

ORIGINAL

Decision No. 22098

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
NEVADA IRRIGATION DISTRICT,
a California irrigation district, and
PACIFIC GAS AND ELECTRIC COMPANY,
a corporation, for an order of the
Railroad Commission of the State of
California authorizing Pacific Gas and
Electric Company to abandon its public
utility operations herein referred to
and authorizing applicants to execute
the deeds and agreements filed herewith.)

Application No. 18900

C. P. Cutten and R. W. DuVal, by R. W. DuVal,
for Pacific Gas and Electric Company;

C. F. Metteer, for Nevada Irrigation District;

T. L. Chamberlain, for certain landowners who are
not in the Nevada Irrigation District.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Nevada Irrigation District, hereinafter sometimes referred to as the District, and the Pacific Gas and Electric Company, hereinafter sometimes referred to as the Company, ask the Commission to make its order authorizing applicants to enter into and execute a deed in the form and in the words and figures contained in Exhibit No. 1 attached to and made a part of Exhibit First, filed in this proceeding; also authorizing applicants to enter into and execute concurrently with said deed and as a part of the same transaction, two agreements in the forms and in the words and figures contained respectively in Exhibits No. 2 and No. 3 attached to and made a part of said Exhibit First; also authorizing Pacific Gas and Electric

Company, upon selling and conveying to the Nevada Irrigation District the properties mentioned in this application, to cease distributing water for irrigation, domestic and/or other purposes in the territory in which it is or may be furnishing such water by means of the said properties, and relieving said Pacific Gas and Electric Company of any and all public utility obligations with respect to the furnishing of water thereunder.

The subject matter of this application is the transfer of the Company's water distribution system located in the Gold Hill area (Exhibit A) in Placer County, whereby it distributes water for irrigation, domestic and other purposes within said area, consisting of (a) Gold Hill water rights, as defined in Exhibit No. 2 attached to Exhibit First, (b) divers dams, reservoirs, and canals, as indicated in red on said Exhibit "A" and as listed and described in Exhibit "B" which is attached to said Exhibit No. 2, together with all existing rights of way and flowage rights appurtenant to said canals and all easements appurtenant to said dams and reservoirs, as listed on said Exhibit "B", and (c) certain real property with any improvements thereon as described in said Exhibit "B".

Exhibit one provides that the District may have and hold the properties so long as, but no longer than, the District shall promptly perform and faithfully comply with all and singular the specific covenants in the basic agreement (Exhibit No. 2 attached to Exhibit First) contained, and in the event the District shall fail, refuse, or neglect so to perform and comply with said specific covenants or any thereof title to said property, together with any and all appurtenances thereto made and/or acquired by the District, including all enlargements, improvements, extensions, additions and adjuncts of, in and to said Gold Hill system, and all right of the District in and to the possession and use thereof, shall ipso facto terminate and

vest in the Company, and it shall be lawful for the Company to take immediate possession of all and singular the said property and said appurtenances.

The specific covenants of the basic agreement (Exhibit No.

2) read as follows:-

1." As the purchase price for the properties so conveyed to it by said indenture (Exhibit 1) District agrees to pay to Pacific (Company) at its office in San Francisco, California, the sum of \$250,000.00, together with interest from the date hereof on any unpaid balance thereof at the rate of six percent per annum, in the following installments, to-wit:

\$18,000.00 or more, on or before January 2, 1934, and
\$18,000.00 or more, on or before January 2nd of each successive year thereafter until the whole of said purchase price and interest shall have been paid in full. All installments so paid shall be applied first in payment of accrued interest and balance on principal. Both principal and interest shall be paid in lawful money of the United States.

2. "District agrees that concurrently with the taking possession by it of said Gold Hill system under and by virtue of said indenture it will assume and continue faithfully to perform all and singular Pacific's existing public utility obligations with respect to the furnishing of water for irrigation, domestic and other purposes within said Gold Hill area, and to that end will from time to time furnish such quantity or quantities of its own water and/or water purchased by it as shall be necessary therefor over and above the water available therefor under said Gold Hill water rights. In performing said obligations District will cause all water available under said Gold Hill water rights to be constantly applied and remain dedicated to irrigation, domestic and other purposes on the lands within said area to which it is now dedicated.

3. "District agrees that until it shall have paid in full said purchase price for said Gold Hill system and accrued interest thereon as provided in paragraph (1) supra it will at its own cost and expense (a) use all legal means and reasonable diligence to maintain the priority and validity of all and singular said Gold Hill water rights and any and all rights of way and/or easements now existing and appurtenant to said Gold Hill system, and (b) so repair, maintain and keep in condition for operation to their present respective capacities all of the diverting dams, reservoirs and canals of said Gold Hill system, unless Pacific shall hereafter in writing authorize District to reduce the capacity or to partially or wholly abandon any thereof.

