Decision No. 29286

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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| In the Matter of the Application of MARKET STREET RAILWAY COMPANY for an Order of the Railroad Commission instituting a formal investigation upon its own motion as to the rates charged by PACIFIC GAS AND ELECTRIC COMPANY for electric energy sold by it to Market Street Railway Company. | Application No. 20337. |
| In the Matter of the Investigation on the Commission's own motion into the reasonableness of the rates, rules, regulations, charges, contracts, schedules, practices, and operations, or any of them, of PACIFIC GAS AND ELECTRIC COMPANY, in supplying electric energy to street railways in the City and County of San Francisco and in the County of San Mateo, State of California. | Case No. 4105 |

ORIGINAL

William M. Abbott and Thelen & Marrin, by Max Thelen, for Market Street Railway Company.

C. P. Cutten and R. W. Du Val, by R. W. Du Val, for Pacific Gas and Electric Company.

John J. O'Toole and Dion R. Holm, for City and County of San Francisco.

Present from the Commission's Staff:

Claude C. Brown, Chief Engineer.

WHITSELL, COMMISSIONER:

## O P I N I O N

Present Proceeding:

Under the above application, filed January 7, 1936 Market Street Railway Company, hereafter referred to as Applicant, requested the Commission to institute a formal investigation into the rates charged Applicant by Pacific Gas and Electric Company, hereafter referred to as Pacific, for railway power service under Schedule P-9. On February 10, 1936, the Commission, in response to Applicant's request, (1) ordered an investigation into the rates and practices of Pacific in supplying electric energy to Applicant.

Public hearings were held on February 20, 21; March 31; April 1, and June 16. The record consists of 61 exhibits, 53 of which were filed by Applicant and the remainder by Pacific, and 469 pages of reporters' transcript of oral evidence. The above entitled proceedings were consolidated for hearing and decision, and the case was submitted on briefs, June 16th. Subsequently briefs have been filed and the case is now ready for final decision.

Previous Proceedings:

The present rate under which Applicant receives service (Schedule P-9) was established by Commission's Decision No. 13316 (24 C. R. C. 638-652), effective April 1, 1924. The above named decision was a supplemental order to Decision No. 11457 (22 C. R. C. 744-804) effective January 20, 1923. Decision No. 11457 was the result of a major electric case, fixing all electric rates

Note (1): It was deemed reasonable that the Commission should so act in order to accord Applicant the privilege due it inasmuch as the latter was unable to challenge the reasonableness of the rate charged because of the limitations imposed under Section 60 of the Public Utilities Act.

on the Pacific's system. It was under this decision that a railway power schedule was first established. Prior to this time railway rates were based upon special contracts.(2)

Since 1924 the rate under this schedule has remained unchanged although it has come under general review with schedules for other classes of service in 1928 (31 C.R.C. 239); in 1930 (34 C.R.C 212); and in 1932 (38 C.R.C. 263). This is, however, the first time the Commission has formally reviewed this rate in a separate proceeding.

Railway Power Service Rendered by Pacific:

Pacific serves twelve electric railways under its Schedule P-9. Of these twelve railways, Applicant's system is the most important. Its annual power bills exceed $1,000,000 and comprise over 45% of the entire railway revenue secured under this schedule. Delivery to Applicant's system is made over an 11 KV net-work, consisting of 82.79 circuit miles of lines owned by Pacific, with the exception of approximately 10 miles belonging to Applicant.

The energy supplied is 3-phase alternating current power delivered and metered at eight widely separated substations owned by Applicant. This energy is converted(3) in Applicant's substations to 600 volt direct current which is employed in the operation of the cars on Applicant's system.

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Note (2): Thus the Commission said, in part, (22 C.R.C. 744,788) "The rates at present in effect have been based on special contracts with the different railway companies, but in general fairly uniform. The rate for service to the Market Street Railway Company is provided, under special contract between the Sierra and San Francisco Power Company, and that railway company as successor to the original party to the contract. A standard railway service rate is therefore fixed for all standard railway service on the combined systems."

Note (3): Converting equipment to the extent of 20,500 KW is owned by Pacific and is carried at a historical cost of $651,336 (Tr.Exh.49). Pacific makes no claim that this investment should be considered but acquiesces to the Commission ruling (22 C.R.C. 744; 24 C.R.C. 654) that such services as are rendered by this investment should be covered by special agreement between the parties and not made a part of the rate.

