

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

# ORIGINAL

Decision No. 2907

In the matter of the application )  
of the Great Western Power Company, )  
a corporation, for an order prelim- )  
inary to the issue of a certificate )  
of public convenience and necessity ) Application No. 1887  
for the exercise of certain rights )  
under a franchise hereafter to be )  
granted by the County of Contra )  
Costa. )

Guy C. Earl and Chaffee Hall for Great Western Power Company,  
Applicant.  
Charles P. Cutten for Pacific Gas and Electric Company,  
Protestant.

DEVLIN, Commissioner.

## OPINION

This is an application by the Great Western Power Company for an order preliminary to the issue of a certificate of public convenience and necessity to exercise a franchise to be obtained from the County of Contra Costa, insofar as it is necessary to serve one consumer, namely, the Western Grain and Sugar Products Company, located in the unincorporated territory of Contra Costa County designated as Crockett.

At the hearing held on October 28th, 1915, counsel for applicant requested that the application be amended to provide for a prayer for the final certificate of public convenience and necessity as the franchise had been obtained on October 4th, 1915, and a copy of said franchise was filed, which request was granted.

In its application the Great Western Power Company states in effect that through one, E. M. Downer, it obtained a franchise dated July 8th, 1907, to construct, maintain and operate a transmission and distribution system upon all of the roads and public highways in the County of Contra Costa for a period of fifty years, that applicant has constructed many miles of transmission and distribution lines, but that under the franchise the construction was to be completed within three years, and as the three year period has elapsed it is necessary for applicant to obtain a new franchise, and under the <sup>provisions</sup> ~~provisions~~ of Section No. 50 of the Public Utilities Act obtain a certificate of public convenience and necessity to extend its lines. On June 9th, 1913, applicant obtained a second franchise to construct and operate an electric transmission and distribution system on certain public highways of Contra Costa County, and on June 30th, 1913, the Railroad Commission issued an order, Decision No. 759, granting applicant a certificate of public convenience and necessity to exercise said franchise with certain limitations.

The certificate did not embrace the territory to which applicant in this case petitions leave to serve, as the order granted a certificate for that territory only not then served by either the Pacific Gas and Electric Company or the Sierra and San Francisco Power Company.

The applicant further states that it has for several years supplied energy in the unincorporated districts called Colona and Crockett, that it has entered into a contract with the Western Grain and Sugar Products Company to furnish said electric energy and that to fulfill said contract will require the construction of a distribution line within Crockett and that said extension will be in territory already served by the applicant.

The Pacific Gas and Electric Company submitted at the hearing a formal protest against the granting of the certificate. In its protest it alleges that the protestant was serving the Port Costa Water Company at Crotona on March 23rd, 1912 and that subsequent thereto, applicant extended its lines and supplied the Water Company without obtaining authorization from the Railroad Commission, and since then has not obtained same. It denies that the extension proposed is within territory already served or necessary in the ordinary course of applicant's business, and alleges that since October 1st, 1910, it has served the Western Grain and Sugar Products Company under a contract which expired September 28th, 1915. The protestant alleges further that it has offered, and still offers, the same schedule of rates as is contained in applicant's contract, and that no public necessity exists and that no public convenience will be served by the Great Western Power Company in extending its lines to serve the consumer in question.

It appears from the evidence that the Great Western Power Company served the Cowell Cement Works in Contra Costa County in 1909, and that in November, 1911, service was rendered the Carquinez Brick Company at Eckley about one mile east of Crockett. Prior to March 23rd, 1912, applicant had no lines west of Eckley, but by June 1912 an extension of its 22 K.V. line was made through Valona and service rendered to the Port Costa Water Company at Valona.

The proposed service to the Western Grain and Sugar Products Company will require an extension of approximately 2,500 feet through the streets of Crotona and Crockett, which are unincorporated territory of Contra Costa County. The

Western Grain and Sugar Products Company has for the past five years, and is at the present time obtaining service from the Pacific Gas and Electric Company at 11,000 volts, and pays a rate of one cent per kilowatt hour.

The proposed extension of the applicant will be along streets now served by the Pacific Gas and Electric Company, and will therefore result in a duplication of lines.

