

Decision No.

**43720**

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED STATES OF AMERICA

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY

Defendant.

Case No. 4950

COLIN A. SMITH, Special Assistant to the Attorney General, Department of Justice, for Complainant.

ROBERT H. CERDES, RALPH W. DuVAL, and CHAFFEE E. HALL, for Defendant.

J. J. DEVEL and EDSON ABEL by MR. ABEL, for California Farm Bureau Federation, Intervenor.

GEORGE KINSMAN, for California Manufacturers Association, Intervenor.

O P I N I O N

This complaint of the United States of America against Pacific Gas and Electric Company<sup>(1)</sup> recites that it was brought under the direction of the Attorney General at the request of the Secretary of Interior, the Departments of the Army, Navy, and Air Force, and the National Advisory Committee for Aeronautics. The specific allegations made in the complaint and the relief sought therein will be referred to in some detail presently. At this point a brief summarization of the complaint and the answer of the Company thereto will be sufficient to indicate generally the nature of the issue presented.

The complaint alleges that the Government is both a producer and a consumer of electric power and energy. It declares that power is generated by the Government at the Shasta plant of the Bureau of Reclamation, Central Valley

(1) Throughout this Opinion the Complainant and Defendant respectively will generally be referred to as the Government and the Company.

Project, by the Navy at the Mare Island Shipyard, and by the Department of Interior at Yosemite National Park. Electric power generated at these three sources is said to be sold to and purchased by the Company, and that power is sold by the Company to various Government departments, bureaus and agencies at many locations. It is alleged that the generating plants of the Government have a capacity in excess of that necessary to supply its own needs, but it lacks adequate facilities to transmit its power and energy to the points of consumption. It is alleged that the Government has on specific occasions requested the Company to supply power on an exchange basis at various points of government use, but the Company is said to have refused to render such a service except for uses in connection with the construction and operation of the Central Valley Project. Such refusal of the Company to supply the Government with power on an exchange basis, except for the Central Valley Project, is alleged to constitute a violation of Sections 13(b) and 19 of the Public Utilities Act. The prayer is that the Commission establish a class of service which will provide for an exchange or wheeling of electric power between the Government and the Company, and to fix just and reasonable rates for such class of service. It is also prayed that reparation be awarded for the loss and damage alleged to have been suffered by the Government because of the Company's refusal to furnish the service requested.

In answer to the complaint, the Company declares that the exchange or wheeling service demanded of it is not a service which it has undertaken to render as a public utility service, and that an order requiring the rendition of such a service would constitute an unlawful taking of its property. It is also alleged that the complaint does not state facts sufficient to constitute a cause of action arising under any provision of the Public Utilities Act.

Hearings upon the complaint were begun on October 27, 1948, and were continued on October 28 and 29, and on November 17 and 18, 1948. At the outset of the hearing, the Company moved for dismissal of the complaint, the grounds advanced being substantially those set forth in its answer. At the conclusion of the hearing the Company renewed the motion first made and added as a further

ground for dismissal the failure of the Government to prove that it was entitled to any relief. It was agreed that the issues presented would be submitted for the Commission's decision after the filing of concurrent opening and reply briefs, and that if it then be found by the Commission that the Government is entitled to receive service from the Company under some special service or rate classification, it would order reopening of the complaint for the purpose of receiving further evidence with respect to the level of the rate to be applied for that special service..

It will be helpful first to review those facts, both as alleged in the complaint and as developed through witnesses, which relate to the quantities and sources of electric power which the Government generates and utilizes through its various departments or agencies..

More specifically, the complaint states that electric power is purchased from the Company for use by the Government at twenty-five named locations.. These include nine installations maintained by the Navy, ten by the Army, four by the Air Force, one by the National Advisory Committee for Aeronautics, and the National Park Service at Yosemite Park is also named as a consumer. Electric power is said to be purchased at other places not specifically named, and by other departments, bureaus and agencies of the Government at many points on the Company's electric system.. The complaint further alleges that the Government has adequate capacity in its generating plants, over and above the capacity necessary to generate the power and energy it sells on a firm basis to the Company, to provide electric service for its own uses at those points of consumption referred to in the complaint..

