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ORIGINAL

Decision No. 4481

Decision No. _____

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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In the Matter of the Application of the)
GREAT WESTERN POWER COMPANY, a corpora-)
tion, for a certificate of public con-)
venience and necessity for the exercise)
of a certain franchise granted by the)
County of Plumas, and for a certificate)
of public convenience and necessity for)
the construction of electric transmis-)
sion and distribution lines in said)
County of Plumas.)

Application No. 2865.

Chaffee E. Hall for Great Western Power Company.
Charles F. Potter and Curtiss Hillier for
Plumas Light and Power Corporation.
H. C. Flournoy in propria persona.

DEVLIN, Commissioner.

O P I N I O N

Great Western Power Company, hereinafter designated as petitioner, alleges in general that under authority of this Commission it constructed an electric transmission line in Plumas County from its Big Meadows line to Engels Copper Mining Company's mine in August, 1915, and later in January, 1917, a branch line to the Philadelphia Exploration Company's mine at Crescent Mills was authorized by the Commission; that petitioner has been serving the two mines with power from its Butt Valley plant; that it has a franchise for the entire County of Plumas; that its Butt Valley plant is not sufficient to supply the present or future demands of Plumas County; that it now proposes to immediately construct a 44,000 volt, 3 phase transmission line

from its Las Plumas Power plant at Big Bend, Butte County, to Crescent Mills, Plumas County, to connect with the existing lines referred to above, and to augment the supply and meet the increasing demands by its existing consumers and prospective consumers' requirements.

Petitioner requests that it be granted a certificate that the present and future public convenience and necessity require and will require by it the exercise of the rights and privileges granted to it by Ordinance No. 182 of the County of Plumas and the construction and operation of electric transmission and distribution lines, and the sale of electric energy in accordance with said rights and privileges in all parts of Plumas County, except in the parts now served by, (1) Plumas Light and Power Company, (2) Quincy Electric Light and Power Company and (3) Grizzly Electric Company. These three companies are the only public utilities of record selling electricity in Plumas County other than applicant.

Grizzly Electric Company, operating a small electric lighting system in Portola and vicinity, filed a protest objecting to Great Western Power Company serving in Portola, Blairsdon, Beckwith and Sierra Valley and that part of Plumas County east of the west line of Range 12 East, M.D.B. and M. Grizzly Electric Company is only serving the Town of Portola and vicinity at the present. It requested, however, that applicant be denied the right to serve approximately one-third of Plumas County. Grizzly Electric Company was not represented at the hearing and no evidence as to its ability to adequately serve the territory was presented.

Quincy Electric Light and Power Company, serving electric energy in and about the Town of Quincy, Plumas County, protested

the entrance of the Great Western Power Company into territory served by it. Attorney for petitioner stipulated that Great Western Power Company would not request to serve in territory served by the Quincy Company, and the protest was thereupon withdrawn.

The main protest against the further entrance into Plumas County by Great Western Power Company was made by the Plumas Light and Power Company, hereinafter designated as Plumas Company, which operates an electric system supplying Greenville, Crescent Mills and adjacent territory.

Plumas Company protests on the general ground that it had pioneered the field, had struggled along serving the demands during the time it was impossible to make more than expenses; that it had attempted to extend its plant and system but had been denied the right to construct an adequate hydro-electric plant, owing to certain conditions existing at the time, and urged to purchase power from Great Western Power Company; that the Great Western Power Company had unreasonably limited the Plumas Company in the contract, thus preventing it from developing the territory; that petitioner had not fulfilled its requirements, and that if petitioner is allowed to further enter the territory which Plumas Company holds itself out to serve, Plumas Company's property will become valueless.

Plumas Company requests either:

1. That petitioner be denied right to enter any of Plumas County, or if deemed reasonable,
2. Right be granted to serve Engels Copper Company's and Philadelphia Exploration Company's existing demand only, or,
3. That if certificate is to be granted, it be on condition that petitioner purchase Plumas Company's property at such fair valuation as may be fixed by the Commission, or,

4. That Plumas Company's previous application, No. 1438 be reconsidered and it be authorized to issue and sell \$100,000 par value of bonds for the construction of its proposed 2,000 horsepower hydro-electric plant and the necessary transmission and distribution lines, and it be allowed to serve the territory, or,
5. In lieu of that order Great Western Power Company be ordered to serve Plumas Company with all electricity required for the carrying on of its business under fair and reasonable rates and conditions of service.

