

Decision No. 6736

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of)
the PACIFIC GAS AND ELECTRIC COMPANY,)
a corporation, for an order of the)
Railroad Commission authorizing appli-)
cant to enter into an agreement with)
the DIRECTOR GENERAL OF RAILROADS,)
THE SOUTHERN PACIFIC RAILROAD, CENTRAL)
PACIFIC RAILWAY COMPANY and SOUTHERN)
PACIFIC COMPANY.)

Application
No. 4722

Chas. P. Cutten, for Applicant.
W. M. Singer, for the Director
General of Railroads, Sou-
thern Pacific Railroad, and
Southern Pacific Company.

DEVLIN, Commissioner:

O P I N I O N

This proceeding is brought by applicant, Pa-
cific Gas and Electric Company, for authority to exe-
cute an agreement with the Director General of Rail-
roads, the Southern Pacific Railroad, Central Pacific
Railway Company and the Southern Pacific Company, un-

der the provisions of subdivision "b" of Section 17 of the Public Utilities Act, in order that it may depart from its regular rate schedules in charging the Railroad Companies for electric service, which departure is in consideration of the further exercise by Pacific Gas and Electric Company of certain rights of way privileges heretofore granted by the Railroad Companies.

A hearing was held in San Francisco on August 25th, 1919, and, being submitted, the matter awaits decision.

It appears that on February 2nd, 1900, the Southern Pacific Railroad Company, Southern Pacific Coast Railway Company, Central Pacific Railway and Southern Pacific Company, hereinafter referred to as "the Railroads", entered into an agreement with the Standard Electric Company, predecessor of applicant herein, under the terms of which the Electric Company was permitted to construct and maintain poles and wires for the transmission of electric energy for a term of ten years on the following rights-of-way of the Railroad Companies:-

1. From San Bruno, San Mateo County, California, to Mayfield, Santa Clara County, California.
2. From Alviso, Santa Clara County, to San Jose, Santa Clara County, California.
3. From Oakland, Alameda County, California, to Irvington, Alameda County, California.

and, in consideration thereof, the Electric Company agreed to deliver, free of charge, to the Railroad Companies at the Railroads' car shops in the City of Oakland, 25 continuous horsepower of electricity.

On September 20th, 1906, the Railroads entered into an agreement with the Bay Counties Power Company, successors to the Standard Electric Company, and predecessor of applicant herein, in accordance with which the terms of the former agreement of February 2nd, 1900 were extended for an additional term of ten years, expiring February 2nd, 1920.

On November 25th, 1911, the Railroads entered into a further agreement with the Pacific Gas and Electric Company, successor of the Standard Electric Company and Bay Counties Power Company, whereby Pacific Gas and Electric Company agreed that, in lieu of furnishing twenty-five continuous horsepower, as provided in the agreement of February 2nd, 1900, it would substitute therefor the equivalent in electric energy required for lighting 211 electroliers, which the Railroad Companies were required to erect and maintain on Seventh Street in accordance with the terms of a franchise of the City of Oakland, under which the Railroads operate electric interurban trains.

These agreements have been filed and approved by the Railroad Commission, and the consequent deviation in rates has been countenanced by this Commission.

All the aforesaid agreements terminate, by limitation, on February 22nd, 1920, and the parties thereto desiring to continue under these arrangements, with certain exceptions noted hereinafter, and having drafted a new indenture, filed as Exhibit "A" with the application herein, now request the authority of the Commission to execute the necessary agreement to continue the exchange of electric service for right-of-way occupancy for a period of one year from February 22nd, 1920 and thereafter, as provided for in the new agreement.

The Electric Company never availed itself of its right to occupy the right-of-way from San Bruno to Mayfield. It did use and is now using the right-of-way from Alviso to San Jose, but has been given notice by the Railroads to vacate this right-of-way, and will do so before the expiration of the present agreement. Applicant proposes to remove its poles and wires from all portions of the Railroads' rights-of-way before February 2nd, 1920, excepting from that portion of the right-of-way extending from Fallon Street to 50th Avenue, in the City of Oakland.

The Commission does not generally look with favor upon exchanges of service by a utility for rights-of-way, and has, in the past, endeavored to place such exchanges upon a cash basis. The propriety of permitting further exchange of utility service for property rights hinges entirely upon the question of whether the interests of the public are thereby benefitted.

