Decision No. 38051

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of POTTER VALLEY IRRIGATION DISTRICT for an order revising water rates.

Application No. 24983

Charles Kasch, for Potter Valley Irrigation District.

R. W. DuVal, Attorney, for Pacific Gas and Electric Company.

BY THE COMMISSION:

O P I N I O N

On May 15, 1945, the Commission rendered an Opinion and Order setting aside the earlier submission of this matter and directing that an oral argument be had before the full Commission. Argument was had, and the matter was again submitted for decision.

The reasons prompting the Commission to ask for argument were set forth in its Opinion of May 15th. It was then pointed out that the pleading filed by the District in the form of an application did not clearly reveal upon its face whether it was to be construed as a complaint against the Pacific Gas and Electric Company, charging it with the exaction of unreasonable rates for public utility water service rendered to the District, or was to be taken merely as a request that the Commission lend its aid in determining what would be a fair settlement of a dispute which had arisen under the terms of the purely private contract respecting the release of water by Pacific Gas and Electric Company from its Snow Mountain hydroelectric power plant. It was also stated that, although the District had been accorded a hearing upon its application, the evidence then presented was not of a kind to afford the Commission any basis for the fixing of just and reasonable rates for utility service. However, rather than to deny the application, it was thought appropriate to afford the District an opportunity to more fully explain

the intent of its pleading and the nature of the relief sought.

From the argument advanced by the District through its counsel, we are still left in doubt as to the theory upon which the District invokes the jurisdiction of this Commission. It was not counsel's declaration that the Commission was being asked to exercise the authority given it under the law to fix just and reasonable rates for utility services, or that the Pacific Gas and Electric Company was in fact rendering any utility water service to the District. Pacific Gas and Electric Company, as successor to Snow Mountain Water and Power Company, has for many years been under a contract obligation to the District to deliver a certain quantity of water at the tail-race of its power plant, and that contract has provided for the payment of certain rates or charges to the utility company, any change in such rates to be negotiated by the parties at five year intervals, or, if there be a failure of agreement, by decision of the Railroad Commission.

We would ordinarily assume that when such a contract as this is entered into by a public utility the service agreed to be rendered would be deemed to be public utility in nature. Under such circumstances the Commission's jurisdiction could lawfully be invoked to declare the rate either discriminatory or unreasonable. However, the District not only declines to allege specifically that the delivery of water to it is a service public utility in character, but the arguments advanced urging us to take jurisdiction appear to us to be quite inconsistent with the claim that a public utility and customer relationship is here involved.

The position seemingly taken by the District is that Pacific Gas and Electric Company does not sell any water to the District. It is contended that the contract between them provides no more than that Pacific Gas and Electric Company shall guarantee the release of a given quantity of water through the tail-race of its power plant, and that the burden upon the latter company to fulfill such covenant is the only service obligation attaching to that agreement.

If this be the true intent and meaning of the contract which the District has with Pacific Gas and Electric Company, we would be compelled to hold that the

relationship between the two cannot be that of public utility and customer. The Company would then be exacting payments from the District to compensate it only for whatever burden it may suffer under its obligation to continue the release of a specific quantity of water through its hydroelectric plant, but how such an obligation, without more, could give rise to a public utility duty, we are not advised.

In spite of this exposition of counsel's theory as to the contract relationship between the parties, he stated, nevertheless, that he was willing for the Commission to interpret his pleading either as one asking for the fixation of just and reasonable utility rates or as a request to act in the role of an arbitrator in a dispute arising between them under the terms of their contract, A 24283 - DMC We do not feel free to accept such offer, for before proceeding to make findings of fact and to issue an order in response to any pleading filed, we must be satisfied as to our statutory authority to act. If the District wishes to clearly raise the issue of just and reasonable rates for that utility service received, it would seem best, if not essential, that it do so by the filing of a complaint in appropriate form. We are not aware of any jurisdiction given to us to exercise any other authority. Accordingly, it is concluded that the only action which we can properly now take, in the light of the record now before us in this proceeding, is to deny the relief requested by the District and dismiss its application.

O R D E R

The application of Potter Valley Irrigation District having been heard, and the matter considered, and it appearing that the application should be dismissed for the reasons set forth in the foregoing opinion; therefore, good cause appearing,

IT IS ORDERED that the relief prayed for in said application be denied and the application dismissed.

Dated at Los Angeles California, this 10th day of July, 1945.

J. Harold Anderson

Richard Mackay

Frank G. Clark

Thos. H. Caswell

Commissioners.