EHH

Decision No. 9684

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

ORIGINAL

PACIFIC GAS AND ELECTRIC COMPANY, a corporation,

Complainant,

-vs-

GREAT WESTERN POWER COMPANY OF CALIFORNIA, a corporation,

Defendant.

Case No. 1668.

C. P. Cutten, for Complainant.

Chaffee E. Hall, for Defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, brought by the Pacific Gas and Electric Company, the Commission is asked to restrain the Great Western Power Company of California from extending its lines into territory, now served by the Pacific Gas and Electric Company, without first obtaining a certificate of public convenience and necessity, as required by section 50 of the Public Utilities Act.

The essential facts adduced at the hearing were as follows:

The Pacific Gas and Electric Company has power lines and supplies electric energy in the town of Oroville, Butte County, and in the surrounding country. It was serving this territory prior to the taking effect of the Public Utilities

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Act, and is successor to the rights of the Oro Electric Corporation, which was the possessor of a certificate of public convenience and necessity from the Railroad Commission, authorizing it to serve the town of Oroville and other territory in Butte County (Opinions and Orders of the Railroad Commission, Vol. 1, p.269).

The Great Western Power Company has a 100,000-volt transmission line traversing Butte County from north to south, and passing a short distance east of the town of Oroville. This Company has never directly rendered any local service in the County of Butte. It has no certificate of public convenience and necessity from the Railroad Commission to serve any of this territory, but its transmission line, running through Butte County, was constructed and in operation prior to the taking effect of the Public Utilities Act.

The Hutchinson Lumber Company, a West Virginia corporation, proposes to construct a lumber mill approximately 3½ miles south of the town of Oroville. Said company also proposes to carry on logging operations near Mooretown, Butte County, approximately 25 miles from Oroville. In the first instance, the lumber company did not contemplate the use of electric energy at its mill, but desired electric service for its logging operations near Mooretown.

The Pacific Gas and Electric Company has a 4,000-volt distribution line, approximately 3400 feet west, a 60,000-volt transmission line 4,000 feet west, and a similar line 2,800 feet south of the millsite. The 100,000-volt transmission line of the Great Western Power Company runs approximately one mile east of the proposed mill. The Great Western Power Company, however, does not propose to serve the mill directly from this line, but proposes, for this service, to construct a 44,000-volt secondary transmission line from its power plant

at Las Plumas, parallel to the transmission line, a distance of about 15½ miles.

The logging works at Mooretown are approximately 23 miles east from the nearest point on the transmission line of the Great Western Power Company, and about the same number of miles northeast from the nearest line of the Pacific Gas and Electric Company. This woods service could be rendered separately at about the same cost by either company. The service at the mill could be installed by the Pacific Gas and Electric Company at considerably lower cost than by the Great Western Power Company.

Both power companies have carried on negotiations looking toward a sale of the power to the lumber company. In carrying on its negotiations with the lumber company, the Pacific Gas and Electric Company offered to serve only the mill near Oroville, and virtually refused to serve the logging works. The Great Western Power Company offered to serve both places and to make, at its own expense, the necessary new extensions which this required. On August 31, 1921, the Great Western Power Company entered into a contract with the lumber company to furnish power both to the mill and for the logging operations. The Pacific Gas and Electric Company claims that, as to the mill service, the Great Western Power Company is violating section 50 of the Public Utilities Act and is invading territory in which it has exclusive rights.

The question which presents itself for determination is: Under what conditions will the Railroad Commission protect a utility which is rendering service in a given territory from competition with another utility seeking to render a like service in the same territory? Or, stating it another way: Under what conditions, if at all, does a utility have "exclusive rights" to serve a given territory?