Evidence presented through Mr. Oliver O. Rands, a civilian engineer employed by the Navy, shows that during 1947 the Government operated four electric generating plants, each of which was physically connected with the electric system of the Company.. The contractual arrangements under which such connections have been maintained will be referred to later in this opinion.. Testimony was given concerning the generating capacities of those plants, their energy output during

that year, together with the actual or normal amounts of energy both delivered to and received from the Company at each location. The following table of figures will serve to summarize that testimony:

	Bur. of Rec. Central Valley Project Shasta Hydro Electric Plt.	Dept. of Navy Mare Island Navy Yard Steam Plant	Dept. of Army Presidio of S.F. Letterman Hosp. Steam Plant	Dept. of Int. Natl. Pk. Serv. Yosemite Hydro Electric Plant
Rated Capacity (kilowatts)	225,000	21,000	625	2,000
Generation 1947 (kilowatt hours)	1,213,559,200	91,551,448	813,900	10,635,750
Purchases from Company (kilowatt hrs.)	-	16,715,152	8,884,300	4,296,576
Sales to Company (kilowatt hours)	1,181,474,419 <sup>a</sup>	30,243,600	813,900	2,151,462
Consumption by Agency or Installation (kilowatt hours)	32,084,781	78,023,000 <sup>b</sup>	8,884,300	12,780,864
Consumption in excess of plant generation: Supplied by Company (kilowatt hours)	-	-	8,070,400	2,145,114
Generation in excess of consumption: Delivered to Company (kilowatt hours)	1,181,474,419	13,528,448	-	-

a. Includes 3,386,688 kwh supplied to Company at Shasta Substation to compensate for the Company's delivery of power for Central Valley Project uses.

b. Normal use as estimated by witness; actual use for 1947 not given. The amount shown as generated also reflects the normal consumption.

The evidence indicates that the capacity of the Shasta plant as above shown as of the end of 1947 was increased to 300,000 kw during 1948. The evidence does not indicate that the capacity of the other Government generating plants, or the use of energy at the same locations will normally exceed those appearing in the above table.

With respect to the Government's purchase of electric power from the Company at all points of utilization, including those where it has generating capacity of its own, evidence was presented through witness Rands to show the amounts purchased in 1947 at only those installations specifically mentioned in the complaint. The power and energy supplied by the Company at those locations, as indicated by the witness, together with the derived annual load factor at each location, are set forth in the table that follows:

<u>Location</u>	<u>Demand</u> (kw)	<u>Energy</u> (kwh)	<u>Annual</u> <u>Load</u> <u>Factor</u> (%)
<u>Navy</u>			
Yorba Buena Island	832	3,917,600	53.8
Point Molate	624	833,600	15.3
NAS Oakland	588	1,478,400	28.7
NSA Stockton	3,984	10,605,600	30.4
Naval Station Treasure Island	3,456	13,408,800	44.3
NAS Moffett Field	2,120	7,161,000	38.6
NSC Oakland	6,091	16,630,400	31.2
Naval Hospital Oakland	780	3,541,200	51.8
S. F. Naval Shipyard	15,000	57,924,000	44.1
Mare Island Navy Shipyard	8,000	16,715,152	23.9
<u>Army</u>			
Benicia Arsenal	1,416	2,906,400	23.4
Camp Cooke	1,200	2,988,841	28.4
Oakland Army Base	2,160	6,062,400	32.0
Fort Ord - Main Garrison	1,600	6,689,600	47.7
Presidio of San Francisco	2,030	8,884,300	48.8
Stockton Sub Depot	864	1,104,000	14.6
Stockton Gen. Depot (Cont.#3)	1,184	1,884,800	18.2
Stockton Gen. Depot (Tracy)	850	1,452,000	19.5
Camp Stoneman	2,432	5,321,600	25.0
<u>Air Force</u>			
Castle Field	846	1,545,200	20.9
Fairfield-Suisun Field	1,440	6,483,400	51.4
Wether Field	1,056	3,596,671	38.9
Hamilton Field	<u>1,740</u>	<u>5,770,800</u>	37.9
Subtotal	60,343	186,905,764	
<u>Non-Military</u>			
Ames Aeronautical Lab.	30,000	24,360,000	9.3
Yosemite National Park	<u>2,325</u>	<u>4,296,576</u>	21.1
Total - Non-coincident demand	92,668	215,562,340	
Total - Coincident demand, with assumed diversity factor of 1.1	84,244		29.2

There should be some further explanation of the quantities of power and energy shown in the foregoing table as having been supplied by the Company at those installations where a part of the power utilized is produced in generating plants of the Government at the same locations.

The Mare Island Shipyard steam plant of the Navy is connected at that point with two lines of the Company, one a 110 kv line and the other an 11 kv line. Written contracts made in 1942 covering such connections are in evidence. The one covering the 110 kv connection was cancelled by the Navy as of June 30, 1948. The quantity of 16,715,152 kwh shown in the foregoing tabulation as the energy supplied by the Company at the Mare Island Shipyard during 1947 represents the total amount supplied by the Company during the year. During the same period the Company purchased 30,243,600 kwh of energy generated at the Navy's plant. The testimony of witness Rands indicates that the 110 kv line connection was then being maintained under a verbal arrangement on a day to day basis whereby the Company may call upon the Mare Island plant, which operates in parallel with the Company's system, to supply the maximum output of that plant during peak load periods on the Company's system, mainly during weekday hours between 7:30 A.M. and 4:30 P.M., a like quantity of energy being delivered back by the Company to the Navy Yard during off-peak hours and over week ends.

