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Decision No. _____

ORIGINAL

Decision No. 4075

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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PACIFIC GAS & ELECTRIC COMPANY,
Complainant,

vs

GREAT WESTERN POWER COMPANY,
Defendant.

CASE NO. 1016.

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

DEVLIN, Commissioner.

O P I N I O N.

The complaint of Pacific Gas & Electric Company in this proceeding is directed against Great Western Power Company and alleges in effect:

That complainant is now and has been since long prior to March 23, 1912 engaged in the business of supplying electricity at reasonable rates to consumers in the city of Pittsburg and contiguous territory, and that it is now and has been since prior to March 23, 1912, been willing and able to supply all reasonable demands for electric service in the territory referred to; that prior to March 23, 1912 complainant was supply-

ing with electric energy the firm of Johnson & Lanteri, engaged in the business of ship building at a point one mile east of the western limits of the city of Pittsburg; that since March 23, 1912 B.P.Lanteri succeeded to the business formerly conducted by Johnson & Lanteri, and is now and has been for some time past the owner thereof, and that complainant has supplied B.P.Lanteri at his ship building works with electricity since he became the owner thereof; that defendant, Great Western Power Company, has since a date prior to March 23, 1912 been supplying with electric energy the Bowers Rubber Company, situated on the road leading from Pittsburg to Antioch approximately 3,000 feet east of said ship building plant of B.P.Lanteri, and that subsequent to March 23, 1912 said defendant has extended its lines in a westerly direction along the said Pittsburg-Antioch county road for a distance of approximately 1500 feet to supply two consumers situated adjacent to said road; that said consumers have ceased to take service from defendant and defendant furnishes no electric service within 3,000 feet of the plant of said B.P.Lanteri.

The complaint further alleges that defendant did not have and has not since acquired a valid franchise to construct its lines along said Pittsburg-Antioch county road in a westerly direction from said plant of the Bowers Rubber Company, and that defendant did not obtain from this Commission a certificate of public convenience and necessity as provided for in Section 50 of the Public Utilities Act to authorize it to build said line in a westerly direction from the plant of the Bowers Rubber Company or to exercise any right or rights under any franchise which defendant may have claimed to have a right to exercise.

The complaint further sets forth that defendant has entered into a contract with said B.P.Lanteri to supply him with electric energy and is now engaged in constructing a line for a distance of 1,500 feet from the end of the line, extending in a westerly direction from the plant of said Bowers Rubber Company, for the purpose of supplying service under said contract; that defendant in attempting to serve electric energy to said B.P.Lanteri under said contract is proceeding without authority and in violation of the provisions of the Public Utilities Act.

The Commission is asked to make its order restraining defendant from extending its said distribution lines to supply said B.P.Lanteri with electric energy and declaring that neither present or future public convenience or necessity require or will require the construction of said line by defendant.

Defendant in its answer admits that it did not have and has not since acquired a valid franchise to construct its lines westerly along the Pittsburg-Antioch county road from the plant of the Bowers Rubber Company but contends that, inasmuch as said line occupies a private right-of-way, a franchise is not required by law. It is further admitted by defendant that it did not obtain from this Commission a certificate of public convenience and necessity as provided in Section 50 of the Public Utilities Act to authorize it to build said line westerly from the plant of the Bowers Rubber Company, but maintains that said certificate of public convenience and necessity is not required by law.

It is further admitted that defendant has entered into a contract to supply B.P.Lanteri with electric energy and that it is now engaged in constructing a line to supply said

service, and that defendant has not requested this Commission to grant to it nor has it received a certificate of public convenience and necessity in connection with the furnishing of service to said B. P. Lanteri, but maintains that such certificate is not required by law. It is further alleged in the answer that said territory is already served by defendant and that the line complained of is an extension necessary in the ordinary course of defendant's business.

The Commission is asked to dismiss the complaint.

Upon a careful consideration of the evidence introduced on behalf of the parties hereto, the facts appear to be as follows:

Complainant, Pacific Gas and Electric Company, since long prior to the effective date of the Public Utilities Act, has been engaged in the business of furnishing electric service in that portion of Contra Costa County lying generally along the Sacramento River and along the bay shore of San Pablo Bay and Suisun Bay. It maintains sub-stations at Pittsburg, Antioch, and various other points in said territory, together with transmission and distribution facilities for furnishing all classes of electric service set forth in its various schedules on file with this Commission. For about five years complainant has been supplying electric energy, under contract, to the ship yards of B. P. Lanteri and his immediate predecessors in interest, Johnson and Lanteri, at a point on the Pittsburg-Antioch county road approximately four thousand feet east of the incorporated limits of the town of Pittsburg.

In 1908 the 100 kilovolt line of defendant from its Big Bend hydro-electric plant to Oakland was completed and about three years later its Clayton substation was placed in operation.

The 22 kilovolt line from Clayton to the bay shore territory, by way of Concord and Bay Point, was constructed during 1911, and in September of that year the 22 kilovolt line which supplies the Bowers Rubber Company was completed. The 22 kilovolt line into Pittsburg was completed about March 11th, 1912. Subsequent to March 23rd, 1912, the lines supplying the plant of the Bowers Rubber Company were extended westerly along the private right of way parallel to the Pittsburg-Antioch county road for a distance of about 1500 feet to serve the Oakland - Antioch and Eastern Railway Company during the construction of a ferry boat, which service was discontinued after the completion of this work.

