

Decision No. ~~29108~~

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the application of PACIFIC GAS AND ELECTRIC COMPANY and SACRAMENTO MUNICIPAL UTILITY DISTRICT for an order granting and conferring upon Pacific Gas and Electric Company all necessary permission and authority to perform and carry out the provisions of the written agreements made by and between applicants and dated April 9, 1946, copies whereof are annexed hereto as Exhibits "A" and "B".

Application
No. 27443

ROBERT H. GERDES and RALPH W. Du VAL, Attorneys, for
Pacific Gas and Electric Company.

STEPHEN W. DOWNEY and MARTIN McDONOUGH, Attorneys,
for Sacramento Municipal Utility District.

ROWELL, Commissioner:

O P I N I O N

This application is joined in by both Pacific Gas and Electric Company and Sacramento Municipal Utility District. (1) Authority is sought to carry out the provisions of two agreements the parties have executed looking toward the District's final acquisition and operation of those electric properties of Pacific which have been the subject of condemnation proceedings for a number of years. A brief summarization of the steps heretofore taken in those proceedings will aid in an understanding of the agreements now before us and the occasion for their execution.

The District was organized for the purpose of supplying electric energy within the City of Sacramento and a surrounding area of approximately 640 square

(1) These applicants will hereinafter be referred to respectively as "Pacific" and "District".

miles. Pursuant to constitutional and statutory provisions, the District filed a petition with this Commission on May 21, 1938, praying that it find the just compensation which should be paid by the District to Pacific for those electric properties and interests particularly described in such petition. The described properties comprise the major part, but not all, of Pacific's electric facilities within the boundaries of the District, and also some properties not within those boundaries. After extended hearings by the Commission on that petition, which was designated Application 21960, a decision was rendered on November 24, 1942, fixing the total just compensation as of May 21, 1938, including severance damages, at \$11,632,000.00. Upon petition to the Supreme Court of California for review of that decision, the court denied review on March 1, 1943.

As provided by statute, the District thereupon commenced action in the Superior Court of the County of Sacramento to take under eminent domain the properties which the Commission had valued for such purpose. That court, on January 2, 1945, rendered its judgment upholding the right and power of the District to acquire the described properties. Pacific appealed from that judgment, and on January 22, 1946 the District Court of Appeal affirmed the condemnation judgment, and on March 21, 1946, the Supreme Court of California denied a petition for a hearing by that court.

Soon after the Superior Court rendered its judgment of condemnation, the District moved for a decree of possession, and also for the appointment of a receiver to aid in making preparations for the actual severance of the described electric properties from the surrounding properties of Pacific's larger system. Although the motion for the appointment of a receiver was granted, the motion for an order of possession was held in abeyance until the District pay into court the just compensation fixed by the Commission. As also provided by statute, both parties then filed supplemental petitions with the Commission seeking a modification of its first finding of just compensation in order to give effect to additions to or retirements of properties subsequent to May 21, 1938.

The two written agreements which the District and Pacific have now executed, relate to (1) the procedure to be followed in perfecting the District's possession and title to the properties described in the condemnation proceeding, including their delineation and severance, and the determination of the adjusted just compensation, (2) the acquisition by District of certain electric facilities of Pacific in addition to those which the District will acquire by eminent domain, these consisting of such items of distribution plant and equipment not specifically described in the condemnation proceeding but which will no longer be useful to Pacific after severance of the condemned properties, and (3) the purchase by District of electric power from Pacific for a term of years.

An extended discussion of the various provisions contained in these agreements is not required. The one entitled "Contract for Delivery", attached to the application as Exhibit "A", in so far as it relates to the taking over of the properties covered by the judgment of condemnation, contains no provisions which in any material way alter the procedure prescribed by law for the taking of a public utility property by eminent domain. It is contemplated and agreed that the District will proceed promptly to make payment of the just compensation originally fixed by the Commission, and any needed adjustment of that amount by reason of subsequent additions, retirements, or depreciation, will be fixed by the Commission in the pending proceeding supplemental to Application 21960. When such finding of adjusted just compensation is filed with the court, and a final judgment is entered, the District will acquire title to all the described properties by operation of law.