The contract entered into by the applicant and the Western Grain and Sugar Products Company calls for service at 220-440 volts and at a rate commencing at 2-1/2 cents per kilowatt hour. This rate is the same as filed by the Pacific Gas and Electric Company and which the latter company is ready and willing to serve at.

Mr. Fenchon, representing the consumer, testified that there was no complaint regarding the service rendered by the Pacific Gas and Electric Company at its Crockett Plant and it is admitted that the rates offered by the two companies are the same.

Considering the evidence in this case and the allegations made both by the applicant and protestant, it appears that on July 8th, 1907 a franchise under the Broughton Act was issued to one, E. M. Downer, and transferred to the applicant to construct and maintain an electric system in the entire County of Contra Costa, with the limitation that the work should be completed within three years. From this it will appear that the right to extend had expired on July 8th, 1910. The applicant, however, continued to construct lines as shown by the fact that in 1912 the line was built from Eckley west through the Town of Valona, and service rendered to the Port Costa Water Company.

The second franchise was obtained on June 9th, 1913, to serve certain portions of Contra Costa County, but a certificate of public convenience and necessity was obtained for that part, only, not then served by the Pacific Gas and Electric Company or the Sierra and San Francisco Power Company.

✓ A third franchise was obtained on October 4th, 1915, apparently for the specific purpose of serving the Western Grain and Sugar Products Company, as the applicant requests only the right to construct the one extension. Therefore it would appear that a period of five years has elapsed since the Company, under its franchise, lost the right to extend its lines, and the applicant has not, since before the effective date of the Public Utilities Act, had a legal right to extend its system.

The fact that the applicant has only served a few isolated large power consumers in this general portion of Contra Costa County, would tend to show conclusively that it has not held itself out to serve the general public, but contents itself with taking the cream of the business. In this application it does not ask for the right to serve the district in general, but in reality to take a large consumer from a competing company. The neglect of applicant to take active steps to renew its rights of extension in this territory and the fact that it has not apparently attempted to serve the general public under its franchise, together with its request to serve the one consumer only, appears to me sufficient proof that it has not and is not now holding itself out to serve the entire territory and has not prosecuted the serving of the public with reasonable diligence.

Attorney for applicant contended that the only questions to be considered were whether or not the proposed extension is in territory already served by applicant, and whether or not applicant was operating in the territory prior to March 23rd, 1912. According to his own statement the franchise under which it was operating was obtained in 1907 and the right to extend its lines expired in three years, or presumably in 1910, from which time it would appear that the construction which the Company made in this territory subsequent to 1910 was without a franchise, and the question therefore arises whether or not applicant had a legal right to construct and operate its lines in the territory west of Eckley. According to its own admission that it now requires a new franchise and a certificate of public convenience and necessity, it would appear that it had no legal right to serve in this territory subsequent to 1910, and that this service is not in territory which it lawfully served prior to March 23rd, 1912.

Under the circumstances I consider it necessary that applicant show that public convenience and necessity require its extension to serve the Western Grain and Sugar Products Company. It did not do this

as is apparent from the fact, first, that the consumer is at present served, that the service is satisfactory and that the rates to be charged are the same as those proposed by the Pacific Gas and Electric Company, and second, that the applicant apparently does not ask to serve the general public.

From all the evidence in the case I find that, the present or future public convenience and necessity do not require nor will require the construction, authority for which is prayed for in this application, and I therefore recommend that the application be denied and that the protestant in this case continue service as provided in the contract dated September 28th, 1910, until such time as it has obtained formal authorization from the Commission to change said rates.

I submit the following form of order:

O R D E R

GREAT WESTERN POWER COMPANY having made application to the Railroad Commission of the State of California for a certificate that public convenience and necessity require the

construction of an electric distribution line to serve the Western Grain and Sugar Products Company in Crockett, Contra Costa County, California, and there appearing no good reason for the granting of such certificate,

IT IS HEREBY ORDERED that the application be and the same is hereby denied.

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 18<sup>th</sup> day of November 1915.

Manuel J. Kelly  
Edwin O. Edgerton  
Frazer R. Dehn

COMMISSIONERS