4. "District shall not and it hereby agrees that it will not, without the written consent of Pacific then first had and obtained, sell or distribute or endeavor to sell or distribute any water for use for any purpose whatsoever within that portion of Placer County lying east of a line running northerly and southerly through the middle of Townships 10, 11, 12, 13 and 14 North of Range 6 East, M. D. B. & M., except within said Gold Hill area."

The District acquires title to the properties subject to all existing mortgages executed by the Company and/or its predecessor in interest. The Company agrees that within a reasonable time and not exceeding 120 days after the District shall have paid in full the purchase price for the Gold Hill system, and accrued interest thereon, it will cause all of said system to be relieved of all and singular its existing mortgages thereon and will thereupon execute and deliver to the District a quitclaim deed to the system.

Under the terms of Exhibit No. 3, which is designated as the "Water Agreement" the Company definitely allocates to the Gold Hill area the following quantities of water:-

January	415	acre	feet
February	295	"	"
March	420	"	"
April	1010	"	"
May	1420	"	"
June	1810	"	"
July	2125	"	"
August	2010	"	"
September	1685	"	"
October	870	"	"
November	505	"	"
December	455	"	"

The above quantities of water are dedicated to the Gold Hill area. In addition, the Company agrees to sell to the District, without, however, dedicating the same to the Gold Hill area, any excess water it may have. The Company is to be the sole judge as to whether it has any excess water. For the water allotted and/or for excess water delivered, the District will pay the Company the following rates:-

For each acre foot of allotted and/or excess water delivered to the District, the District will pay, if the same is delivered at any point or points in the Wise Canal from July 1st to March 31st next, a sum determined by adding \$1.25 to the price which the Pacific Gas and Electric Company would be obligated to pay to the District for an acre foot of water delivered to it at the same point or

points under the provisions of the contract designated as the Gold Hill Contract, and for water delivered from April 1 to June 30 next an amount equal to one half of the sum which would be payable if delivered from July 1st to March 31st next.

For water delivered from the South Canal the District is to pay during the period from July 1st to March 31st next, and the sum of \$1.25 per acre foot; and for water delivered during the period from April 1 to June 30 next \$0.62-1/2 cents per acre foot.

Reference is here made to the several agreements filed in this proceeding for a definition of the rights and liabilities of the parties to the agreements.

It is of record that the transfer of the properties is in the public interest in that it should result in the extension and improvement of the Gold Hill irrigation system and in lower rates.

The testimony shows that there are within the District boundaries in Placer County some 66,389 acres, 5177 of which are part of not ~~in~~ the District. In the Gold Hill area are some 19,428 acres which are not at present in the District. Much of this area is barren and not adaptable to irrigation.

The Company had 389 consumers in the Gold Hill area in 1932. It is estimated that these consumers irrigated between 4,000 and 5,000 acres. The record does not show how much of this acreage is outside the Nevada Irrigation District.

George A. Hunt,^{an} assistant engineer of the Company, testified that the company had a very limited water supply available for and dedicated to the Gold Hill area. The District on the other hand has a large volume of water available for use in the area, but no distribution system. Because of this situation it is believed that the District should take over the Company's distribution system and put in its own water into the Placer County area for the extension of that system and for the service to lands within the District.

Under the law the District, it is said, can sell only surplus water to landowners not in the District. To protect the landowners whose lands are not in the District, the Company dedicates and agrees to deliver annually to the District the quantities of water shown above, ✓ William Durbrow, general manager for the District, believes that the District water supply is adequate to meet all demands for many years. However, the District can at any time purchase from the Company the "allotted water".

Coming to the question of rates, the situation is as follows:- The Company now charges \$45.00 a miner's inch per season from May 1 to September 30 continuous flow. The District's published rates for lands outside the District in Placer County are \$45.00 for orchard and \$37.50 per miner's inch per season of six months for alfalfa and pasture irrigation. The regular published rate of the District is \$24.00 per miner's inch for orchards and \$20.00 for pasture and alfalfa. For this particular season an emergency rate of \$20.00 for orchards and \$18.00 for irrigation is in effect. In addition the District charges for domestic service \$4.50 per quarter for a house for a quarter inch maximum service. The policy of the District will be to charge the lands that are included within the District a rate of \$40.00 instead of \$45.00 per miner's inch per season and credit the difference between \$40.00 and the District's rate, which is \$24.00, against the fees to be charged for inclusion. It appears from the record that the owners of land outside the District will be required to pay, as they do now, \$45.00 per miner's inch of water, but that they will not be called upon to pay any domestic rate. It is of record that the District has no intention of increasing the rate beyond the present rate.

