, that later he sold this property and later still repurchased it. He has last owned this property for about 5 years. It appears that J. Wilson was the purchaser of the land from Hendrix and receipts were produced showing that Wilson paid for water for the years 1900, 1901, 1902 and 1903. Hendrix testified that he paid Pacific Gas & Electric Company for water from the Cherokee Ditch used by him for irrigation after that company had presented to him

a form of written contract and he had refused to sign it. He produced receipts dated June, 1913, July, 1913 and September, 1913, acknowledging receipt of money for water furnished during the year 1913 and signed Pacific Gas & Electric Company, per E. Warner.

Other witnesses testified that they had received water from this Cherokee Ditch for varying periods, but none of them for as long a time as Mr. Hendrix. Some of these witnesses did not pay for what water they received in money but worked on the ditch in cleaning it out, repairing it, etc.

In 1912 defendant, Pacific Gas & Electric Company, demanded of water consumers, or at least some of them, that a written contract be signed wherein it was provided that for the term of one year the consumer was to receive an amount of water not to exceed a maximum stated in the contract, the price for the water being fixed, and a provision being embodied permitting the defendant to discontinue delivering water whenever it should require the same for its own use.

Some of the consumers signed this contract and some refused to do so, but from the evidence it appears that the company did not discriminate in its delivery of water between those who had signed and those who had not. The testimony shows that during certain of the summer months from 1912 on, the water supply delivered consumers from the Cherokee Ditch grew less and less until the summer of 1914 when for a considerable period no water was available in the Cherokee Ditch for the use of consumers. The defendant is entirely frank about this situation and declares that the reason for the shortage of water and the total lack of supply in 1914 was due to the fact that it needed all of the water in the De Sable Reservoir for power making purposes. Acting under what it claims to be its legal right, it is plainly stated by defendant that there will be little, if any, water available for consumers in the Cherokee Ditch during certain of the summer months.

because all water available for this ditch will be used to make power at the De Sabla Reservoir.

While it cannot be definitely determined from the evidence the exact amount of water used by each consumer in times past, nor the exact times when such water was used, I believe a fair conclusion from all the evidence in this case to be that beginning approximately 18 years ago consumers did use water for irrigation purposes from this Cherokee Ditch; that there has been a more or less continuous use of such water by at least some of these consumers ever since; that defendant acquired this Cherokee Ditch about 1903 and up to about 1914 continued the delivery of water to these consumers. However, defendant attempted in 1912 to persuade all of its water consumers to sign a contract, which has heretofore been mentioned, but only partially succeeded, and as to those who did not sign these contracts delivery of water was apparently continued. Furthermore, it does appear that some compensation was paid defendant by water consumers either by way of cash payment or by work done on the ditch.

It follows as a matter of law that defendant was and is a public utility water company. Therefore, at least as to present consumers of water the service of water must be continued and defendant has no right to stop their supply of water during the summer months merely because, in its judgment, this water may be used by it more profitably for other purposes. The contract upon which defendant partly relies, in my judgment, is not effective for the purpose of establishing the right of the company to discontinue service. Defendant, being a public utility company, any contract it has made or may make for the delivery of water is subject, of course, to the power of this Commission to fix rates and prescribe service. There-

fore, it must be held that under the circumstances surrounding the making of these contracts, the clause which in terms sets out the right of the company to discontinue service is ineffective and cannot be availed of by defendant as establishing a right.

I believe then that the present consumers of water from the Cherokee Ditch are entitled to the amount of water which they have received and to a continuation of the service of this water during the summer months, and that defendant has no right to curtail or stop this supply. It being impossible to determine from the evidence so far adduced just what the supply heretofore given has been, I shall leave this determination open so that if defendant cannot agree with its consumers upon the supply of water from the Cherokee Ditch which shall be furnished them, then application may be made to this Commission and proof submitted, whereupon the Commission will make an order setting out the amount of water to be delivered to each consumer.

I am not overlooking in this conclusion the fact that there may be use for all of the water available at De Sabla Reservoir for the purpose of developing power, but I do not believe it necessary in this case to attempt to determine what use this water shall be put to as between irrigation and power, as I believe the rights of the water consumers have been established and that these rights may not be interfered with even for the purpose of producing a power service to other consumers.

I shall recommend that the defendant, Pacific Gas & Electric Company be ordered to file with this Commission within thirty days from the date of this order, rules and regulations governing the supply of water from the Cherokee Ditch to its con-

sumers.

Herewith a form of order:

O R D E R

Complaint having been made against Pacific Gas & Electric Company and Oro Water, Light and Power Company, and a public hearing having been had and the matter being now before the Commission for determination,

IT IS HEREBY ORDERED that the complaint against Oro Water, Light and Power Company be and the same is hereby dismissed.

IT IS HEREBY FOUND AS A FACT that Pacific Gas & Electric Company is a public utility water company distributing water for compensation from its Cherokee Ditch in Butte County, to consumers for irrigation and domestic use.

Basing its order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that Pacific Gas & Electric Company continue to serve water from its Cherokee Ditch in Butte County to consumers, for irrigation and domestic use, and that in the event that said defendant and its consumers cannot agree upon the times for such delivery and the amounts thereof, application may be made to the Commission, whereupon a supplemental order will be made determining the amounts of water to be delivered and the time thereof.

Pacific Gas & Electric Company is hereby further ordered to file with this Commission within thirty days from the date of this order, rules and regulations governing the supply of water to its consumers from said Cherokee Ditch.

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 13<sup>th</sup> day of November, 1915.

Max Thelen  
H. S. Woodard  
Edwin O. Edgerton  
Wm. G. Foster  
Frank R. Durbin

Commissioners.