

ORIGINAL

Decision No. 50839

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of application of)
 PACIFIC GAS AND ELECTRIC COMPANY,)
 a corporation, for an order of the)
 Public Utilities Commission of the)
 State of California authorizing)
 applicant to carry out the terms)
 of a written agreement dated)
 June 5, 1953, (Exhibit A), with)
 CALIFORNIA WATER SERVICE COMPANY,)
 a corporation.)

Application No. 34598

Frederick T. Searls and John Carroll Morrissey
 by John Carroll Morrissey, for applicant.
 McCutchen, Thomas, Matthew, Griffiths and Greene
 by Robert Minge Brown, for California Water
 Service Company; Edson Abel, for California
 Farm Bureau Federation; Robert V. Blade and
Robert W. Anderson, for City of Oroville,
 interested parties.
P. J. Minasian, for Thermalito Irrigation District,
 protestant.
Harold J. McCarthy, for the Commission staff.

OPINION AND ORDER

Nature of Proceeding

By the above-entitled application, filed July 31, 1953,
 Pacific Gas and Electric Company^{1/} seeks approval of a supplemental
 agreement between it and California Water Service Company^{2/} by
 which an annual charge would be established for deliveries of water
 by Pacific to Water Company. Thermalito Irrigation District
 opposes approval of the agreement.

Public Hearings

Public hearings in the matter were held before Commissioner
 Kenneth Potter and Examiner F. Everett Emerson on September 22 and
 23, 1954 at Oroville.

^{1/} Hereinafter sometimes referred to as Pacific.
^{2/} Hereinafter sometimes referred to as Water Company.

The Evidence

The agreement at issue herein is supplemental to a written agreement dated April 19, 1927 heretofore approved by this Commission.^{3/} Said 1927 agreement, among other things, provides that Pacific shall deliver certain water to Water Company for use in the latter's Oroville water system and that until May 1, 1952 such deliveries shall be made without charge. Paragraph 7 of said agreement provides that thereafter water deliveries will be made at such price as may from time to time be established by this Commission.

After extensive negotiations the two utilities entered into a supplemental agreement dated June 5, 1953. By this agreement Water Company would pay to Pacific the sum of \$32,400 per year by monthly installments of \$1,900 for each of the months of January, February, March, April, November and December, and \$3,500 for each of the months of May, June, July, August, September and October. Said sum is to be payment for water deliveries as requested by Water Company but at a rate of flow not exceeding 46.5 cubic feet per second. During negotiations the two utilities were unable to agree as to the date when charges for water deliveries would commence, hence the supplemental agreement provides that such date shall be fixed by this Commission.

The bulk of water delivered to the Oroville water system is taken by Pacific from the west branch of the north fork of the Feather River and thence conducted through rugged hillside terrain by means of Pacific's 23-mile Miocene Canal to the head of Water Company's Powers Canal. At two points along the Miocene Canal the energy of the falling water is used to generate electricity.

^{3/} Pertinent Decision Nos. are 18037, 18101, 18102, 28162 and 29398 in Application No. 13429 and Decision No. 18084 in Application No. 13514.

Since the water thus serves two purposes, generation of electricity and water supply to domestic and other consumers, the two utilities have agreed that the charge for water deliveries should be based upon considering the water as a by-product of hydroelectric operations and thus to bear only a minor portion of the total annual fixed charges and only one half the annual maintenance and operating expenses. Such considerations and the computations leading to the final determination of the \$32,400 annual charge were arrived at after protracted negotiations between the parties. The details of the computations are set forth in Exhibit No. 2 in this proceeding. From the evidence we conclude that the proposed charge of \$32,400 annually is fair and reasonable.

With respect to the effective date of the water charge Pacific points out that the 1927 agreement set forth said date as being May 1, 1952. Nevertheless, Pacific recognizes that the negotiations took time and therefore Pacific urges only that the effective date be the day following the date on which it filed its application seeking approval of the supplemental agreement.^{4/} Contrary to Pacific's position in this regard is the position of Water Company, whose witness stated such a date would be grossly inequitable to it.