The steam generating plant of extraction type operated by the Army at the Presidio of San Francisco has been operated in parallel with the Company's system since some time in 1947, when the Company requested such arrangement. The 8,884,300 kwh shown in the above table as the energy supplied by the Company during that year includes both the energy generated by this Government plant and the amount supplied by the Company. The plant's generation was 813,900 kwh. The evidence indicates that bills are rendered by the Company covering the full amount of the power and energy used at the Presidio, with a credit given at the same rate for such amount as may have been generated by the Presidio plant.

The hydro electric generating plant at Yosemite National Park is connected to the Company's system under a ten year contract executed in 1944. The

contract provides that when electric power produced at this plant exceeds the demand within the Park, the Company agrees to purchase such excess production at 1½ mills per kwh. The contract specifies the rate to be charged by the Company for the electric power it supplies. The stated rate includes a demand charge plus an energy charge of 7½ mills for the first 300 kwh per kw of demand per month, and 6 mills per kwh for all in excess of 300 kwh per kw of demand. During 1947 the total generation was 10,635,750 kwh. The Company purchased, 2,151,462 kwh of the surplus power output of the plant, and during the same year sold 4,296,576 kwh for uses within the Park.

The Shasta Dam hydro electric generating plants of the Bureau of Reclamation, Central Valley Project, had an energy output during 1947 of 1,213,559,200 kwh. The Bureau's transmission lines extend from the point of generation to Shasta Substation about twenty-five miles distant, and thence to Oroville about seventy-five miles from the substation. A contract between the Government and the Company covering the sale and purchase of Shasta power was executed on September 23, 1943. The termination date of that contract was said to be December 31, 1948. The contract called for delivery to the Company at Shasta Substation of specified monthly quantities of power, and provided that the Company should have the use of and the obligation to maintain the Bureau's transmission lines between Shasta Substation and Oroville. For the right to use the line to Oroville the Company was to pay \$6,250 monthly. For electric power purchased at the substation it was to pay a readiness to serve charge of \$125,000 per month for 150,000 kw, together with an energy charge of 1½ mills per kwh. The evidence indicates that 1,178,087,731 kwh of energy were purchased by the Company at Shasta Substation during the year 1947, and that the combined readiness to serve and energy charges averaged 2.74 mills per kwh. This is exclusive of the sum paid monthly for the use of the Bureau's line from Shasta Substation to Oroville.

Another provision of the contract between the Company and the Bureau related to the supplying of Shasta power by the Company for the operation of pumps on the Contra Costa Canal unit of the Central Valley Project. It was pro-

vided that the Company, when requested by the Bureau, should supply 1 kwh of energy metered at the Contra Costa Canal pumps for each 1.75 kwh delivered to the Company at Shasta Substation for that purpose. The record shows that the Company later agreed to deliver power on the same basis for other Central Valley Project purposes and has been making deliveries for project purposes on the Delta-Mendota Canal, for the Tracy pumping plant, and at Friant Dam. During 1947 the Company supplied 4,472,000 kwh at the various points where needed for Central Valley Project operations, and for that purpose the Bureau supplied the Company at Shasta Substation a total of 7,858,683 kwh.

Up to this point the narration of the matters alleged in the complaint and of the evidence introduced has been for the purpose of disclosing the physical facts surrounding the Government's generation and use of electric power. We now turn to those allegations which pertain to the asserted exchange of electric power between the Government and the Company. Although such pleadings are in the nature of legal conclusions, much of the testimony presented through the Government's witnesses was offered and received for the purpose of explaining the meaning of the term "exchange" as used in the complaint. A full consideration of that evidence is necessary for an understanding of the relief sought.

It is alleged that the Company is engaged in the business of generating, purchasing, exchanging, transmitting, distributing, delivering, and selling electric power and energy. It is alleged that the Company supplies power and energy for the operation of certain pumping plants on the Contra Costa Canal unit of the Central Valley Project in exchange for power and energy generated at Shasta Dam and delivered to the Company at the Shasta Substation. The Company is said also to exchange electric power with the California Oregon Power Company, Southern California Edison Company, and with the City of San Francisco. Exchange service with the City of San Francisco is declared to be performed under a contract whereby power generated and required by the City is delivered to the Company at



Newark, where the Company transforms, converts, distributes, retransforms, redistributes, and delivers that power to the City at various points where required for its municipal purposes, and that the service so rendered by the Company to the City of San Francisco is known in the electric utility business as a "wheeling" service and is equivalent in result to the exchange service performed by the Company for uses in connection with the Central Valley Project, in that the customer receives the benefit of the electric power and energy which it generates and supplies to the transmission system of the transmitting company.

