

ORIGINAL

Decision No. 41547

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA WATER SERVICE COMPANY,)
a corporation,)

Complainant,)

vs.)

Case No. 4934

PACIFIC GAS AND ELECTRIC COMPANY,)
a corporation,)

Defendant.)

O P I N I O N

By the complaint and answer on file in this proceeding, issue has been joined concerning certain rights and obligations arising from the acquisition by California Water Service Company from Pacific Gas and Electric Company of a water distribution system in Oroville and vicinity.

Defendant was authorized to transfer its Oroville water system to complainant by Decisions Nos. 18037, dated March 2, 1927, (29 C.R.C. 424), and 18101 and 18102, dated March 24, 1927, in Application No. 13429. The parties were required to determine, subject to the Commission's approval, the quantity of water which defendant should obligate itself to deliver to complainant under the sales contract, based upon the water use during the year 1927. A joint report, known as the Ryan-Earnum Report, setting forth the amounts of water which should be delivered to complainant, was later presented. It was approved, with certain modifications, by subsequent orders in the same proceedings. Decision No. 28162, dated August 6, 1935, (39 C.R.C. 358); Decision No. 29398, dated December 21, 1936.

It appears from the pleadings that during 1947 a dispute arose with respect to the quantity of water defendant is obligated to furnish and the terms upon which it should be supplied.

The complaint alleges that complainant is entitled to the full Miocene Ditch water right — the source from which water has been supplied — so far as required by the Oroville water system and that defendant is obligated to furnish such water free of charge until May 1, 1952. It is asserted that deliveries of water having been substantially less than the full Miocene water right during August and September 1947, and less than required by the Oroville water system, complainant demanded of defendant additional water which it refused to deliver unless complainant agreed to pay for the same at a given rate. As a result, complainant states, it was forced to purchase water elsewhere at a cost of \$763.27.

By the prayer of the complaint, an order is sought (1) determining that complainant is entitled to the amount of water it claims defendant is obligated to furnish free of charge until May 1, 1952; (2) directing defendant to supply such water, as demanded; (3) awarding reparation in the amount which complainant was required to pay for the purchase of water elsewhere; and (4) (in the event that the Commission should determine that complainant is required to pay for Miocene water) fixing the fair, just and reasonable rate to be paid by complainant to defendant.

The answer denies that complainant is entitled to receive free of charge until May 1, 1952, the amount of water it claims under the sales contract and the Ryan-Barnum Report. Defendant admits it failed to comply with complainant's demand for additional water in 1947, but denies that it refused to do so. It is contended that the

Commission is without authority (1) to determine that complainant is entitled to receive free of charge the amount of water claimed; (2) to require defendant to supply such water free of charge; or (3) to award the reparation sought by complainant.

On April 16, 1948, the parties filed a stipulation for a compromise settlement of the controversy, subject to approval by the Commission. A copy of the document appears in the Appendix. The parties have agreed that all Miocene water delivered upon complainant's request prior to May 1, 1952, in excess of the amounts designated in Table F of the Ryan-Barnum Report as the "Average Daily Delivery for the Month" shall be paid for at the rate of \$1.20 per acre foot. Methods have been agreed upon for determining the amount of water delivered or sold to complainant. The stipulation further provides (1) that the proposed arrangement shall be without prejudice to the rights and interests of either party; (2) that neither party shall urge or contend that the agreement upon or approval of the \$1.20 rate should be considered in fixing the rate to be charged after May 1, 1952; and (3) that each party shall be free to urge the prescription of any rate deemed proper for application after May 1, 1952, whether it be the same as or more or less than \$1.20 per acre foot.

After careful consideration, we are of the opinion that the stipulation of the parties should be approved as a compromise settlement, subject to such changes or modifications as the Commission may from time to time direct in the exercise of its jurisdiction, and that the complaint should be dismissed. An appropriate order will be entered.

O R D E R

This case being at issue upon complaint and answer on file, the parties having filed a stipulation for compromise settlement, and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That the stipulation for compromise settlement filed in this proceeding on April 16, 1948, be and it is hereby approved, subject to such changes or modifications as the Commission may from time to time direct in the exercise of its jurisdiction.

(2) That the complaint in this proceeding be and it is hereby dismissed.

This order shall become effective 20 days from the date hereof.

Dated at Los Angeles, California, this 4th day of May, 1948.

