

ORIGINAL

Decision No 4116-

Decision No.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

COAST COUNTIES GAS & ELECTRIC
COMPANY,

Complainant,

vs

SIERRA AND SAN FRANCISCO POWER
COMPANY,

Defendant.

Case No. 1015

In the Matter of the Application of)
Sierra and San Francisco Power Com-)
pany for a Certificate of Public)
Convenience and Necessity to Serve)
Old Mission Portland Cement Company)

Application 2624

In the Matter of the Application of)
Sierra and San Francisco Power Com-)
pany for Order Preliminary to Issu-)
ance of Certificate of Public Con-)
venience and Necessity in San Benito)
County.

Application 2626

C. P. Cutten, for Coast Counties Gas
& Electric Company,
Chickering & Gregory and George H. Whipple
for Sierra & San Francisco Power Company.

DEVLIN, Commissioner.

O P I N I O N

This proceeding was initiated by complaint of
Coast Counties Gas and Electric Company brought against

Sierra and San Francisco Power Company. This complaint was filed on October 31, 1916, and alleges in effect that defendant is illegally, and contrary to an order of this Commission, proceeding to construct an electric power line in San Benito County for the purpose of supplying electric energy to Old Mission Portland Cement Company, in the vicinity of the Town of San Juan Bautista; that complainant, Coast Counties Gas and Electric Company, is the only company engaged in the business of supplying electric energy in the vicinity of said proposed cement plant; and that, in proceeding to supply said electric service to said Old Mission Portland Cement Company, defendant will violate the specific provisions set forth in this Commission's Decision No. 171 (Opinions and Orders of the Railroad Commission of California, Vol. I, p. 386). Complainant asks that defendant be restrained from extending its proposed line to supply said Old Mission Portland Cement Company until the matter has been investigated by the Commission.

Defendant, in its answer admits that complainant is engaged in distribution and selling electric energy in San Benito County in the vicinity of the Town of San Juan Bautista; admits that it, defendant, has commenced the construction of an electric power line from its main transmission line to the Old Mission Portland Cement

Company's plant for the purpose of serving electricity to said company during its construction and operation; admits that it would be necessary to cross several county roads to reach the proposed plant but alleges that it has a franchise so to do and denies that it is, or has been constructing, or intends to construct a distribution system in said County of San Benito. The answer of defendant further alleges that defendant is about to serve said cement plant with electric energy in accordance with a contract entered into between the predecessor of said cement company and said defendant in or about the year 1907, which said contract was amended in the year 1914. It is further alleged that complainant has never given any electric service to said cement plant, or to anyone located upon said property. Defendant asks that said complaint be dismissed.

Subsequent to the filing of the complaint and answer herein, Sierra and San Francisco Power Company, on November 6th, 1916, filed its application for a certificate of public convenience and necessity to exercise the rights and privileges granted to it under the terms of a franchise heretofore granted by the County of San Benito. In this application petitioner alleges that by Ordinance No. 94 passed by the Board of Supervisors of San Benito County on July 1st, 1912,

petitioner was granted permission to erect, construct, maintain and operate its lines and wires over, along, across and upon any or all of the county roads, highways, public ways, streets and lanes of the County of San Benito; that in its application No. 178 petitioner requested authority to exercise the rights and privileges granted to it by said Ordinance No. 94 of the County of San Benito, and that the Commission, in its Decision No. 171, held that public convenience and necessity required the exercise of the rights and privileges granted to petitioner by the County of San Benito in so far as the ordinance referred or related to the transmission, as distinguished from the distribution, of electric energy, and that if petitioner should, at some subsequent time, desire to distribute electric energy in said county the Commission would, on proper application therefor, after public hearing, render its decision on said application. It is further related in the application that in the year 1907 petitioner entered into a contract with the San Juan Portland Cement Company, predecessor in interest of Old Mission Portland Cement Company, whereby petitioner agreed to furnish said cement company with electric power to be used in the construction and operation of its said plant in the County of San Benito. It is further alleged that petitioner, in an endeavor to aid said

cement company, assisted said company in its financial arrangements and in other ways so that it could become an operating company; that in 1912 said San Juan Portland Cement Company was succeeded by Old Mission Portland Cement Company; that shortly thereafter said contract was amended to its present form and that a copy of both said contracts are on file with this Commission. The petition further alleges that the exercise of the right or privilege to furnish and sell electricity to said cement company in the County of San Benito under said franchise, is required by public convenience and necessity, and in support of this claim petitioner alleges:

First: That the main transmission line of petitioner from Alviso, in Santa Clara County, to Salinas, in Monterey County, passes in close proximity to the cement works now under construction by said Old Mission Portland Cement Company, and that said cement works are not now being served by any public utility of like character with applicant.

Second: That said applicant has evidenced an intention since the year 1907 to construct a line to said cement plant for the purpose of furnishing said cement company with electric energy for its construction and operation.

Third: That petitioner is the only company in the vicinity of said plant which can furnish said cement company with electric energy to the extent demanded for the operation of said cement plant, without an expenditure of considerable money for the reconstruction of power lines to said plant.