Applicant's Claims:

Applicant's contention is that the rate fixed by the Commission (24 C.R.C. 638) in 1924 must be taken to be presumptively just and reasonable at the time when established, but, due to changed conditions the rate today is unreasonably high and discriminatory. This is claimed to be true because, (a) there has been no change in the rate since 1924; (b) substantial reductions in the cost to serve have been realized by Pacific; (c) material rate reductions have been made to other classes of consumers; (d) the primary or high voltage industrial power customer enjoys a lower rate; and (e) the Los Angeles Railway Corporation receives a lower rate from the Southern California Edison Company Ltd.

From Applicant's claims it is clear that the issues raised in this case revolve around the question of the reasonableness of the railway rates accorded under Schedule P-9, both as to rate level and relationship with rates for other classes of service.

Review of Evidence:

The evidence of record has been carefully reviewed and analyzed. It appears unnecessary to here discuss, in detail, all the factual matters presented.

Applicant is Pacific's largest single electric consumer. It likewise has certain very favorable load characteristics due to its uniformity of demand, high power factor and better than average load factor. These favorable factors are, however, partially offset by the fact that the railway load contains little diversity.

The record clearly establishes the fact that sales to Applicant's system are now materially lower than when the rate was first established, as shown in Table I.[4] following:

Note (4): From Applicant's Exhibit No. 3.

TABLE I

| Year | Energy Purchased KWH (1) | Peak Demand KW (2) | Average Rate-Cents Per KWH (3) | Annual Load Factor % (4) |
|---|---|---|---|---|
| 1923 | 143,809,640 | 34,900 | 0.860 | 47.0 |
| 1924 | 146,844,900 | 33,996 | 0.833 | 49.2 |
| 1928 | 156,329,050 | 36,510 | 0.833 | 48.7 |
| 1935 | 125,340,290 | 31,280 | 0.836 | 45.7 |

This reduction in consumption of nearly 13% is directly opposite to the trend of consumption of other important classes of service. For instance, the sales(5) to the general power consumers have nearly doubled and to the lighting consumers (including cooking and heating) have more than tripled during this same period. This trend in sales is important and will be referred to later.

The record shows there has been no(6) reduction in the railway power rate under Schedule P-9 since 1924, while substantial(7) reductions, both by order of the Commission and by voluntary action on the part of Pacific, have been made in schedules serving other important classes of consumers.

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Note (5):

| | 1923 | 1935 |
|---|---|---|
| General Power Sales (M Kwh.) | 485,124 | 890,915 |
| All lighting & heating & cooking | 192,167 | 645,103 |

(See Defendant's Exh. 53 and Tr. 309)

Note (6):
Applicant's Exh. 3 and 36, Tr. 9-10; 123-124.

Note (7):
Applicant's Exh. 44 & 45, Tr. 120-124. Thus exhibits 44 & 45 indicate the following annual reductions:

1928.....$2,418,900
1930..... 3,020,000
1935..... 1,600,000 (Limited to the year 1935)
1936..... 3,924,000

Exhibit 45 indicates that the 1936 reduction "can be calculated as equivalent of 4 to 5% of the gross on the basis of its present annual electric department revenues."

The major portion of the record is given over to the question of the magnitude of the downward trend in the average cost to Pacific of rendering service, to the power rates granted to primary industrial users, and to the similarity between Applicant's situation and that of the Los Angeles Railway Corporation. These will be discussed in the order named.

Cost of Service:

The record is silent on what it cost to render the railway service when the rate was established in 1923-24 or in any subsequent year to date.

On the theory that production and transmission costs constitute the bulk of the costs to Pacific of rendering railway service, Applicant introduced extensive studies on the trend of said costs from 1923-1925 thru the year 1935. Using the costs developed for the years 1923-1925 as 100%, it was the contention of Applicant that all system production and transmission costs had declined an average of 15.93% by the end of year 1935. This conclusion was sharply challenged by Pacific whose contention was that, following Applicant's method but correcting for claimed errors in said method, the reduction in costs was not more than 3.26%(8).