It was stipulated that evidence in all previous applications pertaining to service by either party in Plumas County might be considered in evidence.

In 1911, Great Western Power Company constructed an 800 kilowatt hydro-electric plant on Butt Creek, Plumas County, for use in the construction of its reservoir at Big Meadows. Following the completion of the reservoir the plant was practically shut down. Prior to that time, predecessors of Plumas Company constructed a small hydro-electric plant of 40 kilowatts capacity near Greenville and supplied lighting service to Greenville and Crescent Mills. Other developments were projected, but not carried out. On November 30, 1914, Plumas Company applied for authorization to issue bonds to the face value of \$52,000 for the construction of a hydro-electric plant of 400 horsepower capacity, utilizing the waters of Round Valley Reservoir. At the time of the hearing the rights to water in Round Valley Reservoir were in litigation, and also the prospects for business were not too promising. It was suggested at the time that Plumas Company consider building to the Great Western Power Company's line at Big Meadows.

On July 10, 1915, Great Western Power Company filed application for authority to construct a transmission line from

Big Meadows past Greenville to the Engels Copper Mining Company's mine on Lights Creek, a distance of about 30 miles, to serve the Company's mining power requirements.

Plumas Company opposed the granting of authority for the construction of a transmission line and the service to the Engels Copper Mining Company, but from a consideration of the evidence introduced, it appeared that the extension was justified and the Great Western Power Company was accordingly granted a certificate of public convenience and necessity to construct a line to serve the Engels mine only.

On May 20, 1916, Plumas Company applied to the Commission for authorization to issue notes to cover cost of extensions of distribution lines in order to serve prospective consumers. This application was granted. Apparently Plumas Company was not able to sell all the notes and no great amount of extension has been made.

Under date of August 18, 1915, a contract was entered into between the Great Western Power Company and the Plumas Company for the supplying of energy to the latter at Greenville, and thereafter service was rendered and the Plumas Company's plant was shut down, current being purchased from the Great Western Power Company. In this contract the rights of the Plumas Company for power were limited to 200 kilowatts and further limited to the excess power available at the Butt Valley plant in excess of the requirements of the Engels Mining Company.

On November 16, 1916, Great Western Power Company filed an application for authorization to construct a transmission line from its existing line between Big Meadows and

Engels mine to Crescent Mills to supply the power requirements of the Crescent mine of the Philadelphia Exploration Company at Crescent Mills. Great Western Power Company had entered into a contract with Mr. A. C. Burch of the Philadelphia Exploration Company and desired a certificate of public convenience and necessity to exercise its franchise in so far as necessary to serve the requirements of said mine. Plumas Company again opposed the extension of the Great Western Power Company's lines, but from the evidence presented, it appeared that under the circumstances existing at that time, the proposed requirements of the mine were in excess of what could economically be handled by the Plumas Company, although the mine was adjacent to that Company's lines. At that time it appeared that the Butt Valley plant did not have sufficient capacity to supply the future requirements of the Exploration Company's mine, and additional demands to be made by the Engels Company, and Great Western Power Company advised that it was its plan, provided the certificate was granted, to construct a transmission line from Las Plumas plant to Crescent Mills to increase the available supply and meet the growing requirements of Plumas County.

A certificate was granted Great Western Power Company January 11, 1917, to exercise its Plumas County franchise to the extent of serving the Crescent mine of Philadelphia Exploration Company.

Great Western Power Company is now proposing to construct the line from Las Plumas plant to Crescent Mills and is asking the right to serve throughout the entire County with the exception of territory now served by other companies.