Fourth: That in order to supply said cement company with electric energy Coast Counties Gas and Electric Company would have to reconstruct its lines and expend a large amount of money for the purpose of delivering sufficient power to enable the owners of said cement plant to operate the same; that said Coast Counties Gas and Electric Company does not generate sufficient power of its own, in connection with the other demands upon its system, to supply said cement company with the amount of power necessary for it to operate its cement plant, and that said Coast Counties Gas and Electric Company intends to purchase electric energy for the purpose of furnishing said cement company with power should it obtain the contract so to do, and that this arrangement would allow a company operating in another territory to sell power to operating companies in close proximity to the lines of petitioner herein, when petitioner could itself sell such power to its advantage.

Fifth: That petitioner is financially able to undertake and complete without delay the construction of a power line extending from its main transmission line to the works of said cement company, and to supply said cement company uninterruptedly with all electric energy necessary, at reasonable rates, and without having to reconstruct any portion of its main system to enable it to render the said service. Petitioner, in its said application, asks that the Commission make an order finding that public convenience and necessity require that said petitioner shall construct its said transmission line to the works of said cement company for the purpose of supplying said cement company with electric power.

Subsequent to the filing of the application above referred to, Sierra and San Francisco Power Company filed with the Commission a second application, and later an amended application, for an order preliminary to the issuance of a certificate of public convenience and necessity allowing petitioner to exercise rights and privileges under a franchise to be secured from the County of San Benito. In this second application as amended, petitioner relates that on the 9th day of November 1916, petitioner applied to the Board of Supervisors of the County of San Benito for a franchise to distribute and sell electric energy for light,

heat and power purposes in said County; that the exercise of the right or privilege to furnish and sell electric energy in said County is required by public convenience and necessity, and in support of said second application petitioner alleges as follows:

First: That the main transmission line of petitioner from Alviso, in Santa Clara County, to Salinas, in Monterey County, passes in close proximity to many of the inhabitants of said County and industries carried on therein, which are not now being served by another utility of like character with petitioner.

Second: That petitioner, upon entering said County of San Benito in 1912, evidenced and declared its intention of distributing electricity for light, heat and power purposes to the inhabitants of said County, by obtaining a franchise from said County for said purposes. That Coast Counties Gas and Electric Company is at this time also serving some of the inhabitants and municipalities of San Benito County with electric energy, but that said Coast Counties Company has not the facilities nor capacity to furnish all the inhabitants of said County, or all of the industries being carried on in said County, with sufficient light or power for their purposes, and that said Coast Counties Gas and Electric Company, if it has the opportunity

to furnish power in any large amounts in said County, is compelled to purchase said electricity from other sources and from companies not operating in said territory.

Third: That the distribution of electricity for light, heat and power purposes in the County of San Benito in large quantities is necessary to some of the industries carried on in said County, and that petitioner has the necessary amount of power for sale for such purposes and can supply the same to the said industries and to the inhabitants of said County at reasonable rates.

Fourth: That there is no public utility of like character with petitioner in said County of San Benito which is, or would be, able to furnish electricity in large quantities for any purpose for which it may be used, without duplicating at a large expense the equipment of petitioner already constructed and in operation in said County. That no public utility is at present operating in said County of San Benito that has equipment to furnish electric energy in large quantities except petitioner.

Fifth: That there is no public utility of like character of petitioner, or serving the same commodity with petitioner, now operating in said County of San

Benito, or distributing electric energy therein, for any purpose which has at the present time a legal right to extend its system in said County upon, along or over the highways thereof to meet the needs of the inhabitants residing, or of the industries operating, therein.

Sixth: That petitioner is financially able to undertake and complete, without delay, the construction of distributing lines extending from its main transmission line to the various parts of the County of San Benito whereby power or heat in large or small quantities may be furnished to the advantage of the industries and inhabitants of said County and of petitioner.

In its second amended application, petitioner repeats the allegations contained in its first application relative to its contract with San Juan Cement Company and its successor, Old Mission Portland Cement Company of San Juan in the County of San Benito. This application further sets forth that if the Commission shall conclude that it is not desirable for applicant to have a general right to serve electricity for light, heat and power purposes in those parts of San Benito County not now served by any other utility, then said petitioner alleges that the exercise of the right or privilege to sell and furnish electricity to said cement company in said County of San Benito under said

franchise to be secured from said County is required by public convenience and necessity for the following reasons:-

First: That the main transmission line of petitioner from Alviso, in Santa Clara County, to Salinas, in Monterey County, passes in close proximity to the cement plant now under construction by said Old Mission Portland Cement Company, and said cement plant is not now being served by any public utility of like character with petitioner with electricity for the purpose of constructing or operating its said works.

Second: That said petitioner has evidenced an intention since the year 1907 to construct a line to said cement plant for the purpose of furnishing said cement company with electric energy for its construction and operation.

Third: That said petitioner is the only company in the vicinity of said plant of Old Mission Cement Company which can furnish said company with electric energy to the amount demanded for the operating of said cement company, without an expenditure of considerable money for the reconstruction of power lines to said cement plant.

Fourth: That Coast Counties Gas and Electric Company has to reconstruct certain of its lines in

San Benito County and expend a large amount of money to enable it to deliver sufficient power to operate the plant of Old Mission Portland Cement Company; that Coast Counties Gas and Electric Company does not generate sufficient power of its own, in connection with the other demands upon its system, to supply said cement company with the amount of money required by it, and that said Coast Counties Gas and Electric Company intends to buy electric power for the purpose of supplying said cement company if it is able to get the contract therefor, which arrangement would allow a company operating in another territory to sell power to operating companies within close proximity to the lines of petitioner, when petitioner itself could serve such power to its advantage.

