

Decision No. ✓

ORIGINAL

Decision No. 3291

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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JOHN PELGANTI, JOSEPH SILVA,  
J. P. ARBOGAST and SHERMAN W.  
MARSH,

Complainants.

-vs-

Case 679.

PACIFIC GAS & ELECTRIC COMPANY,  
Defendant.

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E. H. Armstrong, for complainants.  
C. P. Cutler and W.B. Hunter, for defendant.

GORDON, Commissioner.

O P I N I O N.

The complaint herein was signed by John Pelganti, Joseph Silva, J. P. Arbogast and Sherman W. Marsh, the first three being farmers, and the last a mill operator.

The complaint alleges that the Pacific Gas & Electric Company, defendant herein, owns and operates a public utility water supply business in Nevada County, and that up to the 7th of August, 1912, the people living on Washington Ridge in Nevada County, including complainants were supplied with water by defendant; that on the date named, defendant turned water out of the ditch providing this service and that several former consumers, through improper methods were induced to dispose of their right to water. It is finally alleged that those who dwell on the Ridge and the public generally have suffered injury and complainants pray that the Railroad Commission order defendant to return water to the ditch serving Washington Ridge.

Defendant in answer admits that on August 7th, 1912, it

turned water out of the ditch named and that it has since refused to run water therein. It is denied that this refusal has resulted in causing any great damage to complainants or any other persons, and denies specifically that any one of complainants purchased water from the defendant and defendant's predecessor in interest within five years or more preceding the date on which the running of water in Washington Ridge Ditch was discontinued. Other allegations of complainants and denials of defendant are relevant and conclusive in part only but have been given full consideration.

It appears that the Ridge Ditch was constructed some fifty years ago, for supplying water for hydraulic mining near Nevada City; that it was abandoned about 1880 when the mines discontinued and rehabilitated about 1891, when it provided water for the operation of certain quartz mines and later, provided water to a few persons for irrigation, domestic and other uses. The ditch is about twenty miles in length, running through a country of rugged topography, and its use would undoubtedly result in very considerable expense and loss of water through seepage and evaporation.

The defendant filed in Exhibit No. 1 detailed estimate of cost of replacing the Ridge Ditch in operation, totalling \$2966, and in Exhibit No. 2 a statement of returns from all use on the Ridge Ditch totalling \$11,722 for the seven years 1905 to 1911 inclusive and \$1004 for the year 1911, of which \$72 was for irrigation.

The records show that the use for mining had decreased rapidly during the period covered, and that the use for irrigation alone had produced returns almost negligible in comparison with the cost of operation and water that would necessarily be

lost in transit.

The Pacific Gas & Electric Company, subsequent to the hearing and upon the advice of the Commission entered into negotiations with the several complainants looking to a fair settlement with such complainants, for such right as they might have to demand that service be re-commenced. The Company now reports having made arrangements with the complainants Pelganti, Silva and Arbogast whereby, upon the Commission so ordering and allowing the discontinuance of service, certain amounts would be paid or privileges granted by the defendant to complainants, whereupon complainants will waive all claim for service.

It is reported that complainant Sherman W. Marsh refused to negotiate with the company in this matter, or to, in any way, relinquish his claim that service should be rendered. Mr. Marsh demands that the water should be carried in the Washington Ridge Ditch insofar as his interest is concerned, that he may have service upon demand for the development of power to be used in operating a saw-mill. The records in this case shows that Marsh was not using water for milling purposes at the time service was discontinued and that he at no time used water for agricultural purposes. Such being the case, Marsh is not being deprived of any income for which he depended upon service from this ditch at time of discontinuance, nor is he being deprived of a property value clearly and definitely established and perpetuated only by the continuing in service of that ditch. It would be manifestly unfair to the Pacific Gas & Electric Company to require the assuredly undue expense that it must assume, if on account of this single complainant, it be required to return the Washington Ridge Ditch to service. It would also be unjust to the other consumers of the utility, should this be required, and if in a subsequent proceeding establish rates, this requirement

be a cause for a general increase, however slight.

We hold that complainant Marsh under the circumstances has no legal right to demand service from this ditch.

O R D E R.

John Pelgani, Joseph Silva, J. P. Arbogast and Sherman W. Marsh, having made complaint against the Pacific Gas & Electric Company demanding that the Commission order defendant to provide service through the Washington Ridge Ditch, and it appearing that the complainants, excepting Sherman W. Marsh, are under certain pre-arranged conditions willing to withdraw the complaint, that complainant Sherman W. Marsh ~~was~~ not at the time of discontinuance of service an established consumer with the right to require continuance, and that the interests of the public would not be furthered by the order complainants prayed for, it is hereby ordered that the complaint be and it is hereby dismissed without prejudice.

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 27th day of April, 1916.

Max Thelein

Geo. G. Anderson

Frank R. Dyer

Commissioners.