The principles governing the determination of this question were formulated very early in the Commission's history. The Commission's Decision No. 107, Pacific Gas and Electric Company v. Great Western Power Company (Opinions and Orders of the Railroad Commission, Vol. 1, p. 203) contains an exhaustive discussion and analysis of section 50 of the Public Utilities Act. This case involved much the same question as is under consideration here. The Pacific Gas and Electric Company was serving a large territory, and the Great Western Power Company had applied to the Commission for a certificate to serve some of the same territory. The particular question under discussion was, Under what conditions would the Commission protect a utility from competition within a field in which it was already rendering service? The law and the policy of the Commission, as interpreted and established in that decision and as uniformly adhered to since that time, are best summed up in the following quotation (page 209):

> "It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within said field; but when one of these conditions is lacking, the public convenience may often be served by allowing competition to come in."

It will be seen that four distinct conditions must exist before a utility is entitled to be protected from competition in any territory. We will discuss these in the following order:

1. <u>Where a territory is served by a utility which has pioneered in the field.</u>

In the present case, the evidence is clear that the Pacific Gas and Electric Company, insofar as local service is concerned, has pioneered in the general field embracing

the town of Oroville and surrounding territory.

2. Where a utility is rendering efficient and cheap service.

There is no evidence in the present case to show that such service as is now being rendered in this territory by the Pacific Gas and Electric Company is not efficient. The rates offered by both companies are the same.

3. The territory is so generally served that it may be said to have reached the point of saturation, as regards the particular commodity in which the utility deals.

(This is the 4th condition named in the above quotation, but, for convenience, we will treat it at this point.)

It will be necessary hereto determine to what extent the territory in question is served and to discuss the meaning of the term "point of saturation."

The Public Utilities Act, section 50, provides that a utility may serve in a territory without a certificate when such territory is contiguous to its lines, and when it is not theretofore served by another utility of like character. Under the principles above set forth, the Commission may permit a second utility to enter a field already served by a utility, unless the territory is served to a point of saturation. Thus it is clear that if the territory is not served at all, the utility may enter it at will without any certificate from the Commission (assuming, of course, that the territory is contiguous to one of its lines) and if the territory is served by a utility, but not to the point of saturation, another utility may be permitted to enter, but only after it has obtained from the Commission a certificate of public convenience and necessity.

It is claimed by the Great Western Power Company that the territory in which the lumber mill is to be located is "open territory" and not "already served" by another utility. This claim is based upon the facts that the nearest Pacific Gas and Electric Company consumer is about a mile away; that the mill itself will be 3½ miles from Oroville, and that there is considerable vacant territory around the proposed millsite. It urges in support of this contention the decision of the Commission in Pacific Gas and Electric Company v. Great Western Power Company (known as the Arbogа case) Decision No. 4218, (Opinions and Orders of the Railroad Commission, Vol. 12, p. 740). In that proceeding conditions were similar to those existing in the present case, i.e. the Pacific Gas and Electric Company had several distributing lines, roughly, about one mile from the territory proposed to be served.

We cannot agree with the contention that the territory in which the proposed mill is to be located is open territory, and not already served by another utility, and that it could be entered at will without a certificate of public convenience and necessity from the Railroad Commission. Nor do we consider that the Arbogа case supports this contention.

In that case, the Great Western Power Company itself asked for a certificate authorizing it to serve the Farm Lands Investment Company, and such a certificate was granted. That fact alone indicates clearly that the territory in question was not absolutely open territory, or else no certificate would have been required, (the territory being also contiguous to an existing line). The statements in the Arbogа case to the effect that the territory in question was not within the territory already served by the Pacific Gas and Electric Company, and that it was "open territory," must be construed in the light of the positive fact that

a certificate to serve such territory was required. In the light of this fact, those statements could only have meant that territory was "not served" and was "open" in the sense that it was not served to the point of saturation, and another utility might enter upon obtaining a certificate.

It is not possible to establish an exact criterion by which it may be ascertained when the point of saturation is reached. If the term be given an extreme and literal meaning, it would require that every foot of the territory in question be built up and every inhabitant served. Such, of course, was not the construction intended. A more liberal definition, permitting a utility some opportunity for growth and expansion within the territory served by it, should generally be allowed. In the present case, however, we have a country with undeveloped resources and a small population. Oroville, itself, is a small community, and the territory surrounding it, insofar as power consumers are concerned, is sparsely settled. There is room for a very considerable development in the sale and distribution of power. Without attempting to lay down any definite rule as to what constitutes the point of saturation, we may safely say that in the present case that point has not yet been reached. We have, then, a territory already served, but not served to the point of saturation.