Fifth: That there is no other public utility of like character with petitioner in said County of San Benito, which is able, or would be able, to furnish electric energy in large quantities to said Old Mission Portland Cement Company without duplicating at a large expense the equipment of petitioner already constructed and in operation in said County, and that there is no public utility at present operating in San Benito County, other than petitioner, with equipment to furnish electric energy in large quantities for any purpose.

Sixth: That there is no public utility of like character with petitioner now operating in said County of San Benito, or distributing electric current therein for any purpose, which has at the present time a legal right to extend its system within said County upon, along or over the highways thereof, to meet the needs of the inhabitants residing or the industries operating therein.

Seventh: That petitioner is financially able to undertake and complete without delay the construction of a power line extending from its main transmission line to the works of said cement company, and to supply said cement company uninterruptedly with all power necessary for its uses at reasonable rates, and without having to reconstruct any portion of its main line to enable it to render said service.

In this second application, petitioner asks that the Commission make an order preliminary to the issuance of a certificate of public convenience and necessity as provided in Section No. 50, Public Utilities Act, granting to said petitioner the right to enter the County of San Benito for the purpose of supplying such County and the inhabitants thereof, or such portion thereof as the Commission may deem proper, or, granting the right to petitioner to serve Old

Mission Portland Cement Company with electric energy for light, heat and power purposes under a contract, or, without the privilege of serving other parts of said County of San Benito except upon further application to the Commission.

Coast Counties Gas and Electric Company, in its answer and protest to the first application of Sierra and San Francisco Power Company above referred to, denies that public convenience and necessity requires the exercise by petitioner of the right or privilege to furnish electric energy to Old Mission Portland Cement Company under the franchise granted to petitioner by said County of San Benito as set forth in the application; denies that the main or any line of petitioner passes in close proximity to the cement works of said Old Mission Portland Cement Company and alleges that said transmission line of said petitioner is distant from said cement plant approximately four miles; alleges that the lines of the Coast Counties Gas and Electric Company are distant approximately three-quarters of a mile from the cement plant of Old Mission Portland Cement Company and that said Coast Counties Gas and Electric Company is distributing electricity and power within less than one-half mile from said cement plant; alleges that said Coast Counties Gas and Electric Company is willing and able

to supply said Old Mission Portland Cement Company and its said cement plant near the town of San Juan, San Benito County, with electric energy to be used for light, heat and power purposes at reasonable rates, and has heretofore informed said Old Mission Portland Cement Company of its willingness to distribute electric energy for all of its requirements at its said cement plant; denies that petitioner is the only company in the vicinity of said plant of said Old Mission Portland Cement Company which can furnish said cement company with electric energy to the amount demanded for the operation of said cement plant, without an expenditure of considerable money for the reconstruction of power lines to said plant, and alleges that petitioner will be compelled to construct a new power line for a distance of approximately four miles in order to supply this service, and that for a distance of approximately three and one-quarter miles said line of petitioner will parallel an existing line of Coast Counties Gas and Electric Company and that the construction of said proposed line by petitioner will result in a duplication of investment in the County of San Benito; that it will be compelled to reconstruct a portion of its transmission line to supply said Old Mission Portland Cement Company, but alleges that it will be compelled, because of the rapidly increased demand for power in territory now served by it,

to reconstruct its transmission line from a point one mile south of the City of Gilroy to a point about one-quarter of a mile south of the Town of San Juan, in which territory is located the said cement plant of Old Mission Portland Cement Company; alleges that the revenue which would be derived from supplying electric energy to said Old Mission Portland Cement Company would assist said Coast Counties Gas and Electric Company in carrying the investment which it must necessarily make in reconstructing its lines to care for the development of its business. The answer and protest of Coast Counties Gas and Electric Company further alleges that said Coast Counties Gas and Electric Company is furnishing adequate and dependable service at reasonable rates to all classes of consumers within the territory supplied by it, and is able and willing to furnish reliable and dependable service at reasonable rates to said Old Mission Portland Cement Company. The Commission is asked to dismiss the application herein.

The complaint of Coast Counties Gas and Electric Company, hereinafter called Coast Counties Company, and the first and second application of Sierra and San Francisco Power Company, hereinafter designated as Sierra Company, were consolidated for hearing and decision and public hearings were held in San Francisco on November 9th, 17th, 21st, 22nd and 24th, 1916, at

which time testimony was introduced by the parties hereto bearing upon the issues raised by the pleadings.

Historical Summary and Former Proceedings
Before Commission:

It appears from the evidence that on or about August 8th, 1907, Stanislaus Electric Power Company, hereinafter designated Stanislaus Company, the predecessor of Sierra and San Francisco Power Company, entered into a contract with the San Juan Portland Cement Company, at which time neither the Stanislaus Company nor any other electrical company had electric transmission or distribution lines in the vicinity of the proposed cement plant at San Juan, in San Benito County. About two years later, or in 1909, the predecessor of Coast Counties Gas and Electric Company extended its lines from Watsonville to Madrone and Hollister by way of Logan, Sargents, Gilroy and San Juan. Early in 1912 the Sierra Company extended its main 60 kilovolt transmission line from Alviso to Salinas via Sargents, crossing the Coast Counties' 20 kilovolt line at a point about four miles northeast of the cement plant site of San Juan Portland Cement Company near San Juan in San Benito County. From 1907 to 1914 the cement company apparently devoted its efforts to attempts at financing, and in 1912 the San Juan Company was re-

organized under the name of Old Mission Portland Cement Company. In April 1912, the Sierra Company made application to the Commission for permission to complete the construction of its transmission line from Alviso, in Santa Clara County, to Salinas, in Monterey County, and for an order preliminary to the issuance of a certificate of public convenience and necessity allowing said Sierra Company to exercise rights and privileges under franchises to be secured from the municipalities of Morgan Hill and Gilroy and from the County of San Benito. On May 11th, 1912, the Commission, in its Decision No. 72 (Opinions and Orders of the Railroad Commission of California, Vol. I, p. 111), granting the application of the Sierra Company, referred to the San Benito County situation in the following words:

