

ORIGINAL

Decision No. 45028

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MEADOW VALLEY LUMBER COMPANY,
 a corporation,

 Complainant

 vs.

 PACIFIC GAS AND ELECTRIC COMPANY,
 a corporation,

 Defendant.

Case No. 5182

REGINALD L. VAUGHAN and GERALD HAGAR by REGINALD L. VAUGHAN,
for Complainant.

RALPH W. DuVAL for Defendant.

S. C. YOUNG, B. D. JAMES, LOUIS GORRIN and W. L. ANDERSON for
Plumas-Sierra Rural Electric Cooperative.

O P I N I O N

Complainant is engaged in the production of lumber products near Quincy, Plumas County, California. It operates a lumber mill at Spanish Ranch in the vicinity of Meadow Valley, which is about seven miles west of Quincy. It also operates a lumber mill and a planing mill near East Quincy. Complainant's mill facilities at Spanish Ranch are supplied with electric energy by the Plumas-Sierra Rural Electric Cooperative*, while its mill facilities nearer Quincy are served by the defendant, Pacific Gas and Electric Company.

Complainant requested defendant to supply electric energy for the operation of the Spanish Ranch mill and, upon defendant's refusal to comply with such request, complainant filed this complaint seeking an order of the Commission re-

* The Plumas-Sierra Rural Electric Cooperative is organized under the non-profit corporation laws of California. It will usually be referred to in this opinion as the "Rural Electric Cooperative."

quiring defendant to render that service. Defendant's answer to the complaint admits that the Spanish Ranch mill is within its general service area, but justifies its refusal to supply the requested service upon the ground that a contract entered into between defendant and the Rural Electric Cooperative prevents defendant from furnishing electric energy to anyone who is being supplied with energy by that agency. It is complainant's contention that defendant is under a legal duty to render the service demanded. It alleges that it cannot obtain an adequate and uninterrupted supply of power except through the service and facilities of the defendant utility.

The initial hearing on this complaint was held in San Francisco on May 5, 1950, when the matter was taken under submission. On May 23, 1950 the Commission issued an Opinion and Order reopening the matter for further hearing, it being stated in the opinion that the issues raised by the complaint and answer may not equitably be determined until an inquiry is made as to the ability of the Rural Electric Cooperative to furnish adequate electric service to complainant. Accordingly, the Commission on its own motion instituted an investigation into the operations of the Rural Electric Cooperative. A hearing on that investigation was held at Quincy on September 6, 1950. On the same day a further hearing was held in this complaint matter, at which time the Rural Electric Cooperative appeared in protest to the granting of the relief sought by complainant. The two proceedings were not consolidated for decision, although the separate record made in the investigation proceeding was incorporated into the record made in this complaint case.

Complainant's showing consisted of testimony indicating the quantity of electric energy needed for its mill operations as presently conducted at Spanish Ranch, and also its need for additional power in the event it electrifies all of its mill equipment, as it plans to do if assured of electric service by the defendant utility. Other evidence was presented by complainant to explain the basis for its dissatisfaction with the electric service obtained from the Rural Electric Cooperative.

As before noted, defendant's answer to the complaint pleads as a defense the fact that complainant is receiving electric service from the Rural Electric Cooperative for the operation of the Spanish Ranch mill, and that defendant and the Rural Electric Cooperative have heretofore by written contract agreed that one party shall not supply electric energy to a customer of the other. The evidence presented by the defendant explains in some detail the history of such territorial service agreement. As defendant makes no other defense to complainant's demand for electric service, the question whether such contract serves to relieve defendant from the duty of providing the requested service becomes the primary issue to be decided in this proceeding. Therefore, the circumstances surrounding the making of that contract should first be considered.

