

Decision No. 28673

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Arthur W. Nicholls,

Complainant,

vs.

Pacific Gas and Electric Company,
a corporation,

Defendant.

Case No. 3890.

A.W. Nicholls, in propria persona.

C.P. Cutten and R.W. Du Val, by
R.W. Du Val, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Arthur W. Nicholls,⁽¹⁾ who owns and operates the water system serving Dutch Flat, Placer County, with water for domestic purposes under the fictitious firm name and style of the Dutch Flat Water Works, asks the Commission to terminate an agreement with the Pacific Gas and Electric Company⁽²⁾ which covers the leasing of the Little Bear River Ditch from said Electric Company, to adjust the charges for water delivered by the Electric Company through the said ditch since July 1, 1934, and to direct Electric Company to deliver water to complainant's reservoir at a reasonable rate.

1. Hereinafter referred to as Complainant.
2. Hereinafter referred to as Electric Company.

Complainant alleges in effect that the Electric Company refuses to replace a 30-inch siphon on said ditch which has resulted in excessive losses and that the charges for water delivered to him at the rate of thirty cents (30¢) per miner's inch day are excessive and unreasonable.

Electric Company in its answer generally denies the allegations set forth in the complaint and asks that the complaint be dismissed.

Public hearings were held in this proceeding before Examiner MacKall at Dutch Flat and San Francisco.

The water supply for the so-called Dutch Flat Water Works is now and has been in the past dependent upon the natural flow of Little Bear River diverted through Little Bear River Ditch and such additional water as has been picked up by said ditch from released water or seepage from certain of the Electric Company's transmission canals crossing the Little Bear River watershed and also from Alta Power House Forebay. The Little Bear River Ditch is approximately one and two-tenths (1.2) miles long and has a capacity at present of about sixty miner's inches,⁽³⁾ has a short section of wooden flume, and approximately 870 feet of 30-inch pipe called Nary Red siphon. The poor condition of both structures is one source of complaint in this proceeding.

Water is delivered by the ditch to complainant's present 60,000-gallon reservoir in Dutch Flat and thereafter is distributed to the users through mains, a part of which is owned by complainant and the remainder owned by the local Fire District. Waste water

3. The miner's inch involved herein is equivalent to one-fortieth (1/40th) of a cubic foot of water per second.

from the reservoir is collected in a natural basin and used as a swimming pool during the summer months. Dutch Flat, one of the oldest towns in the State, is becoming each year more of a summer-resort type of community. In 1934 complainant's domestic system served thirty-eight consumers during the winter months and sixty-seven in the summer period, an average of fifty-three users for the year. All water is furnished on a flat rate basis. No charge has ever been made for water supplied by complainant to the community swimming pool which has been given surplus water only when available.

On August 8, 1912, an agreement was entered into by and between the Electric Company and the complainant, whereby the Little Bear River Ditch was leased to complainant for a term of five years at an annual rental of seventy-five dollars (\$75.00); on October 1, 1917, another lease agreement was entered into by said parties providing, among other things, for the lease of said ditch "for the term of one (1) year beginning on the first day of October, 1917, and thereafter from year to year until terminated by six months' written notice given by either party hereto to the other of a desire for such termination" and "for the yearly rental of seventy-five dollars (\$75.00) payable annually in advance." The agreement further provided that complainant shall "at his own sole cost and expense keep said ditch in good order, repair and condition during the term hereof." Service is now being supplied to the lessee in accordance with this latter agreement.

Complainant has maintained the ditch at his own expense, except that at times the Electric Company has furnished a part of the repair materials and at one time paid for most of the cost of

replacing one of the flumes. The 30-inch siphon originally installed in 1866 is now in such a state of disrepair that it causes excessive leakage and frequent disruption of service, requiring immediate replacement. Complainant contends that the Electric Company as owner of the property is obligated to make this improvement at its own expense.