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Note (8): Thus Applicant's Exhibit 61 revised shows:

Average costs of Production and Transmission Per K.W.H. of Primary Substation Output.

| Average of Years 1923 and 1925 | Present Costs Based upon 1935 Operations | Changes in Cost between 1923-25 & '35 |
|---|---|---|
| 10.512 Mills | 8.838 Mills | 15.93% Decrease |

Pacific's Exhibit 51 shows:

| | | |
|---|---|---|
| 9.567 Mills | 9.084 Mills | 5.05% Decrease |

As per transcript (Pp.295) the 5.05%(Index 94.95) is reduced to 3.26%(Index 96.74) when utilizing certain changes in cost of money which are also understood to be incorporated in revised Exh. 61 of Applicant.

The contentions of the two parties will now be briefly considered. It may be said that the wide differences in result flow from three major causes; namely, the capital base used; the depreciation allowance; and the primary substation output used as the divisor to determine the cost per kilowatt hour.

It appears that Applicant erred in using as a starting point a capital base(9) rejected by the Commission in the original order under which the P-9 rate was established (22 C.R.C.744 supra) and that Pacific is correct in using the capital base found reasonable in said order.

While it appears that both parties may have erred(10) in the depreciation allowance used, the effect in the final result is not believed sufficiently material to warrant further discussion.

The most important difference arises from the lack of agreement as to the proper primary substation output to be used as a divisor in computing average cost per kilowatt hour. Beginning with the year 1931, following the consolidation of Pacific and its affiliates, there occurred an interchange of electrical energy, which resulted each year in deliveries to the subsidiaries. It is these deliveries which give rise to the controversy. Applicant included these deliveries as power actually generated and transmitted and thus secured a lower cost at the terminal year 1935, while Pacific eliminated them both as to kilowatt hours and revenue on the theory that they were surplus or dump power sales, and accordingly secured a higher cost and a lesser downward trend.

Note (9): This capital base was approximately $19,000,000 more than found reasonable (Defendant's Exh. 50, Tr. 282).

Note (10): Mr. Jacobs for Applicant used a constant judgment depreciation rate (Exh.17, Tr. 64-65) throughout the period, which, accordingly, had no effect upon the cost trend, but inasmuch as it was applied to a higher capital base it did unduly increase the depreciation allowance, and thus the cost per Kwh. Mr. Thomas for Pacific used the actual company book allowance, prorated when necessary (Exh.50, Tr.286-288). Pacific's Exh.50 shows that the depreciation allowance for transmission was unduly low in 1923 and 1925, compared with decision No.11457 (22 C.R.C. 777)and the year 1935, and hence tended to depress the cost trend.

It appears that the important question here is whether or not this interchange represents firm or surplus power sales. Pacific claims that they were surplus or dump power sales for which an average rate of approximately 2 mills was received. This claim remains unchallenged. On this basis it appears that, to include surplus power kilowatt hours in the average cost computation, is to dilute the average costs incorrectly. Surplus sales are not to be confused with firm power sales and, as long as something more than increment costs are received for same, the revenues thus realized are beneficial to all other classes of consumers. In the instant case it appears reasonable that Pacific's method, based upon the evidence of record, gives results which are more nearly correct from a rate-making standpoint.

It appears that the average production and transmission costs have declined.(11) In our opinion the mere showing of a decline in average costs is not necessarily sufficient evidence to justify the conclusion that a reduction to a single consumer of a class is warranted, when the record is not only silent on what it costs to serve that particular consumer and class, but likewise is most incomplete respecting other classes of service.

In this case there is in addition, the somewhat unusual situation that the average rate paid by Applicant is less than the average system costs for production and transmission.(12) Pacific claims that, in addition, certain distribution costs, approximating 1 mill, should be included.

Note (11): It is obvious that such decline is much less than that claimed by Applicant.

Note (12):

| Average cost of Production & Transmission | 1923-35 | 1935 |
|---|---|---|
| Applicant claimed (Exh.61) | 10.512 Mills | 8.838 Mi. |
| Pacific claimed (Exh.50) | 9.567 Mills | 9.084 Mi. |
| Average Rate Paid: By Applicant (Exh. 3) | 8.46 Mills | 8.36 Mi. |

Applicant's position is that it is entitled to a rate below the average cost, due to its favorable load characteristics; that such was the condition in 1923-24, and with reduced costs of operation, its present rate level should reflect this saving.