Further allegations are made to the effect that, although the Company has in specific instances been requested to furnish electric power and energy on an exchange basis for use at various Government installations, it has refused to accede to such requests except for uses in connection with the operation of the Central Valley Project; that such refusal of the Company requires the Government, to its resultant loss and damage, to pay for electric power and energy at rates and under conditions which ignore the fact that it generates and supplies to the Company's system quantities of energy far in excess of that supplied by the Company to the Government; that notwithstanding the quantity of power supplied by the Government, the Company has curtailed deliveries of power and energy to the Government, thus rendering its service inadequate, insufficient, and unreliable for the Government's ordinary needs and the requirements of national defense; that failure and refusal of the Company to supply electric power on an exchange basis results in unjust, unreasonable, inefficient and inadequate service in violation of Section 13(b) <sup>(2)</sup> of the Public Utilities Act. The final allegation of the complaint is that the refusal of the Company to render exchange service to the Government, except for operation of its Central Valley Project, while an identical or equivalent service is rendered to others, constitutes the maintenance of an unreasonable difference in service as between localities and as between differ-

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(2) Section 13(b) of the Public Utilities Act provides as follows:

"Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable."

ent persons in the same class, and is an attempt of the Company to maintain arbitrary, unreasonable, discriminatory and artificial classes of service to the Government, all in violation of Section 19<sup>(3)</sup> of the Public Utilities Act. In the prayer of the complaint the Commission is requested to establish a class of service to provide for the exchange of electric power and energy between the Government and the Company or, in the alternative, for the "wheeling" of electric power and energy to be delivered by the Government to the Company and transmitted and redelivered by the Company to the Government for its own use, and that the Commission fix just and reasonable rates for such exchange or "wheeling" service.

It will be observed that in the complaint itself there is no assertion that the Company has been rendering exchange service with any Government agency or for any purpose other than the delivery of power for Central Valley Project uses. In the opinion of the Government's witness Rands, who testified with respect to the meaning of the term "exchange" as employed in the complaint, exchange service is actually being accorded by the Company in supplying electric power to each of the military or other Government installations heretofore listed. The witness made no distinction between "exchange" and "wheeling", stating that to him the accepted interpretation of the two words is identical. Counsel for the Government agreed with that interpretation. The witness was of the belief that the term "exchange" was broad enough to include the purchase and sale of electric power at a single point, whether or not provision is made for the delivery of that power for use at another point. Hence, he concluded that the Company is actually providing exchange service at each of the listed Government installations served by

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(3) Section 19 reads:

"No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The Commission shall have the power to determine any question of fact arising under this section."

the Company, for he considered all power and energy generated by the Government at the four locations mentioned to be a part of the Government's pool of power that may displace other power on the system of the Company, permitting its release for delivery by the Government to other Government agencies or installations.

With respect to the exchange service alleged to be rendered by the Company with Southern California Edison Company and California Oregon Power Company, the evidence indicates that under the agreements which the Company has with each there is both a purchase and sale of electric power at the points where the utility systems are connected. Each utility may call upon the other for power when needed and available. Neither agreement makes any provision for the transmission of power supplied by one to the other beyond the point where their systems are connected. Witness Rands, however, considered them to include exchange service.

The alleged exchange service between the Company and the City of San Francisco is that being rendered under a contract executed in 1945 to continue for a term of ten years. That agreement, together with other agreements executed at the same time, provides for the disposition of the output of the City's hydro generating facilities at Hetch Hetchy in Yosemite National Park. The City owns a transmission line terminating at Newark about thirty-five miles south of San Francisco. The amount of electric power needed by the City for its municipal uses is delivered to the Company at Newark, and the Company is obligated, among other things, to transmit and deliver that power and energy for the municipal uses of the City. It is also obligated to render standby service and other services for the City. The purpose of those agreements was to enable the City to make disposition of the output of its generating plant within Yosemite Park in a manner consistent with the Act of Congress authorizing the project. It appears unnecessary to make extended reference here to the specific provisions of the several agreements. Concerning the charges made by the Company for the service performed solely in the transmission and delivery of the power supplied to it at Newark, it will be sufficient to quote from the decision of the Commission when granting the

Company permission to carry out the terms of those agreements, as follows: "The charges for such service, \* \* \* were arrived at by the elimination of the Company's power costs at Newark from the charges made for the service presently rendered to City in accordance with applicable rate schedules, the difference being accepted as the fair cost of transmitting and distributing the City's power for its several municipal uses. Energy loss ratios \* \* \* have been established to reflect the losses experienced from the various classes of use." In effect, therefore, the undertaking of the Company, aside from the standby and other services it agreed to render, was to transmit and deliver the City's power to the points of utilization by the City. As heretofore noted, the Government's complaint alleges that such a service is known in the electric utility business as a "wheeling" service and is equivalent in result to the exchange service said to be performed by the Company in supplying electric power for Central Valley Project purposes.