This entire controversy has been before the Railroad Commission informally for the past two or more years. No agreement appeared possible so the problem was submitted formally for determination. This was brought about immediately as the result of the billing by the Electric Company for extra water furnished the Dutch Flat Water Works for the six-month period July to December, inclusive, 1934, to the amount of \$1,459.08. The receipts for the same period from water sales to consumers of the said water works were \$707.75.

While complainant contends that the Little Bear River and its diversion rights have been dedicated to the public service through the Dutch Flat domestic water system since at least 1858 and very probably as early as 1851, when it was first constructed primarily for mining purposes, yet the two above referred to leases of this ditch to complainant as well as prior leases thereof to his predecessors indicate that for a considerable period of years last past the owner of the Dutch Flat Water Works has held only a revocable interest in the use of this ditch.

The natural flow of Little Bear River is always insufficient during the summer and fall months to supply the demands of consumers of Dutch Flat Water Works. In the past and until 1934 the deficiency has been made up by intercepted seepage and waste water from upper canals and works of the Electric Company and by

occasional release from the Electric Company's ditches at no extra charge. However, just prior to 1932 the defendant company had greatly improved its canal transmission system and delivery methods in the vicinity of Dutch Flat and Alta Power House by lining long sections of its ditches, constructing tunnels and relocating and abandoning certain portions of its canals. Since 1931 the elimination of the use of the Alta Forebay and abandonment of a two-and-one-half-mile section of the Boardman Canal, a portion of which crossed the Little Bear River watershed, has limited the water available to complainant's leased ditch to practically only the natural flow of Little Bear River, necessitating release by defendant of sufficient water to supply Dutch Flat from the waters which it claims must be withdrawn from the use of generating power for which water defendant now demands payment.

The record is clear that the use of the Little Bear River Ditch has involved a considerable loss of water in the past, which cannot be entirely eliminated by replacement of the worn-out Nary Red siphon, the necessary rehabilitation of this ditch being estimated by defendant to cost not less than \$1,400, using a 14-inch pipe instead of the present sized siphon, 30 inches in diameter. It is also clear that long-established practice of the local domestic water users under flat rates has resulted in an almost general waste of water and universal disregard of all conservative uses. The per capita consumption appears to be somewhat in excess of eight hundred gallons daily, a very exceedingly high rate for such a community.

Complainant demanded replacement of the structures on the Little Bear River Ditch at the expense of defendant and de-

livery of necessary extra water during periods of low flow without charge to him although later he agreed to pay a reasonable price for extra water provided it was delivered to him at a point where he did not have to stand for the excessive transmission losses involved in past releases. The defendant refused to renew the siphon and other ditch structures because of excessive cost, but presented several alternative schemes, the last of which appears fair and reasonable and will be approved by the Commission. This proposal is for the Electric Company to install at its own expense a pipe line from its Cedar Creek Canal to the Little Bear River Ditch, take over and assume the obligation of furnishing all consumers entitled to water directly from said ditch and heretofore served by complainant and deliver water to said complainant at or very near the old or new Dutch Flat reservoir, at which point the water is to be measured by and at the expense of defendant at a price to be fixed by the Railroad Commission. Furthermore, the Electric Company agreed to maintain that portion of the Little Bear River Ditch used by it up to point of delivery and/or measurement to complainant, the existing lease to be cancelled. This plan will protect complainant against paying for large ditch and delivery losses, will eliminate his former expense for canal maintenance, and will insure a constant supply of water available to Dutch Flat throughout the entire year.

A 3-inch line was estimated to deliver approximately fifteen miner's inches and a 4-inch pipe thirty-two miner's inches at the said reservoir. From the testimony it appeared that nothing less than a 4-inch line should be installed to properly provide for present and immediate future development. The cost of the 4-inch line will be approximately \$900.

There remains the matter of fixing charges due for extra water billed complainant for 1934 in the amount of \$1,459.08, based upon a rate of thirty cents (30¢) per miner's inch day. While there is no doubt that complainant and the representatives of defendant who negotiated the last two leases of the Little Bear River Ditch understood that the natural stream flow and sufficient additional water would be supplied from one source or another to the Dutch Flat Water Works without payment therefor to meet the demand, as evidenced by past practice over a great number of years and until 1934, nevertheless the lease itself does not so provide. This Commission is without jurisdiction to pass further upon the interpretation of this instrument.