The Commission must still exercise its discretion in determining whether public convenience will be served by permitting another utility to enter. The same decision from which we have been quoting sets forth the Commission's established policy as to this question (page 212):

> "Competition does not necessarily become duplication unless the field covered by a natural monopoly is completely served. California has just begun her development. We have no doubt that as a rule in this State the going in of a second utility will develop a considerable amount of new business, while leaving an ample field for the existing utility."

As was said in this and other former opinions, whenever the coming of a new utility into a territory will serve to develop such territory and to build it up, either industrially or agriculturally, and thereby enhance the general prosperity of the State, such utility will not be excluded. It appears from the evidence that the Great Western Power Company was largely responsible for the action of the lumber company in changing its plan with regard to the use of power at its mill near Oroville. It is quite possible that had it not been for the efforts of that company electric energy would not have been used at all at this mill. The State is interested in the development of its natural resources through the development and sale of hydroelectric energy. This Commission has encouraged utilities to develop hydroelectric energy. Competition which results in the development of new uses for, and the additional sale of, electric energy is not to be stifled unless it appears that such competition actually results in harmful duplication and economic waste. In the present case, we do not believe that serious duplication will result. Nor is this a case where one utility is taking the "cream of the business" by taking a large consumer away from another utility which had previously served such consumer, as was the case in Decision No. 2904, (Opinions and Orders of the Railroad Commission, Vol. 8, p.429). Rather does it appear here that the Great Western Power Company is developing business which would not otherwise have been developed.

It is apparent, therefore, that one of the four conditions referred to is lacking, and that the public convenience will be served, and it will be consistent with the Commission's established policies if the Great Western Power Company is permitted, under a certificate from the Commission, to serve the proposed lumber mill.

One more condition remains to be discussed, and it is, perhaps, the most important of all:

4. That the utility is fulfilling adequately the duty which, as a public utility, it owes to the public."

A utility must fulfill adequately the ~~one~~ duty it owes to the public. This is not the same as the "duty of rendering efficient and cheap service". We think efficient and cheap service, as used in condition number 2, means that the service already being rendered must be efficient and cheap. A utility owes a duty to that portion of the public which seeks to obtain service as well as to that portion of the public which is already being served. It is the duty of a utility, in proper cases, to make extensions in order to serve new consumers and to furnish information to prospective consumers as to the costs or terms under which such extensions may be made. The evidence in the present case shows that the Pacific Gas and Electric Company did not perform its duty to the public in this respect. The lumber company desired service at the logging works. It was entitled to know the cost of such service and under what conditions it could be obtained. The Pacific Gas and Electric Company, however, sought only to obtain the more profitable business at the mill near Oroville. The business of serving the logging works belonged as properly to the Pacific Gas and Electric Company as it did to the Great Western Power Company. It was about equally distant from the lines of each company, and could have been served by each at about the same cost. The lumber company had notified the Pacific Gas and Electric Company as early as October 28, 1920, that it was considering the electrification of its logging equipment, and would be glad to figure with the Pacific Gas and Electric Company for the power for this work. The rules of the Pacific Gas and Electric Company,, on file with the Commis-

sion, provide for making extensions without cost to consumers when the estimated average annual revenue to be obtained amounts to one-third of the cost of making the extension. It was the duty of the Pacific Gas and Electric Company to facilitate the extension of its public utility service to a proposed consumer desiring such service. The exchange of correspondence between the Pacific Gas and Electric Company and the lumber company indicates that no statement of the terms of extensions of service was made. The lumber company was given no information which would enable it to determine whether or not it was feasible and profitable for it to use electric energy at its logging camp. On the contrary, the Pacific Gas and Electric Company informed the lumber company that it was not in a position to render the service at all. The importance of this refusal is clearly shown when it is noted that on the basis of combined service as considered by Great Western Power Company, no advance or investment in lines was required of the lumber company; while, if the service to the logging plant was to be rendered separately by either company, the rules on extensions would require an investment in advance by the lumber company of from $40,000 to $60,000.