With respect to the proposed voluntary sale or lease by Pacific of certain facilities not covered by the judgment of condemnation, an order of the Commission authorizing such a voluntary disposition is required before their actual transfer may lawfully be accomplished. However, this will not be done until the parties enter into further and more specific agreements which will be submitted to the Commission by supplemental application. It is presently agreed that in order

to aid the District in the development of a functioning organization, Pacific will temporarily permit the District to use its office and garage facilities, and will either lease or convey such transportation equipment, materials, meters and transformers on hand as the District may elect to acquire. In addition, the District will purchase certain other miscellaneous facilities which, after the District begins operations, will not be of further use to Pacific at their present locations.

The second agreement, attached to the application as Exhibit "B", is one providing for the sale of electric energy by Pacific to the District for a term beginning with the transfer of possession of the properties and ending on June 30, 1954. The contract rate differs from that specified in Pacific's existing resale power schedule P-31, in that the energy rates applicable to consumptions of over 8,000,000 Kwh per month are reduced by one-half mill per Kwh. The District will have an estimated demand of 60,000 Kw, and an average use of 27,000,000 Kwh per month. Pacific's largest customer now served under schedule P-31 has a load of approximately 25,000 Kw and 10,000,000 Kwh per month. Pacific proposes to so amend its existing resale schedule as to make like energy rates available to any customer whose monthly use exceeds 8,000,000 Kwh.

Other provisions of the rate contract relative to maximum demand requirements and power factor adjustments, although differing somewhat in form from those specified in schedule P-31, will not result in substantial differences in their application. Pacific has elected to deliver energy to the District at the various points where its existing facilities are available for that purpose. Meter readings taken at such points will be combined. Both the District and Pacific will thus avoid the costs that would necessarily be incurred if their facilities were redesigned to permit delivery of power at a single point. The District agrees to supply power to those fringe customers of Pacific whose only source of power at the time of transfer will be from distribution lines being condemned by the District. Within the boundaries of the District, Pacific will cease the sale and delivery of power except to the District itself and to the small electric system

which serves the area within and adjacent to the town of Walnut Grove.

It is evident that the execution of some such agreements as those in preparation for the actual severance and delivery of the electric properties being taken by right of eminent domain would be in the public interest. An attempt to effect such a severance by force of court decree alone, without the cooperation and agreement of the parties themselves with respect to many details, might result in inconvenience and even hardship to electric customers both within and without the boundaries of the District, as well as to increase the costs of severance to the District and to the utility. Obviously, also, it is desirable that the parties make an agreement with respect to the purchase and sale of power for a reasonable period of time.

It is our opinion that the public interest requires that Pacific be authorized to perform and carry out all the provisions of the aforesaid agreements with the District. As before stated, certain provisions thereof relative to the proposed conveyance of any property or equipment not passing by force of the condemnation judgment will not be self-executing, but contemplate the further approval of this Commission upon the filing of a supplemental application.

The following order is recommended.

O R D E R

A hearing having been held upon the above entitled application of Pacific Gas and Electric Company and Sacramento Municipal Utility District, the matter considered, and good cause appearing;

IT IS ORDERED that Pacific Gas and Electric Company be and hereby is authorized to carry out and perform all of the provisions of that contract made with the Sacramento Municipal Utility District dated the 9th day of April, 1946, entitled "Contract for Delivery of Sacramento Electric System", copy of which is attached to said application as Exhibit "A"; and also to carry out and perform all

of the provisions of that contract made with Sacramento Municipal Utility District dated the 9th day of April, 1946, entitled "Contract for Purchase and Sale of Electric Energy", a copy of which is attached to said application as Exhibit "B".

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

The effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this 18th day of June, 1946.

A. Harold Ruden

Justice F. C. Rogers
Francis D. ...

James D. ...

Harold F. ...

Commissioners,