Defendant and its predecessors have rendered electric service to portions of Plumas County for many years. Service has been rendered in and near Quincy since 1899. The record made in the proceeding before the Commission on an application⁽¹⁾ filed in 1938 for certificate to exercise a franchise granted by Plumas County was the first to make reference to defendant's extension of line facilities to the Meadow Valley area west of Quincy, and also the first to reveal the construction of an electric line to the same area by the Rural Electric Cooperative. At the hearing of that certificate application on August 16, 1940, testimony was given by defendant relating to electric services being rendered by three other public utilities operating in portions of the county, and also referred to electric line facilities then recently constructed by the Rural Electric Cooperative. It was testified that the Rural Electric Cooperative was organized in 1937. In November of that year defendant entered into a contract to supply the Rural Electric Cooperative with power, and in 1938 began the delivery of power at a point about four miles east of Quincy. The witness testified that defendant

(1) Application No. 22218, Decision No. 34495. The record in this application proceeding was incorporated by reference in the present case.

had an understanding with the Rural Electric Cooperative that its service territory would be confined to areas east of Quincy, but, contrary to such understanding, the Rural Electric Cooperative in 1939 constructed a line west of Quincy and began supplying energy to Meadow Valley Lumber Company's Spanish Ranch mill. Defendant had constructed its line to Meadow Valley at about the same time, and, at the date of hearing of the application, it was supplying forty customers in that area. It was stated by the witness, and by defendant's counsel, that the certificate sought was for the exercise of the franchise throughout the county of Plumas with the exception of those areas being served by the three named public utilities to which the Commission had granted certificates to operate, and, with such exceptions only, defendant held itself out to render electric service throughout the county. It was expressly stated that the defendant was not stipulating that the franchise would not be exercised in areas served by the Rural Electric Cooperative.

A copy of the contract between defendant and Rural Electric Cooperative referred to in that 1938 certificate application was not then placed in evidence. It is in the record made in the instant case. The contract provided that the defendant would supply power at specified rates for a period of three years, and would continue thereafter until the contract be terminated on thirty days' written notice by either party. It contained a provision reading as follows:

"Customer agrees that energy purchased hereunder will not be used to serve customers of Company or possible users of electricity located adjacent to the lines, as they exist from time to time, of Company, and Company agrees not to extend its lines for the purpose of serving any customer of Customer or any possible users of electricity located adjacent of the lines, as they exist from time to time, of Customer."

In evidence also is a copy of a second contract between defendant and Rural Electric Cooperative executed June 20, 1942, providing for the continued supply of wholesale power service, this contract containing a territorial clause in the following words:

"Neither party, unless by written consent of the other party first obtained, shall duplicate the other's facilities, or distribute or furnish electric energy to (A) anyone who, at the time of the proposed service, is receiving electric energy from the other, or (B) any premise which is served electric energy by the other party or is capable of being served electric energy by means of a shorter line extension by the other party. Each party agrees to confer with the other party whenever a conflict of interests is likely to occur or has occurred."

On October 26, 1949, a third wholesale power supply contract was executed between these parties which contained the same territorial provision just above quoted from the contract of 1942. It provided further for the appointment of arbitrators to act in the event any dispute arose under the quoted territorial provision. It also provided that the contract would not become effective until the Commission granted defendant authority to carry out its terms and conditions. Accordingly, this contract was presented to the Commission in Application No. 30843 filed December 12, 1949, in which authority of the Commission was sought to carry out the terms of said agreement. The Commission's decision on that application, No. 43674, was rendered on January 4, 1950. After discussing the rate provisions of the contract, the Decision quoted the territorial agreement, which was Provision 9 thereof, and stated:

"In authorizing Pacific to carry out the terms and conditions of the new contract, we are not at this time passing upon the reasonableness of said Provision 9, and the contracting parties are hereby placed upon notice that the action taken herein by the Commission is not to be construed as an approval of said provision."

The order made in that decision authorized defendant to carry out the terms and conditions of said contract, "except as heretofore indicated." It might be observed that the Commission's decision thereon was rendered without hearing and upon consideration of only the pleading set forth in defendant's application. But it might also be noted that defendant did not seek a reconsideration of that decision.

The recital of facts here made is sufficient to indicate beyond any doubt that the defendant utility had declared its willingness to supply electric

service to the Meadow Valley area of Plumas County and had constructed facilities for that purpose; that it sought and was granted a certificate to serve that area without limitations of any kind; that defendant did not subsequently obtain authority from the Commission to modify the terms of its operating rights in that territory, unless its application filed December 12, 1949 for authority to carry out the terms of the agreement executed with the Rural Electric Cooperative be considered an appropriate pleading to accomplish that end. In any event, the Commission did not grant the authority requested in said application.

