

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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In the matter of the application of :
PACIFIC GAS AND ELECTRIC COMPANY, a :
corporation, to sell and of SAN JOSE :
WATER COMPANY, a corporation, to pur- :
chase certain property in Los Gatos :
and certain property interests in that :
vicinity, and authorizing the San Jose :
Water Company to sell to the Pacific :
Gas and Electric Company certain prop- :
erty and interests in property. :
.....

Application No. 552

Cans. P. Cutten for Pacific Gas & Electric Company.
S. F. Leib for San Jose Water Company.

GORDON, Commissioner:

OPINION

This is an application by the Pacific Gas and Electric Company for permission to sell and of the San Jose Water Company for permission to purchase certain land along the Los Gatos Creek and certain water rights to the water of this creek.

The San Jose Water Company supplies the City of San Jose, the City of Los Gatos and the territory in the vicinity of these two cities in Santa Clara County.

The property which the San Jose Water Company desires to purchase includes certain land along the banks of the Los Gatos Creek, from which creek the water company now obtains its supply of water. If this land is owned by the water company, the company will be able to keep the creek in a more sanitary condition than is at present possible. The property to be transferred includes certain rights of way for the laying of aqueducts and pipe lines over the property of the Pacific Gas and Electric Company which will enable the water company to increase the efficiency of its system. If the transfer is consummated, the water company will also be able to supply the City of Los Gatos by a gravity system.

whereas at present the water which the company supplies to the City of Los Gatos is taken from the creek at a point below the city and pumped to the city.

The water company will also procure certain land upon which it contemplates constructing an aeration plant, which will be used to aerate the water and thus insure its purity.

The two parties to this application have entered into a proposed contract of sale, covering all the property to be transferred. This contract of sale is attached to the opinion and order as "Exhibit A." The property to be transferred is described in this contract in detail. In consideration for the transfer of this property, the San Jose Water Company has agreed to pay to Pacific Gas and Electric Company the sum of \$25,000, and also grant to Pacific Gas and Electric Company the right to take water from the aqueducts of the water company, for the purpose of generating power, cooling electrical apparatus and also extinguishing fires.

I recommend that the application be granted and submit the following form of order:

O R D E R .

Pacific Gas and Electric Company having applied to this Commission for permission to sell to San Jose Water Company for the sum of \$25,000.00 certain property and certain rights to receive water from Los Gatos Creek, all of which property is set forth in detail in the proposed contract of sale attached to this order and marked "Exhibit A," and the San Jose Water Company having joined in this application, and it appearing to the Commission that public convenience will be subserved by the granting of this application,

IT IS HEREBY ORDERED That Pacific Gas and Electric Company be and it is hereby authorized to sell to the San Jose Water Company for the sum of \$25,000.00 all the property and rights to the water of Los Gatos Creek set forth in detail in the proposed contract of sale attached to this order and marked "Exhibit A," and that the San Jose Water Company be and it is hereby authorized

to purchase said property and to execute conveyances to the Pacific Gas and Electric Company of certain rights to water from the aqueducts of the San Jose Water Company, all in accordance with the terms of the proposed contract of sale attached to this order and marked "Exhibit A," upon the following condition, and not otherwise, to-wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing, or other purposes, the value of the property to be transferred.

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 6th day of June, 1913.

H. D. Loveland

Max. Thelen

Edwin D. Edgerton

Commissioners.

THIS AGREEMENT made by and between the PACIFIC GAS AND ELECTRIC COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, State aforesaid, the party of the first part, hereinafter for convenience called the "Pacific Company", and the SAN JOSE WATER COMPANY, a corporation also duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City of San Jose, County of Santa Clara, State aforesaid, the party of the second part, hereinafter for convenience called the "Water Company", WITNESSETH that the Pacific Company, in consideration of the promises of the Water Company hereinafter contained, does hereby promise unto the Water Company to sell and convey unto the latter, upon the terms and conditions hereinafter set forth, the property and interests in property which are described as follows, to-wit:

1. All of said Pacific Company's rights, titles, interest and estates in and to that certain parcel of land situate in the City of Los Gatos, County of Santa Clara, State of California, which is more particularly described as follows, viz:

Commencing at an iron pipe driven in the ground at the northeasterly corner of the bridge crossing the Los Gatos Creek on Main Street in the said City of Los Gatos, and running thence north thirty-four (34) degrees east sixty-seven (67) feet to an iron pipe driven in the ground situate approximately five (5) feet northwesterly from another iron pipe driven in a private road leading from Main Street to the mill of said Pacific Company; thence north forty-seven (47) degrees fifteen (15) minutes east sixty-five and 30/100 (65.30) feet to an iron pipe driven in the ground situate approximately five (5) feet northwesterly from another pipe driven in said last mentioned private road; thence north thirty-nine (39) degrees twelve (12)

minutes west fifty-one and 40/100 (51.40) feet to an iron pipe driven in the ground; thence north fifty-four (54) degrees ten (10) minutes west one hundred and twenty-eight and 80/100 (128.80) feet to an iron pipe driven in the ground; thence south forty-six (46) degrees thirty-four (34) minutes west one hundred and forty-one and 30/100 (141.30) feet to the north side of said Main Street; thence along the northeasterly side of said Main Street and said bridge south fifty-four (54) degrees ten (10) minutes east one hundred and ninety-three and 48/100 (193.48) feet to the place of commencement.

2. The perpetual right for the Water Company, its successors and assigns, to use, in common with the Pacific Company, as a means of ingress to and egress from said parcel of land first above described, that portion of the private road of the Pacific Company leading from Main Street to the mill of the Pacific Company in the said city of Los Gatos, which is adjacent to said parcel of land first above described.

3. All of the Pacific Company's rights, titles, interests and estates in and to the bed and banks of said Los Gatos creek to the extreme high water mark thereof, extending southerly from the southerly side of the parcel of land first above described to the dam across the said Los Gatos Creek south of the town of Alma, by means of which dam the Water Company diverts the waters of said creek.

4. The perpetual right for the Water Company, its successors and assigns, to lay, repair, maintain and use, beneath the surface of the ground, for the purpose of conveying water, an aqueduct consisting of pipes, flumes or tunnels from the first parcel of land hereinbefore described to the tail race of the Pacific Company below the aforesaid mill, such aqueduct to be located within the boundaries of the right of way which was granted by Los Gatos Manufacturing Company, a corporation, to said Water Company by deed of conveyance dated August 21, 1889, and recorded in the office of the County Recorder of said Santa Clara County, in Liber 119 of Deeds, at page

'240' and to be kept safely covered' at all times by the Water Company at its own expense.

5. All of the Pacific Company's rights, titles, interests and estates in and to the site of an old dam which was formerly known as "Rogers Dam" and was located in said Los Gatos Creek about four hundred and twenty (420) rods up stream from the aforesaid mill now owned by the Pacific Company, together with the right to construct and maintain a dam thereon and by means thereof to divert and appropriate the waters of said creek there flowing.

6. All of the Pacific Company's rights, titles, interests and estates in and to the rights, privileges, servitudes and easements which were expressly reserved by or granted to the Los Gatos Manufacturing Company by deed of conveyance bearing date December 17, 1886, and recorded in the office of the County Recorder of said Santa Clara County in liber 88 of Deeds at page 89; and also all of the Pacific Company's rights, titles, interests and estates in and to all and singular the rights, privileges, servitudes and easements which were reserved by or granted to the Los Gatos Ice and Power Company by an agreement bearing date July 12, 1902, and recorded in the office of the County Recorder of said Santa Clara County in liber 14 of Miscellaneous Records, at page 53, except the right to use, at the places and in the manner hereinafter specified, the waters of said Los Gatos Creek for the purposes of generating transmissible motive power and cooling transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter situate upon the parcel of land upon which said mill is situated.

7. Also all of the Pacific Company's rights, titles, interests and estates in and to all of the waters flowing in said Los Gatos creek and the tributaries thereof and the right to appropriate, divert and use such waters for any and all beneficial uses, and all pipes, flumes and other aqueducts now or at any time heretofore used by the Pacific Company or any of its

predecessors in interest, in appropriating, diverting and using such waters, except only the right to use such water for the generation of transmissible motive power at such places and in such manner as will not interfere with the Water Company's use thereof for other purposes, or prevent the Water Company from utilizing the pressure of such water in the mains leading to the first parcel of land hereinbefore described for spraying and thereby aerating such water for the purpose of purifying the same, and the right to take so much water from the Water Company's mains at some suitable place in the vicinity of the aforesaid mill as may reasonably be required for cooling the transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter situate upon the parcel of land upon which said mill is situate.