I cannot agree that the conditions are essentially the same today as when the railway rate was established. As already noted the sales to Applicant have declined rather materially, while sales to other consumers have increased very sharply. It was in part through this increase in sales that many of the reductions in rates have been warranted. Not only through savings due to larger volume but also through the demands calling for new lower cost producing equipment because of these new demands. It appears reasonable to accord reductions to those classes of consumers which have earned reductions by increased consumption or who in the past, have carried an undue share of the cost burden, in order that the utility may secure or hold business which it would otherwise lose.(13)

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Note (13): It is well established that cost to serve is but one of the many elements that should be given consideration in the fixing of the level of rates as well as the spread between the different classes of service. This Commission has in many cases expressed itself on this subject and may well quote with advantage here what was said when Schedule P-9 was originally established (24 C.R.C.784). "The fixing of rates and the equitable division of charges on a system as extensive as that of applicant is a problem in the solution of which no exact rule or formula can be used. The approximate cost of rendering the several classes of service; the economic value of the service to the individuals and groups of consumers; the rates heretofore in effect and their results upon the operations of the consumers; the elimination of discriminatory conditions amongst classes and districts and the general effect on future development of business of new rates must be considered in the division among the various classes and groups of consumers of the total revenue which the company is entitled to receive. Forms of rates must be relatively simple, yet must meet the widely varying conditions of retail and wholesale service. It is impossible and uneconomical to attempt to fix rates such that each district or each class of consumer will return to the company an equal rate of compensation for the average proportion of the plant necessary for their service. The system is so extensive and receives power from so many points that the service to the different classes of consumers is largely interdependent as to costs."

It is my conclusion that Applicant has failed to show that the existing rate under Schedule P-9 is unfair or unreasonable because of the reduced costs to Pacific in rendering service generally.

The Primary Industrial Power User:

Applicant calls attention to two primary industrial power schedules of Pacific, Schedules P-5 and P-30, and claims that the application of these, to a load similar to its own, would result in lower rates than it receives under Schedule P-9. Applicant further contends that, in the application of these primary power schedules, its meter readings at the eight points of delivery should be combined for billing purposes. The application of these two schedules (which are not applicable to railway service) does result in a lower average rate if the meter readings are combined. However, if the billing is based upon separate meter readings, P-5 becomes higher than P-9 but the average rate under P-30 still remains lower by approximately 12%. The relevancy of such a comparison goes, of course, to establish that other similar classes of power users are now receiving lower rates and, if a similar rate is not granted to Applicant, discrimination is permitted.

In the first place, I cannot agree with Applicant that meter readings should be combined under Schedules P-5 and P-30 for the purpose of testing the reasonableness of Schedule P-9. The present filing prohibits such combination and, more important, the rate structures themselves do not contemplate such a combination. Where a distributing agency is burdened with the fixed costs incidental to the capital investment in separate lines, feeders, meters, etc., as well as the current operating and maintenance expenses incurred in maintaining separate points of delivery, such should be recog-

nized by considering each point of metering separately for billing purposes unless the rate structure is designed to reflect a consolidation; no such claim is here shown or made. The fact that common ownership may prevail at the different points of delivery results in but minor savings in costs, and is not sufficient to change the standard practice recounted above.

The filing of Schedule P-30,(14) effective January 1, 1936, made it possible for certain consumers, formerly on Schedule P-5, to receive a reduction and likewise made it possible to secure other marginal power business. The record shows, and it is not disputed, that the filing of Schedule P-30 was made primarily to meet competition and was not designed to return full costs of service to the Power Company.(15) This Commission has uniformly permitted and sanc-

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Note (14):
Attention should be called to the nature of the filing of the rate under Schedule P-30. This was a voluntary filing and this Commission has not passed upon the reasonableness of the rate; but merely has received the filing as provided under section 63(b) of the Public Utilities Act. This is the practice accorded all voluntarily reduced rate filings which do not appear to warrant being suspended. This does not mean, however, that their reasonableness may not be challenged at a later date.