To further illustrate the intended meaning of the term "exchange service" as used in the Government's pleading, there were introduced in evidence a number of contracts entered into by both privately and publicly operated electric utilities in other states whereby they undertook to transmit over their line facilities the electric power generated in plants owned and operated by agencies of the Government. Such agreements need not be extensively analyzed here. As stated in the Government's opening brief, the type of service to be performed by the parties to such agreements was described therein in various terms, such as "exchange", "mutual exchange", "delivery for account", and "license to transmit."

The Government's complaint alleges the refusal of the Company to accede to prior requests for the supplying of electric power on an exchange basis. Evidence was introduced to show that a number of requests of that nature, both written and verbal, had been made of the Company. Testimony given by James P. Elmore, of the Marketing and Sales Division of the Reclamation Bureau, was to the effect that the Company had repeatedly indicated its willingness to execute agreements for the exchange of Shasta power utilized at the pumping plants and auxiliary facilities

of the Central Valley Project, but that the Company had refused to enter into similar arrangements for the delivery of power to other places as requested by the Bureau. He testified to requests made for deliveries of power at installations of the Navy at Hunters Point, Mare Island, Moffett Field, Oakland Supply Depot, Treasure Island, and Port Chicago; also to the Lassen National Park and to the City of Roseville. Witness Rands also testified that a proposal was made to the Company for the disposition on an exchange basis of the surplus power capacity of the Mare Island generating plant, and the Company had rejected such proposal.

It is upon the pleadings and facts of record thus far reviewed that the Commission must interpret the prayer of the complaint that the Company be directed to accord a special class of service to the Government, a service denominated an exchange or wheeling service. Whereas the complaint itself does not limit the request for exchange service to any particular governmental uses, it was stated by witness Rands that the governmental installations concerning which he testified each had a maximum power demand of over 500 kilowatts, and that a power demand of that volume is believed by the Government to represent a reasonable classification for the transmission service which is being requested. Counsel thereupon asked that the complaint be amended to accord with the testimony. Both witness and counsel further stated that exchange service was being sought for any governmental use of electric power, now or in the future, when the maximum demand at the place of delivery reaches or exceeds 500 kw, and should continue as long as such demand is maintained. Counsel stated that the use of power by the Government would be for consumptive purposes only. It was further said to be assumed that the delivery of Government generated power will be made to the Company as it now is, principally at Shasta Dam, also at Mare Island and such other places as the parties themselves may agree to interchange or exchange power.

The remaining evidence to be reviewed is that introduced by the Government for the purpose of indicating wherein it has suffered loss and damage, as alleged, because of the refusal of the Company to render exchange service, and

also from its alleged maintenance of arbitrary, unreasonable and discriminatory classes of service. Testimony was received, over objection by the Company, for the purpose of reflecting the charges which the Government would consider reasonable for the service requested. The Company contends that the complaint does not allege the unreasonableness of the existing rates or charges, and that the question of reasonable rates is not in issue.

The witnesses first presented by the Government were representatives of the military forces and of the National Advisory Committee for Aeronautics, each testifying briefly concerning their respective needs for electric power service. The testimony of Captain K. B. Bragg, District Civil Engineer of the Navy, was to the effect that the several installations of the Navy purchase more electric power from the Company than all the other governmental agencies; that the cost of power must be kept to a minimum; that in his view the relationship of the Company to the Government is quite different from its relationship with other customers in that the Government is primarily a producer of electricity, producing far more than it consumes, and it sells electricity to the Company at a rate cheaper than it can be produced or can be purchased from other agencies. Commander Carl H. Plumlee, of the Navy's Civil Engineering Corps, Bureau of Yards and Docks, whose duty it is to procure utility services, testified that it is the aim of his bureau to procure electric services at the lowest reasonable cost in order that the limited funds appropriated for the maintenance of shore establishments can be used to the best advantage. The testimony of Mr. Alvin K. Mann of the Power Procurement Office of the Army was to the effect that any excessive expenditure made from appropriated funds for utility services reduces the amount left to maintain the properties of the Army in proper working order. Colonel William H. Tucker of the Army Air Force, stated that the cost of electric power purchased at the five air bases in this area constitutes about 24% of all funds allocated for base maintenance, repairs and utilities; that there has been a lack of funds sufficient to properly maintain such bases; that because appropriations and tax burdens cannot be increased, in his opinion, the only solution lies in effecting a reduction in

operating costs; and that if the cost of electric power were reduced, the resulting savings could and would be utilized in the interest of national defense. Mr. A. G. Buck, of the National Advisory Committee for Aeronautics, described the installations and power uses at the Ames Aeronautical Laboratory and expressed the opinion that such activity would be benefitted by a reduction or saving in the cost of electric power.