8. A perpetual right and easement for the Water Company to maintain, repair and from time to time to replace its existing aqueducts, consisting of pipes laid below the surface of the ground and ^{from} time to time to construct new aqueducts, consisting of pipes laid beneath the surface of the ground, and to maintain and replace the same, and to use all of such aqueducts for the purpose of conveying water from the Water Company's reservoir situated in said City of Los Gatos and commonly known as and called the "Tisdale Reservoir"; and also from the ravine below said reservoir upon, over and along the three parcels of land situate in said City of Los Gatos which are more particularly described as follows, viz:

(a) A parcel of land of the uniform width of ten (10) feet bounded on the north by Main Street; on the east by the parcel of land which was granted and conveyed by W. S. McMurry and J. Y. McMillin to W. H. Rodgers by deed bearing date December 3, 1869, and recorded in the office of said County Recorder in liber 16 of Deeds at page 379; on the west by the parcel of land which was granted by W. H. Rogers et al. to Jacob Andrick by deed bearing date December 3, 1869, and recorded in the office of said County Recorder in liber 38 of Deeds at

page 32; and on the south by the extension easterly of the southerly boundary line of the last mentioned parcel of land;

(b) A parcel of land of the uniform width of fifteen and 50/100 (15.50) feet extending from the southerly end of the parcel of land described in the last preceding paragraph in a southerly direction one hundred (100) feet, and being one of the parcels of land which were granted and conveyed by W. S. McMurtry et al to the Los Gatos Manufacturing Company by deed bearing date August 23, 1886, and recorded in the office of said County Recorder in liber 86 of Deeds at page 307;

(c) A parcel or strip of land twelve (12) feet in width extending from the southerly end of the parcel of land described in the last preceding paragraph in a southerly direction to a certain reservoir, being the strip of land twelve (12) ^{feet} in width which was excepted by the Los Gatos Manufacturing Company from the parcel of land which was granted ~~xx~~ and conveyed by said Los Gatos Manufacturing Company to W. D. Tisdale by deed bearing date March 3, 1888, and recorded in the office of said County Recorder in liber 105 of Deeds at page 323, and upon and along the center line of which is situated a pipe used for conveying water to the mill property of the Pacific Company.

Also a like right and easement upon, over and along a certain lane commencing at Main Street nearly opposite the northerly end of the parcel of land described in paragraph (a) on page 5 hereof, and running thence in a general northerly direction to the parcel of land upon which the aforesaid mill now stands, and from the northerly end of said lane along the course of the present pipe line to the said mill and to a connection with the above mentioned tail race.

9. A perpetual right of way to construct.

maintain, repair and from time to time to replace such pipe lines beneath the surface of the ground as may reasonably be required for conveying all water which may be brought through aqueducts at any time maintained upon the right of way described in paragraph number 8 of this agreement from a connection with such aqueducts between the northerly end of said land and said mill in a general westerly direction along a practicable route to the parcel of land first hereinbefore described, the place of such connection and such route to be selected by the Water Company subject to the approval of the Pacific Company; but it is understood that this right of way is to be granted upon condition that at any time after the necessary pipe lines shall have been laid therein the Water Company, if requested so to do by the Pacific Company, will take up and remove that part of its aforesaid aqueducts which extends from the aforesaid place of connection to said mill, and shall thereupon abandon the right of way for such part of said aqueducts.