Note (15):
Thus in response to questions by Mr. Du Val, Mr. Beckett for Pacific answers: (Tr. 327)
Q.--"Was Schedule P-5 and P-30 filed predicated on a cost of service basis? A.--Only to the extent that we made sure that it did not go below the increment cost.
Q.--Was it filed because the Company believed that this class of business was yielding more than a fair share of costs? A.--Not at all. The purpose of filing this schedule when it was filed was, as I said, primarily to meet competition, and thus to enable us to retain certain business which it looked as if we would lose if we did not make such a reduction, and also to enable us to secure additional business at something more than the marginal or increment cost, which would not be otherwise available to us."

tioned the meeting of competitive rates,--re Modesto Irrigation District, et al vs. Pacific Gas and Electric Company, (36 C.R.C. 766). There is no competitive situation developed in the instant case in reference to the railway load and we can only conclude that, accordingly, there is no discrimination. It would be inherently unfair and inequitable to use a competitive rate such as Schedule P-30 as a measure to determine the proper level of a rate not so affected by competition.

The Los Angeles Railway Corporation Situation:

Applicant presented extensive testimony for the purpose of showing that there existed a marked degree of similarity between its system and that of the Los Angeles Railway Corporation.

Los Angeles Railway Corporation is served by Southern California Edison Company Ltd. This Railway has enjoyed a lower rate(16) since 1923 (the period covered in the record) than Applicant. The rate schedule or special contract under which it has purchased energy has likewise been limited to itself and one other large railway in the metropolitan area of Los Angeles. Pacific's Schedule P-9 has been open to all electric railways without regard to size or area served.

It is clear that the Commission in 1923, when schedules for both railways were established, recognized and granted the southern railways a lower rate. Since that time the rate differential in favor of Los Angeles Railway Corporation has been still further increased by mutual agreement between the two parties.

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Note (16):
In 1923 the Commission established a railway rate of 7.75 mills per Kwh.(23 C.R.C. 1019) compared with 8.33 mills realized by Applicant. This schedule remained in effect until May 1, 1930, when the rate was reduced to 7.325 mills (Tr. 137). This latter schedule was cancelled and superseded by a 5-year special contract (with a further condition that contract may be extended one year, depending upon the coming in of Boulder Power) between Edison and the Railway on September 1, 1933 (Tr. 137). The rate realized under this contract for the year 1934 averaged 6.63 mills (Tr. 138) compared with 8.34 mills paid by Applicant.

Applicant presented no evidence as to the reasonableness of the present rate nor what return it yielded, if any.

It does not appear reasonable to use a rate voluntarily entered into between two parties as a yardstick to determine a just and reasonable rate to others, unless there be shown a reasonable similarity in the services and conditions which led to the voluntary rate.

While it may be taken that these two railway systems have much in common in respect to certain of the physical and operating characteristics, there is no evidence to show the effect of this agreed rate upon the earnings of the Edison Company nor under what conditions or why it was entered into nor that similar conditions exist between the two parties in this case.

Counsel for Applicant contends that the rate voluntarily granted Los Angeles Railway Corporation by Edison must be presumed to be reasonable. I agree with the presumption as far as the Los Angeles Railway and Southern California Edison Company are concerned, but the implication that it is likewise reasonable for the parties herein does not necessarily follow.

It is my conclusion that Applicant has failed to show that the present rate under Schedule P-9 of Pacific is unjust or unreasonable.

I recommend the following form of Order:

## O R D E R

Market Street Railway Company having applied for an Order of the Railroad Commission instituting a formal investigation upon its own motion as to the rates charged by Pacific Gas and Electric Company for electric energy sold by it to Market Street

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Railway Company, the Commission having instituted an investigation into the reasonableness of rates, rules, regulations, charges, contracts, schedules, practices and operations or any of them of Pacific Gas and Electric Company in supplying electric energy to street railways in the City and County of San Francisco and in the County of San Mateo, the matters having been consolidated for the purposes of hearing and decision, hearings having been held, the matter being submitted and now ready for decision,

The Railroad Commission of the State of California Hereby Orders and Declares that Application No. 20337 and Case No. 4105 be and they are hereby dismissed.

The foregoing Opinion and Order are hereby approved as the Opinion and Order of the Railroad Commission of the State of California.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 13th day of November, 1936.

M B Harris

Leon O. Whitsell

M. J. Carr

Paul Peek

Frank R. Gerstle

Commissioners.