"It does not appear from the evidence what portions of the county of San Benito, if any, are served by other utilities of the character of the applicant, and hence the permission herein merely gives the applicant the right to construct its line through said county contingent upon the necessary permit or franchise by the board of supervisors thereof. On proper application and showing of facts, the Commission will determine whether or not the local distribution of light or power by the applicant shall be permitted in the county of San Benito."

In August 1912, the Sierra Company, after having procured franchises in the municipalities of Morgan Hill and Gilroy and in the County of San Benito,

made application to the Commission for a final certificate of public convenience and necessity permitting it to exercise its rights and privileges under said franchises. On August 8th, 1912, the Commission in its Decision No. 171 (Opinions and Orders of the Railroad Commission of California, Vol. I, p. 386) granted the said application of the Sierra Company and made the following order:

"It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted by the town of Morgan Hill by its said Ordinance No. 42, by the county of San Benito, by its said Ordinance No. 94, and by the town of Gilroy by its said permit dated May 7, 1912, in so far as said ordinances and permits relate to the transmission as distinguished from the distribution of electrical energy through said two towns and said county.

"It is hereby expressly declared that this authorization does not apply to said franchises and said permit in so far as they relate to the distribution of electrical energy within said two towns and within said county. The Commission hereby reaffirms its decision on said application No. 13 to the effect that if applicant shall at some subsequent time desire to distribute electrical energy in said towns and said county, this Commission will on proper application therefor and after public hearing render its decision on such application."

In September 1914, the Sierra Company entered into a new power contract with Old Mission Portland Cement Company, whose financial difficulties had not yet been surmounted, and the Sierra Company further agreed

in a separate contract with the cement company to assist in the financing of the latter to the extent of \$25,000.00. While reference is here made to the tender of financial assistance by the Sierra Company merely because of its historical significance and not because any right not otherwise properly secured could be thereby established, there can be no doubt but that it was largely, if not primarily, due to these contracts with the Sierra Company that Old Mission Portland Cement Company had progressed so satisfactorily with its financial arrangements that in September or October 1916, it commenced the construction of its plant, and desired to obtain electric power to facilitate such construction.

About this time, or to be exact, on August 18th, 1916, the Coast Counties Company which up to that time, as testified to by its General Manager, had considered the cement company a "busted concern" received an application for electric power amounting to 30 kilowatts from a Mr. Stone of the Hunt Engineering Company, in charge of the construction for Old Mission Portland Cement Company. The power covered by this application was intended to be used only in connection with construction work, which will probably be completed by the fall of 1917. The application of Mr. Stone for power was cancelled, or at least indefinitely suspended by him shortly after it was made, which cancellation

was undoubtedly due to the existing contracts between Old Mission Portland Cement Company and the Sierra Company.

Although testimony introduced in its behalf tends to indicate that the Coast Counties Company has had no negotiations with the cement company regarding the supplying by the former to the latter of electric energy, other than those negotiations having to do with the Stone application for a small amount of power to be used for construction purposes, it does appear that San Juan Portland Cement Company had attempted to arrange for electric power as early as 1907. The undisputed evidence of Mr. H. F. Jackson, General Manager of the Sierra Company, establishes the fact that San Juan Portland Cement Company had approached the predecessors of the Coast Counties Company and Pacific Gas and Electric Company with a view to obtaining power service, and that it was only after these efforts had proven unsuccessful that San Juan Portland Cement Company entered into a contract with Stanislaus Power Company. The reason for the failure of these early negotiations can be understood when it is considered that the predecessors of Coast Counties Company did not enter into a contract with Pacific Gas and Electric Company for a supplemental supply of electric energy until 1909, and that

previous to that time these interests did not own or control sufficient production and distribution facilities to supply the amount of power required to operate the cement plant, and had no lines in the vicinity of San Juan. The Pacific Gas and Electric Company apparently did not complete its lines from San Jose to Madrone until 1909, and prior to this time it had no lines of sufficient capacity to carry the cement plant nearer than San Jose. Its San Jose-Davenport line was not completed until early in 1911.