If the Railroad Commission of the State of California shall make an order authorizing the Pacific Company to sell and convey the aforesaid property and interests in property to the Water Company upon the terms and conditions herein set forth, the Pacific Company will, within ten (10) days after the making of such order, make, execute, acknowledge and deliver to the Union Trust Company of San Francisco, as escrow holder, a good and sufficient deed of conveyance granting the aforesaid property and interests in property unto the Water Company, and will authorize and instruct said Union Trust Company of San Francisco to deliver such deed of conveyance to the Water Company upon the latter depositing with it for the account of said Pacific Company the sum of twenty-five thousand dollars (\$25,000.00) in gold coin of the United States of America; and will also, within ninety (90)

days after the making of such order, cause to be executed, acknowledged and deposited with the Union Trust Company of San Francisco, as escrow holder, for delivery to said Water Company, a good and sufficient release and deed of reconveyance releasing and discharging the aforesaid property from the lien, charge and operation of each of the mortgages or deeds of trust which are described as follows, viz:

1. A mortgage bearing date the 1st day of November, 1907, which was executed by the Pacific Company to said Union Trust Company of San Francisco, as trustee, as additional security for the payment of the Unifying and Refunding Bonds of the California Gas and Electrical Corporation;

2. The General and Collateral Trust Mortgage of the Pacific Company dated January 2, 1906, which was executed by said Pacific Company to said Union Trust Company of San Francisco, as trustee:

3. The Debenture Mortgage, bearing date the 15th day of December, 1907, which was executed by said Pacific Company to The Trust Company of America, as trustee; and

4. The General and Refunding Mortgage, bearing date December 1, 1911, which was executed by the Pacific Company to the Bankers Trust Company and F. B. Anderson, as Trustees.

The Water Company, for and in consideration of the promises of the Pacific Company herein contained, promises to the Pacific Company to pay unto the latter the sum of twenty-five thousand dollars (\$25,000) as the purchase price of the aforesaid property and interests in property at or before the expiration of ten (10) days after the receipt by it from the Pacific Company of notice that the aforesaid deed of conveyance to be executed by the Pacific Company and the aforesaid releases and deeds of re-

conveyance have been deposited with said Union Trust Company of San Francisco and are ready for delivery to the Water Company upon the latter depositing said purchase price.

The Water Company, for the consideration aforesaid, further promises to the Pacific Company that it will grant to the latter the right to take water from said aqueducts in the vicinity of said mill for cooling transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter erected upon the parcel of land upon which said mill is situate, and the right to construct, maintain and operate at any convenient place along the line of the aforesaid aqueducts and pipe lines, but upon the lands of the Pacific Company, such buildings, machinery and apparatus as may at any time be necessary or proper for the utilization of the fall of the water flowing therein for the generation of transmissible motive power; provided, however, that the Pacific Company, in using such water for power purposes, shall not at any time interrupt or impair the flow thereof through such aqueducts from the Water Company's reservoirs to the parcel of land first hereinbefore described, or interfere with the Water Company's right to regulate and control the flow of such water through such aqueducts.

It is mutually agreed by and between the parties hereto that the Pacific Company, notwithstanding its grant of the rights and easements described in paragraph number 8 of this agreement, shall have the right at any time to erect, maintain and use electric transmission lines supported by towers or poles, or any other suitable means, upon, over and along the parcels of land affected by said rights and easements, and also to make any and all other uses of said parcels of land not inconsistent with the enjoyment by the Water Company of the rights herein agreed to be granted to it; provided, however, that if the construction of any of such electric transmission line, or the making of any other use of

said lands, shall necessitate any change in the location of the Water Company's aqueducts, such change shall be made upon the demand, but at the expense, of the Pacific Company.

It is also mutually agreed by and between the parties hereto that they will, with all reasonable diligence and within thirty (30) days after the date hereof, prepare and file with the Railroad Commission of the State of California a joint application for an order authorizing and approving the sale and conveyance by the Pacific Company to the Water Company of the property and interests in property which the Pacific Company has herein agreed to sell and convey.

This agreement is made subject to the approval of said Railroad Commission and, in the event of said Railroad Commission refusing to authorize the sale and conveyance of the aforesaid property upon the terms and conditions herein specified, this agreement shall cease and become null and void, and both of the parties hereto shall be released and discharged from their respective promises herein contained.

IN WITNESS WHEREOF the parties hereto have, on this 17th day of April, 1913, executed these presents in duplicate.

PACIFIC GAS AND ELECTRIC COMPANY,

By John A. Britton

Its Vice-President and General
Manager

CORPORATE SEAL

and by D. E. Foote,
Its Secretary.

SAN JOSE WATER COMPANY,

By Joseph R. Ryland

Its President,

CORPORATE SEAL

and by H. L. Kittredge
Its Secretary.