The testimony of Mr. W. W. Briggs, General Agent of the petitioner, in the present application was to the effect that the Butt Valley plant was then operated to its full capacity:

that Engels Mining Company desired to increase its demand approximately 2000 horsepower, and that the Philadelphia Exploration Company's mine would require in the neighborhood of 1500 to 2000 horsepower.

In addition to these two mining customers, Mr. Briggs testified that there were prospects that the Walker Mining Company might develop a mine in the Genesee Valley with an initial demand of approximately 300 horsepower and a final demand between 1000 and 2000 horsepower. He also stated that the United States Mining Company might possibly commence operations and require in excess of 1000 horsepower. There was nothing definite regarding these prospects.

The proposed transmission line of the petitioner from the Las Plumas plant will be approximately 50 miles in length, operated at 44,000 volts, with a capacity of approximately 3,000 kilowatts. The cost of the line is estimated at \$154,000.00. This 3,000 kilowatts in addition to the capacity of the Butt Valley plant is estimated to be ample to take care of the present and immediate future demands for electric power in Plumas County. It appears further from the evidence that petitioner had, at the time of the hearing, obtained rights of way for a transmission line and that it is proceeding with the construction of the same.

At the hearing in Application No. 2534, petitioner, Great Western Power Company, urged that the exigencies of the Philadelphia Exploration Company's demand, which was stated to be at least 300 horsepower by April 1, 1917, required that construction of petitioner's line to Crescent Mills be completed in the shortest possible time. It was also maintained by petitioner that, due to the exigency of this demand and the amount of power involved, only Great Western Power Company could supply the power required. It was further urged that, if granted permission to do so, Great Western Power Company could supply the initial needs of Philadelphia Exploration Company in approximately

fifteen days and the larger additional demands of both this company and the Engels Copper Mining Company in approximately four months. As a matter of fact, petitioner did not complete its line to the Crescent Mine until about forty-five days after receiving authority from the Commission to serve this consumer whose demand, limited by petitioner's ability to serve, is now only about 65 horsepower instead of 300 horsepower as estimated. Apparently, petitioner will not be able to supply the additional requirements of its two mining consumers in Plumas County for some time to come.

In this proceeding the exigency of the needs of certain power users in Plumas County is again advanced by petitioner as ground for requesting early and favorable action by the Commission on the present application and to the extent that this exigency actually exists it is entitled to every consideration which can reasonably be awarded under the circumstances.

The Commission at all times endeavors to act as expeditiously as possible upon matters presented to it for consideration, and to proceed in such a manner that the interests of the public as well as those of the utility are properly safeguarded. However, it may be well to point out that where matters of exigency are involved, an obligation rests upon the utility as well as upon the Commission. If the present exigency which petitioner assumes to exist does exist, as a matter of fact, it should have led petitioner to have presented the matter to the Commission at an earlier date. The Commission will not be induced to act prematurely upon any matter on the plea that an emergency exists particularly when, as in this case, it is obvious that the application could have been presented at a much earlier date.

It may be urged that the delay in fully supplying the requirements of the Engels Copper Mining Company and the Philadelphia

Exploration Company was occasioned by an informal request by the Commission that work on the Las Plumas-Crescent Mills line of Great Western Power Company be suspended pending the consideration by the Commission of the issues raised in this proceeding by the protest of the Plumas Company. In this connection it should be pointed out that the suggestion that work be suspended was made only a few days before the date of hearing, at which time attorneys for petitioner strenuously maintained that the Commission had no authority to require such suspension and refused to give any assurance that the work would not proceed. While the authority of the Commission over the present construction by petitioner of the Las Plumas-Crescent Mills transmission line is not an issue in this proceeding and need not be discussed at this time, the purpose for which the line will be used when completed and the entire extent of the petitioner's activity in Plumas County are matters which are now before the Commission for decision.

Evidence submitted on behalf of Plumas Company in this proceeding discloses the fact that line extensions to serve Taylorsville are now in course of construction and that electric power for distribution in Taylorsville and vicinity will be purchased from Great Western Power Company. It further appears that Plumas Company has entered into agreements to supply electric power to the "F.C.D." Company near Greenville and the Grizzly Electric Company at Portola.