Equitable Considerations:

The situation, in so far as equitable considerations are involved, may be summarized as follows:

In 1907, or prior thereto, attempts were made by two separate interests to establish cement manufacturing plants in territory nearer to that then served by the predecessor of the Coast Counties Company than to the territory reached by the lines of any other electrical corporation. One of these projects, being that of the Santa Cruz Portland Cement Company located near Davenport in Santa Cruz County, was successfully financed and placed in operation in 1907 under steam power produced by itself. The other project, being that of San Juan Portland Cement Company located near

San Juan in San Benito County, was not so successful as its Davenport rival. The San Juan Company attempted to secure electric power from the predecessor of Coast Counties Company but was unsuccessful in its efforts in this direction, and was under the necessity of contracting for power to be supplied by the Stanislaus Company, a utility operating entirely outside of the general territory here involved. In 1909, the lines of the predecessor of Coast Counties Company were constructed to Hollister in San Benito, and to Morgan Hill in Santa Clara County by way of Gilroy, to connect with the lines of, and to obtain an additional supply of power from, Pacific Gas and Electric Company under contract at a rate of one cent per kilowatt hour. At this time the Davenport plant of the Santa Cruz Portland Cement Company was still being operated by steam power, within three and one-half miles from the hydro-electric power plant of the Coast Counties Company and within about eleven and one-half miles of the steam plant of Coast Counties Company at Santa Cruz. At this time also, the plant site of San Juan Portland Cement Company near San Juan was within one and one-half miles of the 22 kilovolt Hollister line of Coast Counties Company, and not more than four and three-quarters miles from the junction of its Hollister and

Gilroy circuits. During the latter part of 1910, or the early part of 1911, Pacific Gas and Electric Company entered into a contract with the Santa Cruz Portland Cement Company, and about March 1911, commenced to deliver power to the Davenport plant. During the same year, 1911, Pacific Gas and Electric Company connected with the Big Creek line of Coast Counties Company and began furnishing electric energy to Coast Counties Company from this second supply point. In 1912 the Sierra Company completed its 60 kilovolt line from Alviso to Salinas, which line passed within a distance of approximately four miles from the cement plant site near San Juan. In 1914, as hereinbefore related, the San Juan Portland Cement Company was re-organized under the name of Old Mission Portland Cement Company, and shortly thereafter new contracts were entered into between the re-organized cement company and the Sierra Company whereby the Sierra Company agreed to furnish power to the cement company at lower rates than the Coast Counties Company paid for its energy wholesale, and the Sierra Company further agreed to assist in the financing of Old Mission Portland Cement Company. Early in 1916 Pacific Gas and Electric Company proposed that a new rate for electric service supplied by it to Coast Counties Company be considered, but it was not

until August of that year that Coast Counties Company asked to have a contract submitted for its consideration covering the proposed new rate, and it was October 17th, 1916, that the new contract was actually submitted to Coast Counties Company. Up to this time Coast Counties Company had made no attempt to secure the business of the Old Mission Portland Cement Company, had neither submitted nor established rates applicable to such business, had completed no arrangements for the purchase of power under conditions which would enable it to supply the cement business if it were obtained, nor did it possess supply facilities, either individually or jointly with Pacific Gas and Electric Company, such as would enable it to supply, without a large expenditure of money, a load of anywhere near the magnitude of that which will be created by the operation of the cement plant. The Sierra Company, on the other hand, has apparently kept in touch with the affairs of Old Mission Portland Cement Company, has agreed to supply the cement company with electric energy at rates which will permit Old Mission Portland Cement Company to compete with other cement plants in the central part of the State, and has in operation in the immediate vicinity, a power line of ample capacity to take care of any and all demands of the cement plant, in addition to all of

its other business supplied by said line.

Considering the service to Old Mission Portland Cement Company alone, as a simple matter of justice between the parties hereto, and as just reward for its continued effort to assist the establishment of a new industry in San Benito County, which has been considered by Coast Counties Company merely as an unsuccessful and financially irresponsible enterprise, I believe there can be no question but that the Sierra Company is entitled to serve the business which it has thus helped to create. However, there are other important considerations involved which demand careful attention.

Transmission as Distinguished from Distribution:

The Sierra Company raises the point that in proceeding with the construction of its line to supply Old Mission Portland Cement Company it was not engaging in the distribution of electric energy within the prohibition contained in the Commission's Decision No. 171 (Opinions and Orders of the Railroad Commission of California, Vol. I, p. 386). There is no merit in this contention. The term "distribution", as I understand it, shorn of its purely technical significance, and as I believe the Commission used it in its Decision No. 171, (Opinions and Orders of the Railroad Commission of California, Vol. I, p. 386), contemplates merely the division or apportionment of the electric energy by a producer or distributor irrespective of the methods

by which the division or apportionment is accomplished or the facilities utilized, and entirely independent of whether the energy be divided between only two or apportioned among many. In confining its permission contained in said Decision No. 171 to transmission, as distinguished from distribution, the Commission undoubtedly had in mind the uninterrupted conveyance or transmission of the energy from Alviso to Salinas.

The Economic Problem:

The broad economic problem here presented, devoid of the purely selfish interests of two or more public utility corporations, each striving for individual advantage one over the other, demands for its solution the same impersonal consideration which would be accorded a similar problem by a single corporation controlling the aggregate facilities of all these several interests which are now devoted to the service of the public. The best interests of the public do not appear at all times and under all circumstances to coincide with the various interests of the public utility corporations involved, although in the final analysis the ultimate interests and welfare of the utilities can only be safeguarded to their owners when the public is receiving the most economical and efficient

service which can be accorded by a proper utilization of the existing service facilities. Competition, or at least the joint occupation of the same territory by two or more utilities of similar character, becomes objectionable when it results in unnecessary and unjustifiable duplication of investment and facilities. Such a condition represents an economic waste, because the duplication of existing proper and adequate facilities and operating organizations renders the efficient utilization of the facilities of either one or more of the utilities involved, both as regards capital investment and operating costs, improbable if not impossible. When such joint operation of territory does not, and will not, result in this unsatisfactory condition, it ceases to be objectionable from the public point of view, and, under certain conditions, may even be beneficial, bearing in mind, of course, the fact that where natural advantages or improved methods or processes render the existing facilities obsolete, unsuitable or uneconomical, the public interest demands that proper and more efficient facilities, methods or processes be adopted, either by the utility enjoying a monopoly in any field or by another utility which will accord the public the benefits to which it is entitled.