The record shows that the rate charged for extra water was arbitrary, that the measurements of the deliveries were neither reliable nor dependable and, in addition, were made at a point about a mile above the intake of the Little Bear River Ditch and some two miles more or less from the Dutch Flat Reservoir, requiring complainant to pay for all seepage losses, resulting in charges for about two and one-half times the amount of water actually received. Although defendant stipulated that the actual amounts of water chargeable for 1934 may be based upon the corresponding uses in the respective months after the proposed pipe line is installed, good judgment should dictate to defendant the advisability of cancelling the entire charges for extra water rather than insisting at this time upon payment therefor during the period complainant was and is still paying the annual rental of seventy-five dollars (\$75.00) for the ditch lease. Should the defendant, however, elect to collect for said extra water, the amounts shall be determined

upon the basis of deliveries for corresponding months for water furnished to complainant after installation of the new pipe line both for water supplied in 1934 and in 1935 to the time said line is placed in operation, charges to be computed at the rate established in the following Order.

Attention is also directed to the seventy-five-dollar annual advance payment for the lease of the Little Bear River Ditch. When the new pipe line is put into service, adjustment should be made of this charge either by credit for water furnished or to be furnished complainant or otherwise, assuming of course that the installation of the new line will be completed and in operation prior to October 1st. Counsel for defendant has assured the Commission that this will be done.

The evidence submitted shows that, if complainant will use due diligence in persuading his consumers to conserve their use of water and reduce their demands to reasonable requirements, placing meters on any possible customers who wilfully waste water or who refuse to abide by fair and just rules and regulations, the cost of purchased water should not exceed the former expenses necessitated by the lease, operation and maintenance of the Little Bear River Ditch, when said purchased water is charged at sixteen cents (16¢) per miner's inch day delivered at the Dutch Flat Reservoir.

While there is insufficient evidence in the record of this case to determine definitely the charge to be made for this water by defendant, yet the above rate is the one generally in effect for similar service throughout a large portion of territory served by the Electric Company. It should be understood, however, that in light of the fact that the future use of water under the proposed new method of delivery is based upon estimate

only and may vary considerably in actual operation, in order to protect the citizens and water users of Dutch Flat from any resulting necessity of their being assessed a heavy increase in local rates through approval of the above sixteen-cent charge, this Commission will reserve the right to retain its jurisdiction in this matter and reopen it at any time in the future for whatever modification in the following Order may appear necessary and justifiable.

O R D E R

Complaint having been filed as entitled above, public hearings having been held thereon, the matter having been submitted and the Commission now being fully informed in the premises,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company, a corporation, be and it is hereby ordered and directed to install at its own cost and expense, within sixty (60) days from and after the date of this Order, a pipe line not less than four inches in internal diameter for the conveyance of water from said Electric Company's Cedar Creek Canal to the Little Bear River Ditch and shall transport such waters as are necessary and required by Arthur W. Nicholls for use of the Dutch Flat Water Works and shall deliver said waters to a point of measurement at either of the existing Dutch Flat Water Works reservoirs.

IT IS HEREBY FURTHER ORDERED that Pacific Gas and Electric Company, a corporation, upon completion of the installation as ordered in the paragraph above and the commencement of deliveries of water thereby to said Arthur W. Nicholls, shall take over and assume the public utility obligations and liabilities of supplying water to all those entitled thereto directly from the Little Bear River Ditch

above the point of measurement and delivery of water to the reservoirs of the Dutch Flat Water Works.

IT IS HEREBY FURTHER ORDERED that the rate to be paid for all of the water delivered to the reservoirs of said Arthur W. Nicholls by the Pacific Gas and Electric Company, a corporation, shall be sixteen cents (16¢) per miner's inch day.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 24th day of June, 1935.

Leon C. White
W. B. Lamm
Walter M. Lamm
COMMISSIONERS