

Decision No. 6508

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Wallace G. Hemphill and

C. W. Levisse,

Complainants,

-vs-

Pacific Gas and Electric

Company, a corporation,

Defendant.

Case No. 1541.

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R. W. Hawley for complainants,

C. P. Cutten for defendant.

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MARTIN, Commissioner.

OPINION

The complaint in the above entitled proceeding alleges in effect that defendant, a public utility engaged in the business of distribution of water for the irrigation of lands in Placer County, has in the past repeatedly negotiated with complainant Hemphill, through its qualified representatives, for the irrigation of his own and other lands adjacent to Auburn Ravine, and as a result entered into three contracts with the complainants herein providing for the delivery of specified quantities of water to their lands for the irrigation of rice and other crops. It is further alleged that defendant has recently so diminished the supply of water turned into Auburn Ravine that complainant Hemphill has received an inadequate

supply and complainant Levisse was entirely deprived of water, and that continued shortage will result in the destruction of complainant's entire crops.

Complainants therefore ask the Commission to make its order directing defendant to deliver an adequate supply for the development of rice crops on complainant's lands, or if there is less than a full supply of water available that it then be required to deliver to complainants an exact pro-rate supply of the entire amount of water available for delivery to all users of water for irrigation.

A public hearing was held in San Francisco on July 15, 1919.

A contract between Pacific Gas and Electric Company and Wallace G. Hemphill was executed on October 31, 1918, and provides for the delivery, at a point on Auburn Ravine in Section 12, T.12 N., R.6 E., M.D.B. & M., of not to exceed 1000 miners inches of water for the irrigation of 1000 acres of rice land at the following "development" rates:

\$1.00 for each acre of land to be irrigated during the year 1919.

\$3.00 for each acre of land to be irrigated during the year 1920.

\$7.00 for each acre of land to be irrigated during each year after 1920.

It was provided that Hemphill should construct, maintain and operate all aqueducts necessary for receiving and conducting the water to the locations at which it was to be utilized and that sufficient water should be purchased each season for the irrigation of at least 800 acres.

Further provisions of the contract were that reasonable care and diligence should be exercised to furnish and deliver to Hemphill the quantities of water to which he was entitled, but that

the Company should not be liable for loss or damage suffered through failure to deliver a full supply if such failure was occasioned by accident, act of God, fire, strikes, riots, war or any other act or thing beyond the reasonable power or control of the company, and if at any time the Company should not have sufficient water to supply all of its consumers with the full amounts to which they are entitled, then the amount of water available for sale during such period should be apportioned fairly and equitably among all such consumers.

It was also understood and agreed that the water to be furnished will first be utilized for the generation of electric energy, which is the primary use to which it shall be put, therefore the Company shall have the right, without incurring any liability, to discontinue delivering water for irrigation use whenever in the opinion of its engineer such discontinuance is necessary in order to conserve the stored waters required for the generation of electric energy.

Two similar contracts were executed between Pacific Gas and Electric Company and C. W. Levisse, as follows:

November 15, 1918, for 1200 miners inches of water for the irrigation of 1500 acres of rice and beans, and delivered at points on Auburn Ravine in Sections 27 and 30, T.12 N., R. 5 E., M.D.B. & M.

January 20, 1919, for 600 miners inches of water for the irrigation of 750 acres of rice and beans at a point near the southeast corner of Section 27, T.12 N.R.4 E., M.D.B. & M.

Complainants contend that they were assured by representatives of defendant that the clause in each contract providing for the distribution of water pro-rata in case of shortage would entitle them to a proportionate share of all water delivered for irrigation purposes to all consumers under defendant's water system, and that the clause under which defendant endeavors to vest the right to discontinue service when, in the opinion of its engineer, such discontinuance was necessary to conserve stored waters was understood

to in no way set aside the provision for delivery of all water pro-rata. Complainants also contend that their rights to receive water in times of shortage are equal to those of other consumers, most of whom have been supplied with water for many years and at higher rates.

Defendant contends that complainants were granted a lower rate for water than other consumers for the reason that the water supplied under the contracts was surplus or "dump" water only and that regularity of service could not be guaranteed at all times and under all conditions. It was also argued by defendant that the rights of complainants to water in times of shortage are inferior to those of other consumers who have purchased water for many years and at higher rates.

