

ORIGINAL

Decision No. 48571

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

L. W. HOSFORD,  
 Complainant,  
 vs.  
 CLYDE W. HENRY,  
 Defendant.

Case No. 5409

George H. Hauerken and Cyril Viadro, for complainant.  
Louis J. Glicksberg, for defendant.

O P I N I O N

Nature of Proceeding

Complainant, L. W. Hosford, seeks an order from the Commission to the effect that defendant, Clyde W. Henry, is no longer operating an electric utility business at Klamath, California; that the Commission no longer has jurisdiction over any of the property formerly used in such business; and that the consent of the Commission to the imposition of a lien upon such property and the foreclosure of the lien is no longer needed. In addition, complainant requests the Commission's consent to the imposition of a lien upon property used by defendant in the operation of a water utility business at Klamath, to the foreclosure of the lien and the sale of such property in accordance with a stipulated judgment rendered by the Superior Court of the State of California, in and for the County of Del Norte, dated July 25, 1952. (Hosford v. Henry et al., No. 4219, Del Norte County.)

Public Hearing

The case was heard before Commissioner Potter and Examiner Gregory on January 8, 1953, at San Francisco. Submission was deferred pending an attempt by Henry to sell, on or before February 9, 1953, pursuant to a stipulation made and filed at the hearing, certain property, described in a judgment dated April 11, 1950, in the Del Norte County proceeding, formerly used in Henry's electrical utility operations, as well as property used in his water utility operations, sale of the latter, however, to be "subject to such control as the Commission shall see fit to impose thereon". The Commission was advised in writing, on February 13, 1953, that sale of the property referred to in the stipulation was not made within the time provided therein and that the case, therefore, might be deemed submitted. Accordingly, we will now take the case under submission and proceed to discuss the underlying facts, as to which there is no material dispute.

The Evidence

On March 13, 1948, pursuant to prior authorization by the Commission, defendant, then operating a certificated electric and water utility system under the name of Klamath Water Light and Power Company at Klamath, Del Norte County, borrowed from complainant \$36,000 in exchange for a promissory note secured by a deed of trust purporting to cover two parcels of real property, described in the security instrument by metes and bounds. Upon these parcels was situated the generating plant of the electric utility business. Neither the wells which produced water for the water utility business nor the pumps, pipe lines or other appurtenances of the water system, nor much of the operating property of the electric utility, such as poles, service lines, transformers, meters and the like, were within

the boundaries of the parcels so described.. Attached to the application for authority to execute the note and deed of trust was a statement of assets and liabilities of the Klamath Water Light and Power Company, listing "Machinery & Equipment \$80,996.99, Land (the two small parcels) \$1,471.00, Autos & Trucks \$1,410.02, Inventory \$1,265.88". The statement showed the net worth of Klamath Water Light and Power Company to be approximately \$69,000.. The Commission granted permission to defendant to execute the note and deed of trust substantially in the form on file with the application.. (Dec. 41279, Mar. 3, 1948, Appl. 29132.<sup>(1)</sup>)

Following defendant's default in the payments due on the note, a dispute arose between the parties with respect to just what property was intended to be subjected to the lien of the deed of trust.. Complainant contended that all of the operative property of defendant's utility enterprises in Klamath was meant to be so included.. Early in 1949 complainant applied to the Commission for an order authorizing inclusion in the deed of trust of the property above described, which had not theretofore been specifically designated in the instrument, and also requested authority to prosecute an action for reformation of the deed of trust and for foreclosure, should defendant decline to extend the lien to the additional property if ordered to do so by the Commission. The Commission, after hearing, dismissed the petition, declaring it had no authority to reform the deed of trust, but that if a court ordered reformation the Commission, in an appropriate proceeding, would consider what action it should take. (Dec. 42979, June 14, 1949, Appl. 29132 - 1st Supp.) The Commission on May 10, 1949, after hearing revoked defendant's electric utility certificate, effective September 1, 1949.. (Dec. 42869, Cases Nos. 4992, 4993.)

(1) Though not controlling here, the Commission directed that the proceeds of the note be used to retire an outstanding note of about \$1,800 and to build a 12-kv electric transmission line between Klamath and Crescent City. ✓

Complainant, in 1949, filed his action in the Superior Court in Del Norte County to obtain reformation of the deed of trust and to foreclose the deed of trust as reformed. After the action was begun and by permission of the Commissioner (Dec. 43546, Nov. 22, 1949, Appl. 30777) and agreement of the parties to the action, the rights of way, power poles, power lines and incidental equipment used in connection with defendant's electric utility were sold to California-Oregon Power Company for \$30,000, \$24,000 of which was paid to complainant. The court, in a decree filed April 11, 1950, found that the sum of \$12,000, plus interest and attorney's fees amounting additionally to approximately \$8,000, was due complainant at the time of the judgment. The court also found it to have been the intent of the parties to include under the lien of the deed of trust the electrical equipment not located on the two parcels of land at the time of the execution of the instrument and the water utility properties, described in detail in the decree, and ordered reformation and foreclosure.

On appeal, the District Court of Appeal affirmed the judgment, except as to certain matters not material here, and sent the case back to the trial court with instructions to determine certain questions relating to some items of personal property and after-acquired property and, having determined those things, to enter an interlocutory decree for reformation in accordance with such determination and then afford an opportunity to complainant to apply to the Commission for its consent to extend the lien of the deed of trust, as reformed. (Hosford v. Henry, 107 C.A. 2d 765, 777.)

On July 25, 1952, the Superior Court in Del Norte County, in a stipulated interlocutory decree rendered following a hearing

the preceding May, ordered that all of the property described in the decree entered April 11, 1950, be included under the deed of trust, "subject, however, to the approval of the Public Utilities Commission of the State of California, insofar as such approval is required by said opinion of the District Court of Appeal."

The present proceeding, as we have said, was brought for the purpose of obtaining the Commission's approval, or consent, to the extension of the lien of the deed of trust in accordance with the judgment rendered by the Del Norte County Superior Court.

Conclusions

The Commission, in view of the revocation of defendant's electric certificate, is no longer concerned with the encumbrance or disposition of defendant's properties formerly used in his electric utility business and included in the deed of trust either at the time of its execution or as a result of its reformation by the court.

There is some doubt as to whether the Commission may, at this time, retroactively authorize an extension of the lien to include defendant's water system at Klamath. Moreover, if such authority had been requested originally, it is doubtful whether the Commission would have granted it inasmuch as it would have encumbered defendant's water system for the benefit of his electric properties.

The Commission, for the foregoing reasons, is disposed to allow the parties to remain in the position in which they placed themselves upon the execution of their security transaction. Accordingly, it is hereby found that the requested extension of the lien would be adverse to the public interest and the complaint will be dismissed.

ORDER

Public hearing having been held in the instant proceeding, the matter now being submitted and being ready for decision, the Commission being fully advised and hereby finding that no just cause for complaint has been made to appear,

IT IS ORDERED that the complaint of L. W. Hosford herein be and it hereby is dismissed.

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

Dated at San Francisco, California, this 5th day of May, 1953.

[Signature]  
President

[Signature]

[Signature]  
[Signature]

Commissioners