

Decision No. 6430

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

WEBB BROTHERS COMPANY,
a corporation,

Complainant,

vs.

Case No. 1324.

CALIFORNIA-OREGON POWER
COMPANY, a corporation,

Defendant.

Sanborn & Roehl, by H. H. Sanborn,
for complainant.Morrison, Dunne & Brobeck, by E. S. Taylor,
for defendant.

BY THE COMMISSION.

O P I N I O N.

This is a proceeding instituted by the owner of a tract of land in Siskiyou County for the purpose of obtaining an order requiring defendant to supply it with electric energy for pumping purposes. A public hearing in the matter was held in San Francisco on June 11, 1919, before Examiner Bancroft.

From the evidence, it appears that complainant is the owner of a tract of land which is used for agricultural purposes, consisting of 632 acres, near the town of Montague, Siskiyou County; that complainant is now irrigating some of this land and desires to irrigate more by means of a pump, to be operated by a fifty horse-power electric motor; that it has applied to defendant, a corporation engaged in the service of electric energy in the County of Siskiyou, for the necessary service to enable it to operate said pump, and has offered to sign the usual form of contract.

From evidence introduced by defendant, it appears that complainant's lands are situated near the Shasta River and that it purposes to use the energy for which it has applied in pumping water out of this river from a point near Montague; that defendant is the owner of and engaged in the operation of a hydro-electric power plant situated on this river some distance below the point from which complainant intends to pump its water.

Defendant also pleaded, as an affirmative defense, among other allegations, that by appropriation and the beneficial use, over a period of fifteen years, of the waters of Shasta River, defendant had acquired and perfected a vested right thereto, for power development purposes, to the extent of 8500 inches (old style); that during the summer months of the last two years complainant has wrongfully and unlawfully diverted a portion of the waters of said river away from the natural channel thereof and from defendant's power plant; and that by means of said wrongful diversions, complainant has deprived and is now depriving defendant of a portion of the waters appropriated by, and belonging to, defendant, and necessary for the proper operation of its said power plant; that complainant is now threatening to install another and additional pumping plant, for which purpose the electric service in controversy has been demanded from defendant, and by means thereof, to divert additional water away from said river and said power plant; and that if complainant continues to maintain its existing pumping plant and to install and operate its proposed electric pumping plant, thereby depriving defendant of the use of said waters, defendant will be unable to continue the operation of its said power plant during the time of such wrongful and unlawful diversions and will suffer great damage and irreparable injury.

The answer further alleges that the estimated cost of constructing the power line extension, with its appurtenances necessary to enable defendant to furnish the electric energy applied for by complainant will amount to approximately \$1,000, and that if defendant is required to construct such line at its own expense, it will be compelled thereby to suffer a further loss in a sum equivalent to the cost of such construction.

The Commission ruled at the hearing that it was not within its province to determine the question of water rights and that the situation, so far as this Commission is concerned, is the same as though complainant's rights to the use of the water of Shasta River were being contested by a third party. In other words, that the only effect of the dispute as to the water rights, so far as this Commission is concerned, would be the raising of a reasonable doubt as to whether or not complainant would be able to continue using the electric energy for which it has applied. The Commission finds from the evidence that there is a bona fide contest over the right to the use of this water and that defendant intends to bring an action in the courts to prevent complainant from diverting the same, which, if successful, would result in compelling complainant to cease the use of the electric energy for which it is now applying. Realizing this situation, complainant has offered to indemnify defendant for the cost of its extension, or, if necessary, to advance to defendant the cost thereof, with the understanding that the same shall be repaid to complainant in the form of a deduction from bills for electric energy hereafter supplied. Defendant expressed the fear that if it furnished electric energy to complainant, which the latter intended to use for pumping water out of the Shasta River, defendant might thereby

be estopped from legal or equitable action against complainant. No compliance with the order of this Commission, however, can in any way prejudice defendant's legal or equitable rights, as defendant has clearly established throughout this proceeding that it will not serve complainant with the electrical energy in question, while the matter of water rights is still in dispute, unless it is forced to do so by this Commission.

O R D E R.

WEBB BROTHERS COMPANY having filed a complaint against CALIFORNIA-OREGON POWER COMPANY, a public hearing having been held and the matter being now ready for decision,

IT IS HEREBY ORDERED that California-Oregon Power Company, upon deposit with it by complainant of the sum of one thousand dollars (\$1,000), shall immediately commence the installation of the necessary extension and equipment to serve complainant's fifty(50) horse-power three-phase electric motor in the southeast quarter of the southwest quarter of the southeast quarter of Section 28, Township 45 North, Range 6 West, M.D.B. & M., and shall complete said installation within thirty (30) days after the receipt of such deposit from complainant.

IT IS HEREBY FURTHER ORDERED that if the reasonable cost to defendant of installing said extension and service connections shall be less than one thousand dollars, defendant shall immediately refund to complainant the difference between such actual cost and the amount deposited with defendant by

Complainant.

IT IS HEREBY FURTHER ORDERED that as long as complainant pays to defendant for such service not less than two hundred and fifty dollars (\$250.00) per year, defendant shall pay to complainant interest at the rate of seven (7) per cent per annum upon the unreturned portions of said deposit, provided that said interest shall not be paid on any portion of such amount in excess of three times the annual revenue from complainant for the service applied for herein.

IT IS HEREBY FURTHER ORDERED that defendant shall refund to complainant the entire amount advanced in case it shall be finally decided by the courts that complainant has the right to the use of said waters of the Shasta River and complainant shall have contracted to take power from defendant at its regular rates for a period of three (3) years thereafter or shall enter into a contract with defendant to take service under conditions satisfactory to defendant for a period of three (3) years.

Dated at San Francisco, California, this 25th day
of June, 1919.

Edwin O. Edgerton

Frank W. DeWitt

James Martin
Commissioners.