Plumas Company has supplied or is preparing to supply, so far as the evidence discloses, all demands for electric power in that portion of Plumas County which can normally be reached by its lines with the exception of the Engels Copper Mining Company and the Crescent Mine at Crescent Mills.

Present industrial conditions with attendant revival of the mining industry in Plumas County have caused an unexpected demand for electric service in that territory far beyond the present ability of Plumas Company to meet. Prior to the recent activity in mining, the resources of Plumas County have lain practically dormant for many years and in view of the fact that the present new development of the county began rather unexpectedly as a more or less direct result of the present international war, it is not surprising that Plumas Company should have found itself unprepared, as was also the Great Western Power Company, to meet a condition which neither utility could reasonably have been expected to fully anticipate. However, when the new demand occurred and it became evident that Plumas Company could not with its own resources and facilities meet the requirements within a reasonable period of time, the Commission had no recourse other than to grant the request of Great Western Power Company when that utility applied to enter the field. At the time Great Western Power Company applied for permission to serve the Engels Copper Mining Company and again when it applied to serve Philadelphia Exploration Company, petitioner maintained that it was in a position to supply the immediate requirements from its Butt Valley Plant and the Commission, notwithstanding its desire to protect the smaller company, could not under the circumstances turn a deaf ear to the apparently pressing needs of those mining interests which had arranged for a supply of power from petitioner.

Plumas County now promises to be a fruitful field for the sale of electric power and in so far as possible Plumas Company should be permitted to share in the general prosperity. In making this declaration I am not unmindful of the fact that Plumas Company has steadfastly maintained electric service in Plumas County during a period when none of the larger companies looked with covetous eyes on its then undisputed territory, and that only when for the first

time there appears to be a material reward in prospect are its rights contested.

Butt Valley plant of Great Western Power Company was not constructed for the purpose of serving the public but was built to supply the electric power required by petitioner in constructing its Big Meadows dam. Although this plant, having an installed capacity of about 800 kilowatts, was placed in operation about 1911 and is located but a few miles from the territory served by Plumas Company, it remained idle, or practically so, for several years without supplying a single consumer other than petitioner's own employees and it was not until the recent activity in mining began that petitioner made an attempt to utilize any portion of the capacity of the Butt Valley plant in the service of the public.

During the period of general inactivity in Plumas County the Plumas Company and its predecessor were not entirely dormant as shown by the fact that, since its present hydro-electric plant at Greenville was completed in 1909, continuous efforts have been maintained to finance a larger plant. That these efforts have been unsuccessful up to the present time does not alter the significant fact that Plumas Company and its predecessor were first to realize the potential possibilities of Plumas County as a market for relatively large amounts of electric power. The failure of Plumas Company to successfully finance additional power developments during the past five years was due in part, no doubt, to the fact that its confidence in Plumas County, which has since been amply vindicated, was not shared by those who were asked to provide the necessary money. The fact that the waters of Round Valley Reservoir, a necessary factor in the proposed scheme of power development, were continuously involved in litigation, had an important bearing on the inability of Plumas Company to proceed with its plans and this also was the primary reason why the Com-

mission did not feel at liberty to authorize the issuance of bonds to finance the project. At the time the Commission rendered its decision in the matter of the application of the Plumas Company to issue bonds for the purpose of partially developing the Round Valley Reservoir project (Decision No. 2192, Opinions and Orders of the Railroad Commission of California, Vol. 6, p. 267) the litigation over water rights was still pending. However, at a later date the Superior Court fully affirmed the rights of Round Valley Water Company and of Plumas Company and entered judgment against the adverse claimant. This case is now pending ⁱⁿ the Appellate Court and apparently involves only a portion of the water. It also appears from the evidence that the litigation could now be compromised on a basis which would permit the Plumas Company to proceed with the construction of a plant having a capacity of approximately 2,000 horsepower.