At the time of the filing of the complaint herein, defendant had 22 kilovolt lines on three sides of the ship-building plant of B. P. Lanteri and complainant was serving this consumer and also had its distribution lines generally serving this entire district.

Some time prior to the filing of the complaint herein, defendant entered into a contract to supply B. P. Lanteri with electric energy under its filed schedule Number 500, which is as follows:

2.80¢ per kilowatt hour for first 60
kilowatt hours per month per horse power
1.75¢ per kilowatt hour for next 60
kilowatt hours per month per horse power
1.05¢ per kilowatt hour for next 60
kilowatt hours per month per horse power
.90¢ per kilowatt hour for all over 180
kilowatt hours per month per horse power
Minimum charge - \$1.00 per horse power per
month for first 50 horse power of rated capacity
and 50¢ per horse power per month for all over
50 horsepower of rated capacity

Complainant, Pacific Gas and Electric Company, has

for some five years been supplying electric service to B. P. Lanteri, and his predecessors, at a straight meter rate of 2-1/2¢ per kilowatt hour, without any minimum charge, which rate is a deviation from the established schedule of complainant for this service. Schedule Number 142, of complainant, under which said B. P. Lanteri is entitled to receive service, if required to pay the same rate demanded of other consumers similarly situated, is as follows:

3.00¢ per kilowatt hour for first 54
kilowatt hours per month per horse power
2.00¢ per kilowatt hour for next 54
kilowatt hours per month per horse power
1.10¢ per kilowatt hour for next 54
kilowatt hours per month per horse power
.90¢ per kilowatt hour for all over
162 kilowatt hours per month per horse power

Minimum charge - \$1.00 per horse power
per month for first 50 horse power installed
and 50¢ per horse power per month for all
over 50 horse power of installed capacity

It is obvious that both complainant and defendant were engaged in the business of distributing and selling electric energy in the general territory involved in this proceeding prior to the effective date of the Public Utilities Act, and it is also clear that both are amply prepared to continue and extend such service. The rates of complainant and defendant are practically the same and there can be no question but that each is capable of giving proper and adequate service. It may, however, be well to point out that there is a certain difference between the character of service furnished by complainant and that supplied by defendant. Complainant, as has already been indicated, maintains and operates general distribution facilities around the bay shore territory and in each

of the several municipalities and unincorporated villages. This general service requires a relatively large investment in lines of 11,000 volts and less, and a correspondingly heavy investment in line transformers, services and meters to meet the demand of the average consumer. Defendant, on the other hand, has very largely confined its investment and efforts to securing the larger consumers and to that end maintains lines of a potential considerably in excess of the usually accepted limits for economical distribution. It may be well at this point to call attention to the possibility that, if this practise were to become general throughout the rural districts, the utilities might urge unsuitable facilities as an excuse for refusing service to that class of prospective consumers whose individual requirements are relatively small and where, even under favorable circumstances, the supplying of electric energy presents no small problem. In this connection I desire to point out that the obligation and duty of an electrical corporation to serve does not imply that the serving utility has a right to select the class of consumers which it desires to serve. While I do not wish to be understood as charging defendant with an intent to refuse to supply service to the small, and, consequently, less profitable class of consumers, I do intend to clearly indicate that where an electrical corporation maintains such character of distribution facilities as we find here, there is great danger that while possibly these facilities will most economically meet the demands of the relatively large consumer, the serving utility may find considerable difficulty in profitably fulfilling

its full duty to the public, which obligation can only be discharged by meeting all reasonable demands for electric service from every class of consumer which the utility holds itself out to serve as set forth in its established schedules of rates. Nor can this duty and obligation be avoided, or in any way lessened, by the maintenance of facilities which may render anyone of the several classes of service undesirable from the utility point of view. If the only issue involved in this proceeding was one of public convenience and necessity, and considering the problem involved in rural distribution, the present service facilities of defendant, consisting of 22 kilovolt lines would be exceedingly difficult to justify, particularly in view of the fact that complainant, as has already been stated, maintains distribution facilities apparently designed to more nearly meet the requirements of general distribution to consumers of all classes.

After full consideration of all the evidence introduced, I am of the opinion that the territory involved in this proceeding can reasonably be declared to be territory now served by both complainant and defendant, and that no certificate of public convenience and necessity is required by either party to extend its lines to serve consumers therein except in the event that permission is desired to exercise franchise rights. Under the circumstances and in view of the fact that defendant does not intend to use the county roads of Contra Costa County in extending its service lines to the ship building plant of B. P. Lanteri, I would recommend that the complaint herein be dismissed, and I submit the following form of order:

O R D E R

Pacific Gas and Electric Company having filed complaint in the above entitled proceeding, requesting that defendant be prevented from extending its distribution lines along the Pittsburg-Antioch county road to supply B. P. Lanteri with electric service, and defendant having answered said complaint and public hearing having been held thereon, and the matter being now ready for decision,

IT IS HEREBY ORDERED that the said complaint be, and it is hereby dismissed.

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 1st day of February, 1917.

Max Thelen

H. B. Loveland

W. G. Foster

Frank R. Dehn