

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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GREAT WESTERN POWER COMPANY, a Cor-
poration, and the TOWN OF SUISUN CITY,
a Municipal Corporation,

Complainants,

- vs. -

PACIFIC GAS AND ELECTRIC COMPANY, a
Corporation, and PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a Corporation,

Defendants.

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Case No. 351.

DECISION ON MOTION
TO DISMISS.

Guy C. Earl and Chaffee E. Hall for complainant
Great Western Power Company.
Chaffee E. Hall and C. J. Goodell, for complainant
Town of Suisun City.
C. P. Cutton for defendant Pacific Gas and Electric Co.
Pillsbury, Madison & Sutro, for defendant Pacific
Telephone and Telegraph Company.

ESSELBMAN, Commissioner.

O P I N I O N

The above named complainants filed their complaint on the 30th day of December, 1912, praying that the defendants be required to afford to the Great Western Power Company the joint use of the poles used within the Town of Suisun City jointly by the Pacific Gas and Electric Company and the Pacific Telephone and Telegraph Company, on the ground that public convenience and necessity would be served by such joint use. Thereafter the defendants objected to the sufficiency of the complaint on the ground that this Commission does not have authority to grant the relief prayed for.

A hearing was held and arguments adduced touching the legal questions involved. I do not feel, however, that it is necessary at the present time to express an opinion upon the constitutional questions raised by the parties. Section 41 of the Public Utilities Act provides:

"Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof. "

From a consideration of this Section it appears that there are certain questions of fact which must be determined after the submission of evidence which may be largely determinative of the legal questions involved. It must appear that the joint use "will not result in irreparable injury to the owner" of the facility, and of course the determination of this question will have to await the hearing of the case. Furthermore, in the face of a positive admonition of the statute empowering this Commission to take the action demanded in the complaint in a proper case, I do not feel that a tribunal such as this should, in the face of such provision of the statute, refuse to grant the relief, if otherwise found to be proper, on the ground that this provision is contrary to the Constitution. Not intimating at all that I think the provision is inconsistent with either the State or Federal Constitution, I think it is unnecessary to pass upon the question now. If, after a hearing, the Commission is of the opinion that on the facts disclosed at such hearing the complainants are entitled to the relief prayed for, I think the relief should be granted, and if the defendants are dissatisfied with such disposition of the case they can as well after such decision as now avail themselves of any legal defense they may have against the action of the Commission, and the courts, which are of course the proper tribunals for determining this

question, can be called upon for a decision.

The parties to this case do not raise any question as to a conflict of jurisdiction between the municipal corporation involved and the Commission. The complainants by bringing this action admit the jurisdiction of this Commission, and their attorneys, furthermore, take the position that the jurisdiction is not in the City but in the Commission. The attorneys for the defendants likewise admit the jurisdiction of this Commission to grant the relief prayed for if it exists anywhere. Such being the case it will not be necessary to discuss the question as to the power of the Town of Suisun City in this regard, and the case may be decided on the theory that if jurisdiction exists anywhere it exists in this Commission.

ORDER.

I recommend that the protest be dismissed and defendants be required to answer, and it is so ordered.

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 10th day of April, 1913.

John W. Eschleman
H. L. Richard
W. G. Gordon
Max Thelen
Edwin O. Edgerton
Commissioners.