Evidence pertaining to the level of the charges which might reasonably be made by the Company for the exchange service requested, was presented through Mr. Rands and also through Mr. Elmer W. Moke, Chief of the Branch of Rates and Statistics of the Bonneville Power Administration. Exhibits presented by witness Rands showed the amounts paid to the Company for 211,265,764 kwh of energy actually supplied by the Company during 1947 at each of the twenty-four Government installations, excluding Yosemite National Park,<sup>(4)</sup> as listed in the table hercinabove set forth. He computed the average energy rate charged for those twenty-four Government accounts to have been 9.29 mills per kwh. He then made a comparison between the charges made by the Company and those that would have resulted by application of a rate schedule published by the Bureau of Reclamation, Central Valley Project, in March 1945. He found that with the application of the Bureau's schedule a lesser charge would have been incurred at each installation, with the exception of the Ames Laboratory, where the Bureau's rate would have increased the cost of power. He estimated that with application of the Bureau's schedule the average energy rate for all power used at the twenty-four Government installations would have been 6.25 mills per kwh. The purpose of making such a comparison between the rates applied by the Company and those set forth in the published schedule of the Reclamation Bureau, as stated by the witness, was, "I feel that it is the complainant's necessity in this case to show the Commission that the

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(4) A supplemental exhibit by this witness to show the cost of power supplied at Yosemite National Park was not based upon the amount of power actually delivered by the Company during 1947, but upon the total amount of power generated within the Park as well as that purchased from the Company.

charges being made by the Pacific Gas and Electric Company for the service which they perform are not in line with the value of those services received." The schedule of rates published by the Bureau of Reclamation was entitled as an "Interim schedule of rates for wholesale firm power service available in the area served by the Central Valley Project." The witness stated that those rates would be applicable to the governmental uses under consideration if the Bureau were to construct line facilities so as to permit the delivery of Shasta power at such installations. It was stated by counsel, however, that the witness was not expressing any opinion to the effect that the Bureau rates were appropriate to be charged by the Company.

Witness Rands also presented exhibits to show the difference between the charge made by the Company in 1947 for electric power supplied to the same twenty-four Government installations and the price he calculated to have been paid to the Bureau of Reclamation for a like amount of energy delivered to the Company at Shasta Substation under the sale and purchase agreement then in effect. According to his estimate, the total charge of \$1,962,027 made by the Company for 211,265,764 kwh supplied to the twenty-four installations was \$980,862 in excess of the amount the Company paid the Bureau for a like quantity of energy delivered to it at Shasta Substation, an average difference of 4.64 mills per kwh. He referred to this difference as a reflection of the net amount paid by the Government to the Company for transmitting the energy received at Shasta Substation to the various points where that energy is withdrawn from the Company's system. Although the witness agreed that there would be transmission losses, he did not make allowance for such losses, stating that the Company can reduce transmission losses by utilizing such purchased power at points nearer the place of its receipt, and by substituting its own power for deliveries at more distant points. He acknowledged that electric power supplied by the Company is more dependable because of its integrated network of transmission lines and approximately seventy different sources of generation.



The rate study presented by witness Moke was for the purpose of estimating the cost to the Company in rendering the exchange service requested by the Government. He calculated the 1947 cost to the Company in the transmission of all electric energy over its lines of 60 kv or more amounted to 1.06 mills. After allowing for estimated costs in connection with lesser voltage sub-transmission facilities utilized in the delivery of power to the respective Government installations, together with an allowance for the cost of meter reading, billing, and accounting, he arrived at a total cost for the use of both transmission and sub-transmission facilities, plus billing costs, of 1.73 mills per kilowatt hour. Those unit costs, as the witness testified, do not include power and energy losses incurred in the transmission of electric power from Shasta Substation to points of actual use by the Government. He proposed that the Company be compensated for such losses by accepting delivery of additional power and energy to make up for the losses, the amount to be based upon "conditions of actual power flow." He estimated that during 1947 the Company's losses in the transmission, conversion, and distribution of electric power amounted to 17.63%.

The application of a different rate for the proposed exchange service to be rendered at Ames Laboratory was suggested by the witness because the load factor of that installation in 1947 was only 9.3%, which was materially below the composite load factor of 38.3% on the remaining twenty-four Government installations. From the data submitted by witness Moke, it appears that the Company's system load factor for the same year was 64.9%.