In the light of these facts the Commission must conclude that, unless other controlling facts are set up as a defense to complainant's request for defendant's service, defendant is under a legal duty to comply with such request, for a utility's service duty is ordinarily a correlative of its service right. ✓

Defendant does not cite any other facts nor refer to any principle of law, which would justify the Commission in relieving defendant of its primary legal duty to comply with complainant's application for electric service. Defendant points to the fact that complainant originally elected to take service from the Rural Electric Cooperative, and may continue to take service from that source. But the record is clear that complainant is also free to cancel its contract to take electric service from that source. Defendant asserts that it is in the public interest that utilities enter into such an agreement as that made by it with the Rural Electric Cooperative. The Commission is fully in accord with the general principle that competition which results in a duplication of facilities and uncontrolled solicitation of business should be avoided. But the fact remains that the defendant did not, at least prior to its application filed December 12, 1949, present any petition alleging that the public interest justified the Commission in modifying the service obligation undertaken when it sought and obtained its certificate of public convenience and necessity.

The evidence presented by complainant in this proceeding indicates that it has pressed its demand for defendant's service in good faith and because of its

conviction that the efficient and economical operation of its Spanish Ranch mill will be furthered if it secures defendant's service. That conviction is founded on complainant's experience in the operation of its mills near Quincy where it has been receiving defendant's service. Complainant explained its plans for the more complete electrification of its Spanish Ranch mill facilities during the coming winter season, and it declared that such plans are contingent upon securing electric service from the defendant utility. It was also shown that with the application of defendant's rates to the energy used at the Spanish Ranch mill, its annual cost of electric power would be reduced approximately thirty-three percent.

After the reopening of this matter for further hearing, the Plumas-Sierra Rural Electric Cooperative appeared in opposition to the granting of the relief sought by complainant. It presented testimony to controvert complainant's specifications of deficiencies in the Rural Electric Cooperative's service. However, we need not here further discuss the evidence presented by either the complainant or the Rural Electric Cooperative relating to the adequacy of the electric service which complainant presently receives.

The sole issue raised in this complaint case is whether complainant has the legal right to demand that defendant supply it with electric energy. The Commission, on its own motion, has in another proceeding instituted an inquiry as to the jurisdiction it may exercise over the Rural Electric Cooperative. Unless the Commission now finds that it possesses the authority to do so, and can find that the public interest requires it to now delineate new boundaries covering defendant's service obligation, and also prescribe the corresponding obligation resting upon the Rural Electric Cooperative, the Commission is called upon to decide only the issue raised in this complaint case. However desirable it may be that the Commission exercise such authority as it may possess to prescribe the respective service rights and obligations of these two suppliers of electric service, the Commission believes that under the circumstances here presented it would be inequitable to complainant, as well as a possible denial of its legal right,

for the Commission to find that complainant may not avail itself of defendant's electric service. Complainant made demand for that service while defendant clearly remained under a duty to supply it. It made that demand even before defendant had filed with the Commission any pleading indicating that it sought to limit that duty. In addition, the Rural Electric Cooperative now appears before the Commission in both this complaint case and in the Commission's investigation for the purpose of challenging the power of the Commission to in any way regulate its service rights or duties. The issue raised on the Commission's investigation must be the subject of a separate decision. The Commission concludes that the equitable and proper disposition of the complaint herein requires that we find complainant to be lawfully entitled to the relief prayed for in its complaint.

O R D E R

A public hearing having been held on the within complaint of Meadow Valley Lumber Company against Pacific Gas and Electric Company, and the matter submitted for decision, and the Commission having fully considered all of the pleadings and evidence in said matter, and basing its order upon the findings and conclusions set forth in the foregoing opinion; and good cause appearing

IT IS HEREBY ORDERED that Pacific Gas and Electric Company shall, in accordance with its service rules and regulations and rates on file with this Commission, proceed to accept and comply with the request of Meadow Valley Lumber Company for electric service to be supplied to said company for use in the operation of its lumber mill and facilities at Spanish Ranch near Quincy, California.

The effective date of this order shall be twenty (20) days from and

after the date hereof.

Dated at San Francisco, California, this 27th day
of November, 1950.

R. E. Anderson
Justus J. Calver
Walter Powell
Harold P. Kala
Wassette Fott

Commissioners.