R. T. [Signature]
Justice F. [Signature]
Geoff [Signature]
Harold P. [Signature]
Kenneth [Signature]
 COMMISSIONERS

(Appendix Follows)

APPENDIX

STIPULATION FOR COMPROMISE
SETTLEMENT

CALIFORNIA WATER SERVICE COMPANY, complainant (hereinafter referred to as the "Water Company"), and PACIFIC GAS AND ELECTRIC COMPANY, defendant (hereinafter referred to as the "Pacific Company"), hereby stipulate and agree that the above entitled proceeding shall be compromised and settled upon the following terms and conditions, to which they hereby mutually agree:

(1) All Miocene right water which, upon request of the Water Company, shall be released and delivered to the Water Company at the Coal Canyon tail race prior to May 1, 1952, in excess of the amounts designated as the "Average Daily Delivery for the Month" in Table F of the Ryan-Farnum Report dated July 30, 1928, (without any adjustment of or diminution in said Table F figures) shall be paid for by the Water Company at the rate of \$1.20 per acre foot. Bills for the water so delivered during any calendar month (based upon averages of recording gauge readings, where available) shall be rendered by the Pacific Company on or before the 10th day of the next succeeding calendar month and shall be paid by the Water Company at the office of the Pacific Company at 245 Market Street, San Francisco, California, on or before the 20th day of such month.

(2) The amount of water to be paid for by the Water Company, as above provided, shall be determined by measurements made at Station BW41, which is the gauge at the head of the Powers Canal, and for the purpose of determining what portion of the flow at BW41 is Miocene right water to be delivered and/or sold to the Water Company and what portion thereof is Lake Wilenor water belonging either to Thermalito Irrigation District or Table Mountain Irrigation District or both of them, the following formula shall be used:

The Water Company's share of the water actually delivered at BW41 shall be calculated as and be

$$\frac{(A-C)}{(B-D) + (A-C)} \times E$$

in which

A = amount of Miocene water delivered through gauge BW26.

B = amount of Wilenor water delivered through gauge BW27.

C = the Pacific Company's sales above Coal Canyon Power House plus canal losses thereon, plus spillage at Lime Saddle Power House, if any.

D = amount of Wilenor water, if any, diverted above Coal Canyon Power House, plus canal losses thereon.

E = total water measured at BW41.

All figures to be in cubic feet per second, and losses under C and D to be calculated on the basis of the difference between the readings of gauges BW33 and BW41 after first taking into account all sales by the Pacific Company and diversions, if any, of Wilenor water above Coal Canyon Power House.

(3) At all times when Lake Wilenor water is being conveyed in the Miocene Canal the Pacific Company shall advise the Water Company at the Water Company's district office at Oroville, not less often than every Monday, Wednesday and Friday (excepting such of said days as may be holidays), of the following measurements:

- (a) the gauge readings at FW26;
- (b) the gauge readings at BW27;
- (c) the gauge readings at FW33;
- (d) the gauge readings at BW41;
- (e) the amount of Pacific Company's sales from the Miocene Canal above Coal Canyon Power House;
- (f) the amount of all diversions of Lake Wilenor water from the Miocene Canal above Coal Canyon Power House;
- (g) the amount of spillage at Lime Saddle Power House.

The gauges at BW26, BW27, BW33 and BW41 will be read not less often than each Monday, Wednesday and Friday, excepting such of said days as may be holidays. The above measurements shall be used in applying the formula set forth in the preceding paragraph and said formula shall be applied at all times when Lake Wilenor water is being conveyed in the Miocene Canal, irrespective of whether the Water Company is then buying water from the Pacific Company pursuant to the foregoing provisions of this stipulation.

(4) The foregoing arrangement is a compromise settlement and, subject to the terms agreed upon, shall be without prejudice to the rights and interests of either party. In this connection it is expressly agreed that neither party shall urge or contend that because

the rate of \$1.20 per acre foot is hereby agreed upon and may be approved by the Public Utilities Commission of the State of California, such agreement or approval is any evidence of, or shall be accorded any consideration whatsoever in the fixation of, the fair, just and reasonable rate to be charged by the Pacific Company and paid by the Water Company for water deliveries subsequent to May 1, 1952, and each of the parties hereto shall be entirely free to urge whatever it may deem to be the fair, just and reasonable rate to be paid for water deliveries subsequent to May 1, 1952, whether the amount so urged be the same as or more than or less than \$1.20 per acre foot.

(5) This compromise settlement shall not become effective until the Public Utilities Commission of the State of California shall approve the same and shall authorize the carrying out of its terms and conditions. This stipulation shall be presented to the Public Utilities Commission of the State of California for its approval and, if and when the Commission shall by order approve the same, the compromise settlement shall be and become effective, but in all other respects the above entitled proceedings shall be deemed and ordered dismissed.

Dated: April 16, 1948.

CALIFORNIA WATER SERVICE COMPANY

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General Manager

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PACIFIC GAS AND ELECTRIC COMPANY

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