The proposed agreement permits the occupancy of three miles of right-of-way in the City of Oakland for the same consideration on the part of the Electric Company that it formerly gave for the occupancy of twenty-one miles of right-of-way from Oakland to Niles.

At the present time the Pacific Gas and Electric Company maintains an 11,000 volt distribution line along the Railroads' right-of-way from Fallon Street to 23rd Avenue in Oakland, and a 60,000 volt transmission line from 23rd Avenue to 50th Avenue in Oakland. Applicant is now constructing a new main substation at Newark, and has obtained rights-of-way on private property, with the exception of two parcels of land now in litigation, which will permit it to remove, before February 2nd, 1920 all of its poles and wires now located on the Railroad right-of-way from 50th Avenue, Oakland, to Niles. Its plans further contemplate the later removal of all of its 60,000 volt line, which shall remain on the Railroads' right-of-way from 23rd Avenue to 50th Avenue in the City of Oakland, in connection with the construction of a high voltage receiving substation at or near 50th Avenue in Oakland. Pacific Gas and Electric Company will thereby remove all of its high voltage lines, not only from the Railroads' right-of-way, but also from the more densely settled portions of the City of Oakland.

The immediate cost to the Electric Company of removing those portions of its lines that shall remain on the Railroads' right-of-way, which will neces-

sitate the construction of the aforementioned substation at 50th Avenue and other changes in its lines in the City of Oakland, is stated to be approximately \$250,000. The relocation of the present 60,000 volt line from the Railroad right-of-way to a public highway is not to be considered as an alternative on account of the hazard involved.

The expenditure of \$250,000 in the necessary construction would impose a fixed charge upon applicant of approximately \$25,000 per annum, for which it would have a right to ask reimbursement in rates. The revenue from the service now given by applicant in the lighting of the Railroads' electroliners, if charged at schedule rates, would not exceed \$5,000.00 per annum.

From the standpoint of the Railroads, their rights-of-way are now more valuable than at the time the original contracts were negotiated, and although the mileage now to be occupied is but one-seventh of that heretofore used by the Electric Company, the Railroads contend that the service they are receiving will not be an excessive compensation for the proposed occupancy of their rights-of-way. The Railroads express their policy of requiring all foreign utilities to vacate their rights-of-way as rapidly as conditions permit, and have from time to time required the removal of all facilities not directly connected with railroad operations. Both parties agree that the proposed arrangement is a temporary one, not to con-

tinue for more than 2 or 3 years at the most, and are willing to accept any conditions this Commission may see fit to require in the matter.

The Director General of Railroads remains a party to the proposed agreement for such time as said railroads shall continue under Federal control.

The attention of the parties hereto is directed to General Order No. 53 of this Commission, which requires that all contracts and agreements entered into between public utilities for service to their consumers shall contain the following provision:

"This contract shall at all times be subject to such changes, or modifications, by the Railroad Commission of the State of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction."

The proposed agreement contemplating the furtherance of an arrangement heretofore sanctioned by the Commission, the proposed arrangement being of a temporary character, and the public's interest not thereby affected, I recommend the granting of the authority to applicant to enter into the proposed agreement in accordance with the following form of order:

O R D E R

Pacific Gas and Electric Company, applying to the Railroad Commission for an order authorizing it to enter into an agreement with the Director General of Railroads, Southern Pacific Railroad, Central Pacific

Railway Company and Southern Pacific Company, whereby the Electric Company furnishes the Railroads with certain electric service in exchange for the temporary occupancy of certain rights-of-way of the Railroads from and after February 2nd, 1920, the Commission finding that the granting of such authority is proper, and not inconsistent with the public interest,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company be, and it is hereby authorized to enter into an agreement with the Director General of Railroads, Southern Pacific Railroad, Central Pacific Railway Company and Southern Pacific Company, substantially under the terms and conditions set forth in Exhibit "A" filed with the application,

PROVIDED, that the agreement shall contain the provision required by General Order No. 53 of the Railroad Commission, and,

FURTHER PROVIDED that Pacific Gas and Electric Company file with the Railroad Commission stipulation to the effect that it will, at any time during the life of the proposed agreement, terminate its occupancy of the Railroads' rights-of-way at such time and under such conditions as the Railroad Commission may, in the public interest, hereafter direct.

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 28 day of October, 1919.

Edwin A. Egan

H. D. Woodard

Frank R. Deery

Henry Martin

Commissioners