Upon concluding the presentation of testimony, counsel for the Government then made the following statement:

"In response to the request from the Bench I shall state here the theory of the Government's case, including a statement of the charges which the Government deems reasonable and which it requests the Commission to establish for the exchange service which the Pacific Gas and Electric Company is furnishing to the Government.

"The theory of the Government's case is that it produces large quantities of electric power and energy which it delivers into the transmission and distribution system of the P. G. & E.; the Company delivers equivalent electrical power and energy to the Government for use within California, principally by the Departments of the Army and Navy and Air Force, the National Advisory Committee for Aeronautics, the National Park Service and the Bureau of Reclamation.

"This constitutes, in fact, an exchange of service between the Company and the Government. This is a distinct class of service different from the generation, transmission and distribution of its own electrical power and energy in which the Company is engaged generally. The United States is asking that the actually existing exchange service be recognized as a different class of service from the ordinary commercial service for which rates are now provided in the defendant's schedules and that appropriate and reasonable rates be established therefor, which will be fully compensatory to the Company, for rendering such exchange service, and fair to the Government for the use of such service.

"The Government has limited its request for such service to loads which show a demand of 500 kilowatts or more; the evidence establishes that there are now 25 such loads of the Government, which the Company supplies directly.

"Counsel for defendant has stated on the record that the Company opposes the Government's request, one, because the Bureau of Reclamation is attempting to engage in a public utility business in competition with it, using the system of the Company upon which to conduct such business and, two, because the Government is attempting to take away its customers.

"Neither of those expressed fears of counsel are based upon fact. Witnesses and counsel for the Government have stated, and I shall repeat, that no change in the existing service and no new facilities are sought. The Government loads will continue to be served by the Company and the

Company will continue to bill the Government therefor; the Government proposes that the following charges be established for such exchange service:

"Rate for exchange service for delivery of power to the Government.

Availability: This rate applies to exchange service performed by the Company for delivery of power and energy to Government loads at nominal voltage of 2300 volts and higher, having a maximum demand of 500 kilowatts or more during any 12 consecutive months:

Conditions: The Government will deliver firm power and energy to the Company's inter-connected transmission system in an amount equal to the total firm power and energy delivered by the Company to the various Government loads, plus replacement for power and energy losses.

Charges:

1. The Government will pay the Company for the exchange service performed at the following rates:

- (a) 1.06 mills per kilowatt-hour for all energy delivered to Government loads at nominal voltages of 50 k.v. or higher.
- (b) 1.75 mills per k.w.h. for all energy delivered to Government loads at nominal voltages below 50 k.v.
- (c) A reasonable surcharge for power delivered to any Government load having an annual load factor of less than 15 per cent on basis of peak period demand (7 A.M. to 10 P.M. daily except Saturdays, Sundays and holidays).

2. The Company will render one bill to the Government of the United States for the exchange service performed.

"That is a statement of our proposal and our theory of this case."

When the Government's case was completed, there were received in evidence at the Company's request copies of certain documents to which reference

had been made by witnesses during the course of the hearing. Without the introduction of additional evidence, the Company renewed its motion that the Commission dismiss the complaint, and it rested upon that motion.

We need not consider all the grounds advanced by the Company in support of its motion to dismiss. But our attention should be directed at once to its claim that no cause of action has been stated in the complaint nor shown by the evidence introduced. The crucial question raised involves the exact nature of the relief which the Government seeks. The Company contends that the complaint itself pleads that the Commission order the Company to render the exchange or wheeling service which the Company has refused to render in the past, whereas the testimony of the Government's witness, as well as the statements made by its counsel, are to the effect that exchange service is now actually being rendered, and that all the Government seeks is a lower rate applicable to the service now rendered. The Company further contends that the complaint does not allege the unreasonableness of the rates being charged for the utility service now being given, nor could the question of reasonable rates be pleaded unless the complaint be signed by at least twenty-five customers as required by Section 60 of the Public Utilities Act.

The Government's argument in answer to such contentions is partially revealed in the above quoted statement made by its counsel when summarizing its case, and has been amplified in the briefs thereafter filed. It seems appropriate and even necessary to quote extensively from its briefs on this point. Its reply brief states:

"The brief of the defendant, however, is based upon the assumption that the United States is demanding of the company a new undertaking in the sense of new performance on its part and new use of its facilities. That the Government is making no such request is evident not only from its opening brief but from statements made by counsel and witnesses in the course of the hearing. But if those statements were not explicit enough, it may now be said with emphasis that we do not ask of the Com-

pany that it add or make available for the service in question any new facilities; that we do not require or expect that the Company make any new use of existing facilities; that we do not request of the company any new or additional service in terms of performance by the company; that we do not ask that electric energy from Government sources be separately transmitted by the Company to the stations where the Government makes use of such energy but only that it or equivalent energy continue to be delivered to those stations as at present. Nothing that we request requires of the Company a new dedication of any sort.