At the present time it might be shown that the development of the Round Valley project by Plumas Company is or will be justified by the increasing demands for electric power in the general territory which can be economically reached by its lines, or it may even develop that the completion of this plant is necessary. In any event, it is only just and reasonable that sufficient territory be reserved to Plumas Company so that it will be enabled to continue its operations with the assurance of reasonable protection in a field which, if it should prove necessary, will warrant the completion of its proposed Round Valley plant.

At the present time, however, it would seem that the development of a new hydro-electric project by Plumas Company is not desirable from an economic point of view. Petitioner has applied for permission to supply electric energy "in all parts of the County of Plumas except in the parts of said County now served by the Plumas Light & Power Company, the Quincy Electric

Light and Power Company, and the Grizzly Electric Company". Inasmuch as the territory, in addition to that now being served by Plumas Company, will be reserved to it by the order herein, and bearing in mind that petitioner now supplies Plumas Company with electric energy for re-sale in said territory, petitioner's request to serve the entire County should be granted with the distinct understanding that service in the reserved districts shall be supplied by petitioner in such districts only through the agency of the local distributing companies.

Petitioner, while maintaining that it has no desire to oppress the Plumas Company, contends that the Plumas Company occupies the position of a competitor, and questions the right of any public authority to force it to serve the Plumas Company with additional power over and above that provided for in the present contract between these two parties.

As to the matter of competition between petitioner and the Plumas Company, this possibility can and will be eliminated by a demarcation of territory, so that the question of oppression of the smaller utility by the larger need not enter as a factor in the determination of the issues involved in this proceeding; neither will it be necessary for petitioner henceforth to consider Plumas Company in the light of a competitor whom petitioner may feel some hesitancy or embarrassment in serving to the full extent of its ability.

As to whether or not a public utility may say whom it will serve and whom it will not serve, it may be well to point out that the Commission has heretofore had occasion to call petitioner's attention to the fact that the duties and obligations which it has undertaken as a public utility do not contemplate the right on its part to select the consumers it will serve. While it is true that up to the present time petitioner has, as a matter of fact, selected its consumers in Plumas County

and has not undertaken any service in that territory to the general public except through the agency of the Plumas Company, petitioner's duty and obligation is not and can not be affected by this policy, nor can petitioner expect that the Commission will permit the continuation of such a policy when it may appear that the interests of the public require general service. It is clearly the duty of a public utility, situated as is the petitioner, to supply every reasonable demand for service at non-discriminatory rates and under just terms and conditions. Nor can this duty be avoided, modified or abridged in any manner whatsoever, either by contract between the utility and any private interest or by the maintenance of unsuitable facilities for general distribution.

By reserving a definite territory to Plumas Company that company will henceforth occupy precisely the same position with relation to petitioner as that occupied by any other consumer who is or may be entitled to receive service, except to the extent that the public utility character of Plumas Company's business may entitle it to preference. It will therefore be the duty of petitioner henceforth to supply electric energy to the Plumas Company at rates and under terms and conditions

reasonably comparable with those accorded to other patrons of petitioner in Plumas County. In case of a temporary insufficient supply of electric energy to meet all of the reasonable demands in the territory which petitioner has elected to serve the available supply will of course be prorated upon an equitable basis, consideration being ~~given~~ given to the necessities of the public irrespective of whether or not these necessities arise directly or through the medium of another utility.

After a careful consideration of all the evidence introduced in this proceeding, I find as a fact that present and future public convenience and necessity require and will require the exercise by petitioner of the rights and privileges granted to it under Ordinance No. 182 of the Board of Supervisors of Plumas County to the full extent hereinafter indicated and not otherwise.

FIRST: Present and future public convenience and necessity require and will require the furnishing by Great Western Power Company of electric energy in such quantities or amounts as may be required to serve and supply all reasonable demands in Plumas

County irrespective of whether these demands are or may be made directly upon said Great Western Power Company from consumers or prospective consumers whose point or place of use is located within territory in said County not specifically reserved to other electrical utilities, or whether said demands for electric energy are now or may hereafter be made by other electric utilities for distribution and re-sale within any of the reserved territories in said County.