This proceeding had its inception in an informal complaint filed with the Commission on July 8, 1919. A conference was held on July 11th at which were present the Power Administrator, defendant's chief electrical engineer, the complainants, and the Commission's engineers. Owing to the gravity of the situation and the impossibility of deciding the matter without a formal hearing, the Power Administrator consented to issue an order directing defendant to increase the supply of water to complainants for a period of ten days so that crops might not be ruined during the period required to bring formal action and a decision be reached by the Commission. This action was taken in spite of the fact that it might seriously affect the supply of electric light and power, later in the season.

Testimony at the hearing developed the fact that the present situation regarding water supply is abnormal; that the demand for water is greater than usual while the supply is below normal and that in no year since 1905 has it been necessary to draw upon storage so early in the season. During the winter and early spring every indication pointed to a year of normal water supply but these early

predictions were later reversed by hot winds which seriously depleted stream flow. So acute did this situation become that early in July the Power Administrator called a conference to discuss power possibilities at which each power company submitted estimates. It was then decided that in order to carry the load it would be necessary to operate all steam plants to full capacity and to conserve stored water. The Power Administrator accordingly issued his order to reduce draft on storage as much as possible.

It was also shown that a large number of irrigators and a considerable number of municipalities, including Auburn, Colfax, New Castle, Roseville, Nevada City and others, are dependent upon defendant for water for domestic use, and that a depletion of amounts in storage might seriously affect their supply.

In view of the foregoing circumstances, it would be unwise to draw upon stored water to supply complainants.

It was suggested at the hearing that a proration of the irrigation supply between complainants and other consumers, who are mostly orchardists, might be accomplished by a strict division of the available water or by withholding the orchardists' supply entirely for one or more months. Either course would entail so many difficulties as to make the plan impracticable. A strict division of the water would necessitate changing over some 900 measuring boxes, the water so diverted would be inconsiderable in quantity for rice irrigation and would be still further reduced in amount when delivered at complainants intakes, owing to the enormous losses in Auburn Ravine, which testimony shows are somewhere between 25 and 75 per cent, depending upon the distance transported. Withholding the supply from the orchardists for a time would be impossible as water for domestic use is carried in the same ditches that supply the irrigation demand, with the result that irrigators at the upper end of the ditches would appropriate the domestic supply not only of other irrigationists but of the municipalities as well. Any reduction of the supply to the

orchardists would also cause them severe financial loss.

Some of complainant Levissee's tenants are endeavoring to secure a water supply by the sinking of wells and the installation of pumps, hoping in this way to save a part of their crops. Others contend that owing to their location it is impossible to secure water through the installation of wells and pumping equipment and will not make the attempt.

Testimony shows that defendant has failed to file copies of contracts and rates with the Commission as is provided for in general orders. Presumably this was an oversight rather than an intentional disregard of a very vital matter, but it should be a lesson to the company.

It was also shown that defendant made no effort to warn complainants of the impending water shortage, although its chief electrical engineer admitted that he was aware of conditions for a considerable time in advance of the actual curtailment of supply, and the only explanation given for such failure was that it was not customary to notify consumers of probable water shortage. The Commission deems it the duty of a public utility to keep reasonably in touch with the consumers and to give them fair notice in such an important matter as impending water famine or stoppage of service. Such notice to the consumers in the present case would not only have aided materially in the conservation of water but would also have saved financial loss to consumers in many instances. Defendant should also be condemned for making contracts for the supply of such large quantities of surplus or "dump" water before it was determined, by trial for several years upon a small acreage, how much water could safely be assured for the purpose.

I submit the following form of order:

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WALLACE G. HEMPHILL and C. W. LEVISEE having made com-

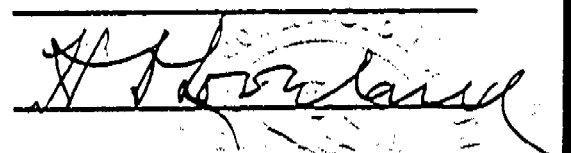
plaint against PACIFIC GAS AND ELECTRIC COMPANY, a public hearing having been held thereon, the Commission being fully informed in the matter and basing its order upon the findings contained in the preceding opinion,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company be and the same is hereby directed to turn into Auburn Ravine, for the use of complainants herein, such quantities of water as is possible to divert thereto after complying with the orders of the Power Administrator, to the effect that impounded water shall be conserved as much as possible.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint herein be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18<sup>th</sup> day of July, 1919.

  
H. H. Howard

H. C. Brundage

Dwight Martin  
Commissioners.