It has been suggested that the Commission incorporate in its order some provision which will insure the delivery of water to owners of land outside the District which such owners have heretofore re-

ceived from the Pacific Gas and Electric Company in the event that for any reason the District is unable to deliver its own water, and that the rates charged owners of land outside the District be fixed by the Commission sitting as a board of arbitrators, and that in the event the Commission should decline to sit as a board of arbitrators, some other method of selecting a board of arbitrators be determined.

We feel that the first point is covered by the agreement between the Company and the District whereby the District assumes all of the public utility obligations of the Company and whereby the Company allots certain quantities of water to the Gold Hill area. The order herein will provide, however, that the Board of Directors of the District file with the Commission a resolution in which the District, its successors and assigns, agrees to protect the public by the performance of the obligations set forth in the agreements and particularly that obligation referred to in the specific covenant No.2 in Exhibit No.2 attached to Exhibit First, in which covenant the District agrees that it will assume and continue faithfully to perform all and singular the Company's existing public utility obligations with respect to the furnishing of water for irrigation, domestic and other purposes within the Gold Hill area.

The matter of what is an appropriate rate to be charged by the District to owners of land outside the District is difficult to determine. For the time being the District plans to charge such land owners the same rate as is being now charged by the Company. No one objected to this rate. We believe that this should be the maximum rate charged the owners of outside land, unless hereafter owners of land in the District are required to pay a rate, including taxes, in excess of the aforesaid rate of \$45.00 per miner's inch per season of six months. If such a contingency arises, the owners of land

outside the District should be charged a rate which is not in excess of the over all rate paid by those in the District in the Gold Hill area. The order will provide for the filing of a resolution of the Board of Directors of the District to cover this point.

O R D E R

Nevada Irrigation District and Pacific Gas and Electric Company having asked the Commission to make its order, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission having considered the record in this proceeding and being of the opinion that applicants' requests should be granted as herein provided, therefore,

IT IS HEREBY ORDERED as follows:-

1. After the effective date hereof and prior to October 1, 1933, Nevada Irrigation District and Pacific Gas and Electric Company may enter into and execute a deed in the form and in the words and figures contained in Exhibit No. 1 attached to and made a part of Exhibit First filed in this proceeding.
2. After the effective date hereof and prior to October 1, 1933, Nevada Irrigation District and Pacific Gas and Electric Company may enter into and execute two agreements in the forms and in the words and figures contained respectively in Exhibits No. 2 and 3 attached to Exhibit First filed in this proceeding.
3. After the effective date hereof, and upon the conveyance to the Nevada Irrigation District, of the properties described in the aforesaid agreements, Pacific Gas and Electric Company may cease to distribute water for irrigation, domestic and/or other purposes in the territory in which it is or may be furnishing such water by means of said properties and is hereby re-

lieved of any and all public utility obligations with respect to the furnishing of water thereunder, so long as said properties remain in the possession of Nevada Irrigation District.

4. The permission herein granted will not become effective until fifteen (15) days after the date hereof, nor until Nevada Irrigation District has filed with the Railroad Commission in satisfactory form a resolution of its Board of Directors in which the District agrees for itself, its successors and assigns, that it will not charge the owners of land outside the Nevada Irrigation District in said Gold Hill area a rate in excess of that now charged by Pacific Gas and Electric Company, unless said Nevada Irrigation District finds it necessary to charge owners of land in said Gold Hill area who are in said Nevada Irrigation District a rate, including District taxes, in excess of said rate now charged by the Pacific Gas and Electric Company, in which event said owners of land outside the said Nevada Irrigation District will be charged a rate not in excess of the rate, including taxes, charged owners of land in said Nevada Irrigation District in said Gold Hill area; also a resolution of its Board of Directors in which the District agrees for itself, its successors or assigns, that it agrees to protect the public by the performance of the obligations set forth in the agreements filed in this proceeding and particularly the obligation referred to in the specific covenant No.2 in Exhibit No. 2 attached to Exhibit First, in which

covenant the District agrees that it will assume and continue faithfully to perform all and singular the company's existing public utility obligations with respect to furnishing of water for irrigation, domestic and other purposes within the Gold Hill area, and to that end will from time to time furnish such quantity or quantities of its own water and/or water purchased by it as shall be necessary therefor over and above the water available therefor under the Gold Hill water rights, as defined in said Exhibit No. 2.

5. Within thirty (30) days after the transfer of the properties herein authorized, Pacific Gas and Electric Company shall file with the Commission a statement showing the date on which said properties were transferred and possession delivered to the Nevada Irrigation District.

DATED at San Francisco, California, this 26th day of June 1933.

C. L. J. J. J.
Leon A. J. J.
W. A. J. J.
W. B. J. J.
W. J. J. J.
Commissioners.