SECOND: Present and future public convenience and necessity require and will require the construction, operation and maintenance by Great Western Power Company of transmission lines and facilities, as distinguished from distribution lines and service facilities, into and throughout the County of Plumas for the purpose of transmitting or conducting such electric energy as is or may be required to meet all reasonable demands for electric service in said County.

THIRD: Present and future public convenience and necessity require and will require the construction, operation and maintenance of distribution lines and service facilities and the supplying of electric energy and service by Great Western Power Company to all classes of consumers for their own use throughout the entire County of Plumas with the exception of those portions of said County specifically reserved to other electrical utilities and described as follows:

(a) Reserved to Grizzly Electric Company:

All of Township 22 North, Range 13 East, M.D.B.&M.

(b) Reserved to Quincy Electric Light & Power

Company: All of Township 24 North, Range 9 East,
M.D.B. & M.

(c) Reserved to Plumas Light and Power Company, with the exception of the electric energy supplied or to be supplied by Great Western Power Company to Philadelphia Exploration Company for use for mining purposes for the operation of Crescent Mine at or near Crescent Mills: All of Townships 25 North, Ranges 9, 10, and 11 East; all of Townships 26 North, Ranges 9, 10 and 11 East, and all of that portion of Townships 27 North, Ranges 9 and 10 East lying within the County of Plumas.

FOURTH: Present and future public convenience and necessity require and will require that Great Western Power Company continue to supply Plumas Light and Power Company with such electric energy as the latter may reasonably require for distribution and re-sale in that portion of Plumas County reserved to it as herein set forth; provided that the reasonableness of the requests of Plumas County for power may be submitted to this Commission on petition of Great Western Power Company.

Petitioner should be required to establish and file with the Commission, within twenty days from the date hereof, complete schedules of rates, rules and regulations applicable to Plumas County.

I submit the following form of order:

O R D E R

GREAT WESTERN POWER COMPANY having applied to the Railroad Commission for a certificate that present and future public convenience and necessity require and will require the exercise by it of rights and privileges granted it under a certain franchise by the County of Plumas, except as noted in the opinion which precedes this order, and the construction of transmission and distribution lines and the sale of electric energy under said franchise; and public hearings having been held, and the matter having been submitted, and the Commission being fully apprised in the premises,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT:

5-18-17

1. That present and future public convenience and necessity require and will require the construction, operation and maintenance by Great Western Power Company of distribution lines and service facilities to serve and supply electric energy to all classes of consumers for their own use throughout the entire county of Plumas with the exception of those portions specifically reserved to other electric utilities as described and set forth in the opinion preceding this order and subject to the conditions hereafter set forth.

2. That present and future public convenience and necessity require and will require the construction, operation and maintenance by Great Western Power Company of transmission lines and facilities as distinguished from distribution lines and service facilities into and throughout the county of Plumas for the purpose of transmitting or conducting such electric energy as is or may be required to meet all reasonable demands made upon Great Western Power Company for electric service in said county.

3. That present and future public convenience and necessity require and will require the exercise by Great Western Power Company of all the rights and privileges granted it by Ordinance No. 182 of the County of Plumas in the entire county of Plumas with the exception of that specific territory reserved to other electric utilities as described and set forth in the opinion preceding this order, and the exercise by Great Western Power Company in so far as necessary to transmit electric energy of rights and privileges granted by Ordinance No. 182 of

the County of Plumas insofar as necessary in the entire county of Plumas including that reserved to other utilities.

The rights herein granted are conditioned upon the following and not otherwise:

1. That Great Western Power Company shall not serve consumers or prospective consumers, other than those already served, located within the territory reserved to other utilities except upon application to this Commission and receipt of an order granting such rights.

2. That Great Western Power Company shall continue to supply Plumas Light & Power Company with such electric energy at reasonable rates as the latter may require of it for distribution and resale in that portion of Plumas County reserved to it.

3. That Great Western Power Company establish and file with the Commission within twenty (20) days from the date hereof complete schedules of rates, rules and regulations applicable to Plumas County.

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

33rd day of July, 1917.

Max Thelen

Alex Gordon

Edwin O. Edgerton

Frank P. Nelson
Commissioners.