The economic situation, in so far at least as the physical plant is concerned, appears to be as follows:

Coast Counties Company owns and operates a small hydro-electric plant of 810 kilowatt rated capacity, located at Swanton in Santa Clara County. This plant during the year 1915 generated 4,042,400 kilowatt hours, of which total 2,913,600 kilowatt hours or about 72 per cent was produced from February to July inclusive, 640,800 kilowatt hours or 15.85 per cent being produced in January and August, and only 488,000 kilowatt hours during the remaining four months. The Coast Counties Company also maintains steam plants in Santa Cruz and Watsonville, the former having a rated capacity of 1,000 kilowatts and the latter 750 kilowatts. These steam auxiliaries are used but very little as is evidenced from the fact that during 1915 the Santa Cruz plant turned out but 64,400 kilowatt hours while the Watsonville plant produced but 47,600 kilowatt hours. During the same year, 1915, Coast Counties Company purchased from Pacific Gas and Electric Company, at Davenport, 1,859,440 kilowatt hours and at Morgan Hill in Santa Clara County, 3,212 000 kilowatt hours. The electric energy purchased by Coast Counties Company from Pacific Gas and Electric Company at Davenport during the six months from February to July 1915, was only 87,520 kilowatt hours, or about 4.7 per cent of the total amount purchased for the year at this point. 178,640 kilowatt hours was

purchased at the Davenport supply point in January and August 1915, and 1,593,280 kilowatt hours, or over 85 per cent, was purchased during the remaining four months. From the above statement of facts, it is apparent that the energy purchased by Coast Counties Company at Davenport is used mainly to supplement the output capacity of its Big Creek hydro-electric plant. The energy purchased from Pacific Gas and Electric Company by Coast Counties Company at Morgan Hill amounted to 3,212,000 kilowatt hours in 1915, of which 1,288,000 kilowatt hours were purchased during the first six months and 1,924,000 kilowatt hours during the last six months. The transmission system of Coast Counties Company consists of 22 kilovolt single circuit lines on wooden poles. The line from Big Creek power plant and the supply point from Davenport to Watsonville, by way of Santa Cruz, is No. 4 B. & S. G. copper. From Watsonville to the junction of the Hollister and Gilroy circuits, the line into Hollister and the line from the junction to a point about one and one-half miles south of Gilroy is No. 6 B. & S. G. copper. From the last named point to Madrone, about two miles north of Morgan Hill, the line is No. 1 B. & S. G. copper.

The Coast Counties Company's demand upon the system of the Pacific Gas and Electric Company is about 1,500 kilowatts at Davenport and 1,800 kilowatts at

Morgan Hill.

The probable initial power requirements of Old Mission Portland Cement Company for the operation of its cement plant near San Juan is estimated to be between 1,200 kilowatts and 1,500 kilowatts. To supply this load in addition to its regular business, Coast Counties Company will be required to make a large capital investment in new lines and equipment and in the rehabilitation of existing lines. The combined investment of Coast Counties Company and Pacific Gas and Electric Company for supplying the cement plant from a 60 kilovolt circuit, exclusive of the return circuit from San Juan to Gilroy and not including the substation at San Juan, was estimated by Mr. J. E. Woodbridge at \$125,000.00. Mr. Charles Grunsky, of the Commission's Gas and Electric Department, estimated that the probable investment of Coast Counties Company in lines alone to supply this cement plant load would be \$46,000.00 for a 60 kilovolt circuit from Madrone to San Juan, a distance of approximately twenty three miles. No allowance is made in Mr. Grunsky's estimate, however, for the necessary substation equipment at San Juan, nor is provision made for a return circuit from San Juan to Gilroy, which latter point, unless a return circuit were provided, would be without an auxiliary source of supply after Pacific Gas and Electric Company's line from San Jose to Madrone is

changed from 22 kilovolt to 60 kilovolt. The probable total investment which Coast Counties Company would be required to make in order to serve Old Mission Portland Cement Company may be taken as approximately double the amount provided in Mr. Grunsky's estimate, or in the neighborhood of \$92,000.00. It will be unnecessary to consider the probable cost of increasing the line voltage on the Coast Counties' system from 22 kilovolt to 38 kilovolt, for the reason that such an arrangement would be but a mere makeshift and the expense involved would not be warranted by the benefit to be obtained. The probable cost to the Sierra Company of extending its lines and providing the necessary substation facilities at San Juan for the purpose of serving the cement plant would, in all probability, be considerably less than one-half the cost of providing for this service from any other available source.

From the above statement it will be apparent that in order for Coast Counties Company to serve Old Mission Portland Cement Company from its present sources of power it would be necessary, in a large measure, to duplicate the existing facilities immediately available in the territory. Economically this duplication is entirely unjustified regardless of the ownership of the existing facilities, and, if permitted, will react unfavorably either on the cost of service to users of

electric energy in Santa Clara, San Benito and other counties, or in a diminished return to the stockholders of either one or both of the parties hereto. On the other hand, if the Sierra Company were permitted to distribute electric energy generally in that portion of San Benito County now served by Coast Counties Company, a precisely similar condition of duplicated investment and economic waste would result, which is not warranted by public convenience and necessity.

