

Decision No. 42583

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, for an order of the Public Utilities Commission of the State of California granting and conferring upon applicant all necessary permission and authority to carry out the terms and conditions of a written contract with H. A. FREY, dated November 7, 1947, (Exhibit "A" hereof).

ORIGINAL

Application No. 28947

Ralph W. DuVal, for Pacific Gas and Electric Company;
H. A. Frey, in propria persona.

O P I N I O N

In this proceeding the Pacific Gas and Electric Company,^{1/} a corporation, requests the necessary permission and authority to carry out the terms and conditions of a contract with H. A. Frey, a real estate subdivider, relating to the sale and delivery of water for resale purposes in a subdivision located near the Weimar Sanatorium in Placer County.

A public hearing in this matter was held in Auburn before Examiner Foster.

The proposed agreement, executed by both parties under date of November 7, 1947, provides for the sale of an amount of water not exceeding a maximum flow of six miner's inches.^{2/} The contract is to be effective for the period of one year from and after the date of first delivery of water thereunder and to continue thereafter in full

^{1/} Hereafter sometimes called the company.

^{2/} A miner's inch as used herein shall mean a continuous flow of water equivalent to 1/40 of a cubic foot per second or 1.5 cubic feet per minute, and a miner's inch day shall mean one miner's inch flowing continuously for a period of twenty-four consecutive hours.

force and effect until terminated by 30 days' notice by either party:

All water is to be sold at the following rate, as set forth in the agreement:

"For the first block of water delivered hereunder per month amounting to 1,000 cubic feet times the number of dwellings to which said water shall be resold by applicant, the rate of \$0.10 per 100 cubic feet shall apply, and for the purpose of this rate a dwelling shall mean each single family dwelling or each family dwelling unit in other buildings containing living quarters.

Next 4,000 cubic feet per month will be at \$0.05 per 100 cubic feet.

Next 5,000 cubic feet per month at \$0.025 per 100 cubic feet.

All water per month in excess of above at \$0.015 per 100 cubic feet.

The minimum charge per month will be \$1.25 times the number of dwellings as defined above."

The contract further provides, among other things, that the water will be sold and delivered as an accommodation to said H. A. Frey, and that he shall notify in writing all present residents and all future residents in said subdivision, immediately upon their first receiving water from him, that the responsibility of the company for delivery of water is to H. A. Frey only, at a point of metering on the berm of the company's Boardman Canal; is limited to the company's available supply; and does not constitute a dedication of service. Another provision of the contract requires H. A. Frey, at his own expense, to install a tank of sufficient size to store a quantity of water adequate to supply, for a continuous period of 30 days, such customers as may become dependent upon water obtained thereunder, and delivery of water under the contract is conditioned upon the installation and use of such storage tank. It is also provided in paragraph 6 of the contract that the company may temporarily interrupt the flow of water for purposes of cleaning, repairing, or maintaining the water system.

The company contends that it has not used its ditch system in this area to supply public utility water service to developers of real estate subdivisions. Its witness testified that it is willing to furnish service of this character only under the terms outlined in the contract submitted herein. It is perfectly clear from the record that the terms and conditions contained in the contract have been adopted by the company as a definite policy not heretofore in effect but applicable to all future service of a similar nature. That being the case, authorization of such a contract would establish a precedent for water service in a classification which may have widespread application.

Commission approval of the contract in its present form, with the provisions in paragraphs 1 and 7 that water service is to be supplied as an accommodation only without dedication, could be construed as a determination by us that the company has the right to grant or withhold service to this subdivision, in its discretion. The present record, however, is insufficient upon which to base a determination of the question whether the company is or is not charged with the duty of rendering service to this subdivision, and upon this question we express no opinion. Consequently, approval of the contract containing specific non-dedicatory provisions as proposed would be inappropriate.

It appears to us that the requirement contained in paragraph 5 of the contract, that Frey shall install a tank of sufficient size to store a water supply adequate for a 30-day period, with the proviso that delivery of water is conditioned upon the installation of such a tank, is unnecessarily burdensome. It would seem that requirements similar to those appearing in paragraph 6 would afford sufficient protection to the company against liability for interruption of the water flow due either to causes beyond its control or to the necessity for cleaning or repairing the ditch.

The record discloses that Frey, at the time of entering into the contract, had sold the distribution system serving his subdivision to a mutual association of water users, and that he was acting only as an agent of this association when the contract was executed. Although the contract may be binding upon Frey as agent for a principal who was undisclosed at the time the contract was executed, there is some doubt as to whether the association, the real party in interest, is bound thereby or has any rights thereunder. It would be preferable to have the association appear as the principal in any sale of water by the company to the association.

For the foregoing reasons we are of the opinion that the present application should be denied. The parties should undertake the development of a new basis for service of water to this subdivision. In doing so, every effort should be made to evolve a plan which will afford a basis for uniform treatment of all customers of a particular type or class receiving water. The use of special contracts to establish rates and conditions, under which any utility service is rendered, should be limited to extraordinary cases unless such contracts are provided for in rate schedules on file with the Commission. Filed schedules have the advantage of being available for inspection by any customer at the utility's offices.

O R D E R

Application, as entitled above, having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted, the Commission now being advised fully in the premises after careful consideration of all the evidence presented in this proceeding,

IT IS HEREBY ORDERED that this application of the Pacific Gas and Electric Company for authorization to carry out the terms and

conditions of that certain written contract with H. A. Frey, dated November 7, 1947, attached to the application as Exhibit A, be and it is hereby denied.

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

Dated at Los Angeles, California, this 8th day of March, 1949.

R. J. [Signature]
Justus F. [Signature]
[Signature]
Harold P. [Signature]

Commissioners