As already stated, the evidence shows clearly that the logging operations could have been served equally as well and as cheaply by the Pacific Gas and Electric Company as by the Great Western Power Company. If that territory be regarded as open territory, it was as much the duty of the Pacific Gas and Electric Company to make the necessary extension as it was the duty of the Great Western Power Company. Public interest required that this logging camp be served with electric power. The Pacific Gas and Electric Company was in error in making the contention that the lumber company could be better served at that point from some other source. In making what was virtually a flat refusal to render service at this point, the Pacific Gas and Electric Company has not fulfilled adequately the duty which, as a public utility, it owes to the public. It is true that counsel for the Pacific Gas and Electric Company stated at the hearing that that company would willingly serve both plants if it

was ordered to do so by the Railroad Commission. As indicated in Decision No. 107 (Opinions and Orders of the Railroad Commission, Vol. 1, pp. 210, 211), only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that it is performing the duty it owes to the public.

The Great Western Power Company, according to the evidence, not only sought aggressively to serve the lumber company at both places, but readily agreed to make the necessary extensions and furnish the lumber company with all necessary cost data and information relative to the type of machinery, etc. Its efforts resulted in the signing of the contract by which the lumber company agreed to take electric energy both at the mill and in the woods. The estimated revenue to be derived from this service is $14,589.00 per annum at the logging works, and $45,072.00 per annum at the mill, or a total of $59,661.00 for the entire service. It should also be noted that at the present time, the Great Western Power Company has considerable surplus of hydroelectric energy, while the Pacific Gas and Electric Company is producing considerable power by steam.

From all of the above discussion, it is clear that two of the four conditions, necessary to entitle the utility to protection from competition under the principles first laid down, do not exist in this case, and that the public interest and convenience will be served by allowing the Great Western Power Company to enter the field, as to the consumer under consideration. The Great Western Power Company has asked for a certificate of public convenience and necessity to serve this consumer, and such a certificate will be granted.

In arriving at this conclusion, we are unable to pass without comment the failure on the part of the Great Western Power Company to apply for a certificate of public convenience and necessity as required by section 50 of the Public Utilities

Act before entering into the contract with the lumber company. The contention of the Great Western Power Company, that this was open territory and that a certificate was not needed, has already been fully discussed. It is difficult to see how this contention could have been seriously urged in view of the fact that in the Arbuga case, upon which Great Western Power Company relied, a certificate from the Commission was actually sought and obtained by that company. With the knowledge of that case that it clearly had, the Commission feels that the failure on the part of the Great Western Power Company to apply for a certificate of public convenience and necessity before making this contract is inexcusable.

In view of the remissness of the Great Western Power Company, the Commission would be very much disinclined to grant that company the certificate for which it asks were it not for the fact that the Commission is satisfied that by so doing public convenience and necessity will best be served.

O R D E R

Complaint having been made by the Pacific Gas and Electric Company against the Great Western Power Company of California, and application having been made by the Great Western Power Company of California for such certificate of public convenience and necessity as may be required in order to permit service and delivery of electric energy to the Hutchinson Lumber Company, and a public hearing having been held and the Commission being fully apprised in the premises,--

IT IS HEREBY ORDERED by the Railroad Commission of the State of California:

1. That the complaint of the Pacific Gas and Electric Company herein be, and the same is hereby, dismissed;

2. That the application of the Great Western Power Company of California is hereby granted; and

IT IS HEREBY DECLARED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that public convenience and necessity require, and will require that the said Great Western Power Company of California construct and make such extensions from its existing lines as will enable it to serve and deliver electric energy to the HUTCHINSON LUMBER COMPANY at its lumber mill at a point about 3½ miles south of the town of Oroville and at its logging works at a point about 2 miles northeast of the town of Mooretown, and upon the completion of said work, deliver electric energy to the said Hutchinson Lumber Company at said points.

Dated at San Francisco, California, this 31st day of October, 1921.

H. D. Loveland

Commissioners.

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