When viewed from a purely economic standpoint it must be at once apparent that there can be but one solution to the problem, and this solution demands that the present facilities of both utilities be utilized to their highest efficiency before additional investment is made in similar facilities to serve this territory. The economic situation here presented, however, does not justify competition, but rather indicates a need for prompt and intelligent co-operation. Briefly, the Coast Counties Company is already occupying the field with apparently adequate and proper distribution facilities and a reasonably efficient operating organization, but in order to serve an additional load of the magnitude of the cement plant from its present source of power, it must make an additional large investment in transmission lines and equipment. The Sierra Company, on the other hand, has no distributing

system in San Benito County but possesses transmission capacity, readily and economically available, amply sufficient to provide the energy required by the cement company in addition to all of its other requirements. Obviously, from this point of view the interest of the public requires either that the Sierra Company be permitted to supply the cement plant directly, limiting its activity to the service required by this particular consumer, or that Coast Counties Company supply the cement plant, and in so doing utilize the existing transmission facilities of the Sierra Company.

Protection from Competition;

In addition to the phases of the problem already discussed, there are still other important considerations which it may be well to analyze:-

Coast Counties Company contends, with much merit, that inasmuch as it is at present occupying the territory and giving proper and adequate service at reasonable rates, it should be protected in the enjoyment of its present monopoly. With this general contention, assuming the premises are correct, I am in entire agreement, however, in finally passing upon the degree of protection to which a utility is entitled in a specific

case, it is essential that the obligation undertaken by the utility shall clearly include the particular class of service for which it desires protection when another utility of similar character desires to enter the field. An existing utility is required to demonstrate not only its ability to serve but also the extent to which it holds itself out to serve; otherwise a financially weak utility with limited facilities which are designed to serve, or which are capable of serving, only the relatively small consumer, could claim protection of territory when a class of business develops for which it has made no provision, either as regards rates or supply facilities. Clearly, protection of this character is directly contrary to the public interests, and if indulged in would effectually discourage the establishment of new enterprises in the territory so protected and remove the inducement and necessity for supplying proper utility service to all who may apply. In this connection it may be well to point out that a utility's claim to protection cannot be maintained as against the public which demands service beyond the ability of the utility to supply, or of a character not contemplated in the obligation which the utility has assumed. The limitations of a utility's ability to serve involves questions of facts which may be readily determined, while the self imposed limitation

of obligation to serve can best be disclosed by the actual operations of the utility and by its regularly established rate schedules. In the case at hand, as has already been related, Coast Counties Company has established no rate applicable to power of the magnitude in character of the cement plant requirements, nor has it the ability, either as regards the cost of energy at present produced and purchased or as to supply facilities, to supply Old Mission Portland Cement Company at a rate which would enable the cement company to compete in open market with other plants of similar character. It is also significant that the only other large consumer in the territory served by Coast Counties Company, which may be compared with Old Mission Portland Cement Company, is the Santa Cruz Portland Cement Company at Davenport, which consumer has been supplied direct by Pacific Gas and Electric Company since 1911, two years after Coast Counties Company first began to purchase electric energy from Pacific Gas and Electric Company, and four years after the predecessor of the Sierra Company entered into its contract to supply the predecessor of Old Mission Portland Cement Company.

From the facts hereinbefore set forth, it is apparent that Coast Counties Company has not at any time held itself out to serve consumers of the magnitude or character of Old Mission Portland Cement Company, while

the Sierra Company has devoted the larger portion of its plant capacity to such service.

Ability to Serve:

As bearing on the ability of Coast Counties Company to serve large consumers of the character of Old Mission Portland Cement Company from its present source of supply, it should be noted that this class of service demands, under present conditions, a rate 35.7 per cent less than the rate paid by Coast Counties Company for its general service from Pacific Gas and Electric Company, and about 14.2 per cent less than the lowest special rate now paid by Coast Counties Company to Pacific Gas and Electric Company for service purchased for and supplied to the former's two largest consumers. At the new rate, which is contemplated in the tentative contract submitted to Coast Counties Company by Pacific Gas and Electric Company, the additional cost only, to Coast Counties Company, of supplying Old Mission Portland Cement Company, even if no new investment or operating expense were involved, is such that less than \$2,800.00 per year could be realized by Coast Counties Company as profit. Considering the fixed charges on the additional investment required and other costs, Coast Counties Company could scarcely hope to serve this consumer from its present supply source

without a net loss of from eight to nine thousand dollars per year.

The territory now served, or which may reasonably be served, by Coast Counties Company in San Benito County includes all that portion of said County lying north of an east and west line between Townships 14 and 15 South, Mount Diablo Base, and that in said territory, in so far as the evidence in these proceedings disclosed the facts, Coast Counties Company may be assumed to be furnishing proper and adequate service at reasonable rates to all classes of consumers which it has held itself out to serve. It will be unnecessary at this time to pass upon the question as to what obligations are imposed upon Coast Counties Company by the franchise granted to it by the County of San Benito, nor to consider the question as to whether or not these obligations may be diminished or modified by self imposed limitations in rates, regulations or the dedication of its facilities tending, by inference, at last to exclude particular classes of service.