"The "exchange" to which reference is made in this case is in fact accomplished and continues to be performed on the side of actual service rendered or energy received and delivered. In fact the Company has indicated no unwillingness to receive electric power and energy from the United States. What is it then to which the Company objects? There is nothing left in the proposal of the Government to which it can object except a new classification and the possibly consequent new rates. There is nothing else new in the Government's request.

"The motion of defendant to have the complaint summarily dismissed, and its brief in support of such motion, are grounded upon the totally fallacious proposition that the United States is requesting this Commission to compel the defendant to render exchange or wheeling service. We submit that there is no support whatsoever in this record for such position of defendant—except in irrelevant and meaningless remarks of defendant's counsel—and we further submit that such position of defendant is diametrically opposed to the true and plainly expressed purpose of the case which the United States is here maintaining."

The foregoing statements made in the Government's reply brief cannot be construed to seek relief of the same kind prayed for in its complaint. The complaint itself is premised upon the alleged refusal of the Company to render some type of service differing from that now afforded by the Company to any

government use of power except for Central Valley Project operational uses. According to the complaint, it was the refusal of the Company to make the same type of service available for other government uses that is said to constitute an unreasonable difference in service between persons of the same class. According to its brief, however, the Government denies that the Commission is being asked to compel the Company to render an exchange or wheeling service or any different type of service from that now accorded, but it is seeking only the establishment of a proper schedule and rate for the specific class of service now actually being rendered.

The Commission must assume that counsel for the Government possess full authority thus to interpret the meaning of the complaint and to declare the nature of the relief sought. Accordingly, we may accept the declaration made by the Government on brief that the purpose of the complaint is not to obtain an order requiring the Company to supply an exchange or wheeling service and that the Government is not requesting such type of service. Therefore, on the record as it now stands, the Commission is not called upon to decide whether or not it has the authority to compel the Company to perform wheeling or exchange service for the Government. This radical change of position by the Government, as expressed in its briefs, leaves the record in a very uncertain state as to the exact type of rate relief the Government now prays for. The burden is upon the Government to make known to the Commission, with reasonable certainty, the particular type of rate relief it is demanding. As the record now stands, it has not done so and, therefore, has not carried the burden of proving a prima facie case as to any type or kind of special rate relief to which it may be entitled. This being true, it follows that, on this phase of the case, the Company's motion to dismiss should be granted.

The only other question remaining for consideration is whether the Government has shown that the charges exacted by the Company for the service now furnished to the Government by the Company are in any respect unlawful.

The Commission has considered fully the Government's evidence and contentions on this point and holds that it has not been shown on this record that the rates now charged the Government by the Company are, in any respect, prejudicial, unreasonable or otherwise unlawful as applied to the Government. All of the points and contentions made by the Government on this phase of the case have been considered by the Commission. Having held that the rates charged the Government by the Company have not been shown to be in any respect unlawful, the Commission concludes that the motion to dismiss made by the Company should be granted and that the complaint of the Government should be dismissed.

#### O R D E R

The Commission having fully considered the complaint filed by the Government, the evidence adduced in support thereof, the Company's motion to dismiss, and argument and briefs presented and filed, and now being fully advised in the premises,

IT IS ORDERED that the motion to dismiss made by the Company is hereby granted and the complaint of the Government be and the same is hereby dismissed.

Dated, San Francisco, California, this 17th day of January, 1950.

*R. E. [Signature]*  
*James J. [Signature]*  
*Harriet [Signature]*  
*[Signature]*

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Commissioners

SEPARATE OPINION BY COMMISSIONER ROWELL

I agree that the Government's complaint should be dismissed, and I would not deem it necessary to render this separate opinion were it not for the uncertainty arising in my mind as to the effect of the order herein made when read in the light of the conclusions expressed by the Commission in justification of that order. There is no support for the statement made in the second paragraph preceding the order that the record is very uncertain as to the type of rate relief the Government seeks. It is true that the Government abandoned the prayer of its complaint that the Commission order the defendant to perform a type of service not now being rendered and fix a special rate for that service. But the record is perfectly clear with respect to the rate relief sought by the Government covering the service which defendant has been and now is supplying the various governmental customers. Therefore, the only question for decision is whether the evidence presented by the Government in support of its claim that rates should be reduced for the future, and reparation be awarded for the past, is of sufficient persuasiveness to justify the Commission in granting the rate relief demanded. I am convinced that upon that issue the record justifies an unequivocal finding that the Government has not shown wherein the rates charged by defendant are in any respect unreasonable or prejudicial as applied to the Government. The complaint should be dismissed upon that ground alone. Moreover, the reasons which prompt the Commission to reach that conclusion should be adequately set forth.



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IRA H. ROWELL, Commissioner.