That portion of San Benito County lying south of an east and west line between Township 14 and 15 South, Mount Diablo Base, is at the present time entirely without electric service of any character.

It has been the policy of this Commission to protect, wherever possible, the existing utility in any

territory when it appears that such utility is properly and economically discharging its full duty and obligation to the public. With this policy in view, and with the present and future convenience and the necessity of the inhabitants of San Benito County in mind, I am convinced that under the circumstances of this particular case it will be in the interests of the public, as well as of the parties hereto, for Coast Counties Company and the Sierra Company to prepare and submit to the Commission a plan for jointly utilizing the facilities and operating organizations of each, in such a manner as to permit Coast Counties Company to continue the sole distribution and sale of electric energy to ultimate consumers in that portion of San Benito County now served by it, and which will further utilize, in so far as possible, the excess capacity of the supply facilities of the Sierra Company in that territory. I would, therefore, recommend that the final order herein be withheld for twenty days from the date hereof, in order to permit the preparation and submission by the parties hereto of a tentative plan for carrying out the suggestions herein made relative to electric service in that portion of San Benito County now served by Coast Counties Company.

As to that portion of San Benito County lying south of the 4th Standard Parallel, South, Mount Diablo

Base, I find that public convenience and necessity require, or will require, the exercise by Sierra and San Francisco Power Company of the rights and privileges under a franchise to be hereafter granted to it by said County. I further find that, after obtaining its franchise in San Benito County, the Sierra Company should be permitted to serve the territory in said County lying between the 4th Standard Parallel, South, Mount Diablo Base, and of east and west lines between Township 14 and 15, South, Mount Diablo Base, provided that in exercising its rights and privileges under said franchise as to said last named portion of San Benito County, the Sierra Company shall not duplicate the facilities of any other electrical corporation which may now possess, or which may hereafter acquire, the right to distribute electric energy therein. These findings are made with the express understanding that Sierra Company, its successors and assigns, will never claim before any court or other public body, a value for said franchise in excess of the actual cost thereof.

I submit the following form of order:

O R D E R

Coast Counties Gas and Electric Company having filed complaint in the above entitled proceedings alleging

that Sierra and San Francisco Power Company is illegally, and contrary to an order of the Commission, proceeding to construct an electric power line in San Benito County for the purpose of supplying electric energy to Old Mission Portland Cement Company, near the Town of San Juan; and Sierra and San Francisco Power Company having applied to this Commission for permission to exercise certain rights and privileges under a franchise heretofore granted by the Board of Supervisors of San Benito County; and Sierra and San Francisco Power Company having filed its petition herein asking that this Commission make its order authorizing said Sierra and San Francisco Power Company to construct a line in San Benito County for the purpose of supplying electric energy to said Old Mission Portland Cement Company, and to otherwise distribute and sell electric energy in San Benito County, under the terms of a franchise to be hereafter granted, and the complaint and applications herein having been consolidated for hearing and decision, and public hearings having been held, the Railroad Commission hereby finds as a fact and declares that to the extent hereinafter provided, and not otherwise, public convenience and necessity require, and will require, the exercise by Sierra and San Francisco Power Company of the rights and privileges to be granted to it under a franchise, which has been applied for

but which has not yet been secured from the Board of Supervisors of the County of San Benito, and basing its order on the foregoing declaration and finding of fact and upon the findings in the opinion which preceeds this order,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby dismissed, and

IT IS FURTHER ORDERED that the application of Sierra and San Francisco Power Company for permission to exercise certain additional rights and privileges under a franchise heretofore granted to said Sierra and San Francisco Power Company by the Board of Supervisors of San Benito County by Ordinance No. 94, be and the same is hereby dismissed, and

IT IS FURTHER ORDERED that within twenty days from the date hereof Coast Counties Gas and Electric Company and Sierra and San Francisco Power Company prepare and submit to the Commission a plan for carrying out the intent of the opinion which preceeds this order, with reference to electric service within that portion of San Benito County lying north of an east and west line between Township 14 and 15, South, Mount Diablo Base, and that the final order herein with reference to said portion of said County, be and the same is ordered withheld for twenty days from the date hereof pending the presentation of the plan herein required, and

IT IS FURTHER ORDERED AND DECLARED that public convenience and necessity require, and will require, the construction, operation and maintenance of electric power lines and distribution facilities and the furnishing of electric service by Sierra and San Francisco Power Company in that portion of San Benito lying south of an east and west line between Townships 14 and 15, South, Mount Diablo Base, and that as to said portion of San Benito County this Commission will hereafter, upon proper application, issue a certificate of public convenience and necessity under the conditions herein stated and which may hereafter be specified by the Commission, declaring that public convenience and necessity require the exercise by Sierra and San Francisco Power Company of the rights and privileges under a franchise which has been applied for by said Sierra and San Francisco Power Company, but which has not yet been granted by the Board of Supervisors of said County, provided that, as to that portion of San Benito County lying between an east and west line between Township 14 and 15, South, Mount Diablo Base, and the 4th Standard Parallel, South, Mount Diablo Base, Sierra and San Francisco Power Company, in exercising its rights and privileges under said franchise as to said portion of San Benito County, shall not duplicate without further order of this Commission, the facilities of any other electrical utility which may now possess, or which may hereafter acquire, the right to distribute electric energy therein. --

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 20th
day of February 1917.

Max Thelen

W. H. Leonard

Edwin O. Edgerton

Francis R. DeLong

COMMISSIONERS