According to Water Company's witness the expiration date of the "free" water provision in the 1927 agreement has been considered by both utilities on several occasions and particularly during 1946 and 1947 when the terms and conditions of the 1927 agreement were the subject of a formal proceeding^{5/} and certain litigation.^{6/} These cases, according to this witness, should have

^{4/} Such date would thus become August 1, 1953.

^{5/} Case No. 4934, re amount of free water delivery, Decision No. 41547 issued May 4, 1948 (48CPU115).

^{6/} So-called "Thermalito Law Suit", re service interruption to Thermalito Irrigation District (See decision of District Court of Appeal, Vol. 108 Cal. App. 2nd 329, decided December 26, 1951).

placed clearly before Pacific the need for submission of a proposal as to water delivery charges in ample time to enable both parties to obtain approval of a supplemental agreement by this Commission prior to the expiration date of the "free" deliveries. Further, according to this witness, Water Company determined during 1951 that it should seek rate relief in its Oroville system and in December of that year urged Pacific promptly to submit a proposed charge so that Water Company might know the full extent of its operating expenses before applying to this Commission for authority to increase charges to its consumers. No proposal was received from Pacific until April 24, 1952, one week before the "free" water expiration date, and then the proposal was unacceptable to Water Company. Negotiations thereafter were not completed until June 5, 1953. On June 22, 1953 Water Company filed Application No. 34458 with this Commission seeking increases in rates for its Oroville system and also seeking approval of the supplemental agreement now before us.^{2/} Water Company avers that its own earning position has been injured by the delays of Pacific and, further, that if its water delivery payments were to be made prior to its receiving rate relief it would find it necessary to seek authority to add a surcharge to the rates charged the Oroville system customers in order to recover the additional expense, a situation which it thinks would be unfair to its customers.

In commenting upon the position of Water Company, counsel for Pacific stated that in Pacific's opinion the price to be paid and the effective date thereof had no more dependence upon when, if at all, Water Company receives rate relief than have the prices Water Company pays for materials, labor and other items.

^{2/} Application No. 34458 was heard October 23 and 24, 1954 with decision thereon being issued on the date of the order herein.

In our opinion this problem of effective date is one of equity. Delays in matters of this kind are desired by none of the parties. They have occurred however and seemingly constitute one of the requisites of an ordered society and a regulated industry. In view of the evidence and after consideration of the positions of the parties at interest and the statements of counsel we are of the opinion that the effective date of the above-discussed charges should be January 1, 1955 and the order herein will so provide.

Position of Protestant

Protestant District, through its counsel, seems to object to the granting of authority for Pacific and Water Company to consummate their agreement on two grounds; namely, that the charge by Pacific to Water Company will affect the rate which District must pay to Water Company and that this Commission has no jurisdiction over "private" contracts. At the hearing in this matter protestant was permitted to argue at length and to present testimony, over the objections of counsel for Pacific and Water Company, rather than to allow the possibility of erring by seeming to foreclose the presentation of what might have been pertinent items. We have endeavored with great care to sift out of protestant's arguments and testimony any facts which properly might have a bearing upon the matter herein. We find none and conclude that protestant's claims are unsupported by the evidence and that its arguments are not germane to the issues in this particular proceeding. However, protestant's presentation may have some bearing on the issues involved in Application No. 34458 and it will be considered and treated in our decision therein. In view of these circumstances the motion to strike such presentation, made jointly by several parties at interest, as it pertains to this proceeding is hereby granted.

Conclusions

In view of the evidence and the above-stated findings relative thereto we are of the opinion that the subject supplemental agreement of June 5, 1953 is fair and reasonable and that the requests of applicant should be granted, therefore,

IT IS HEREBY ORDERED as follows:

1. Pacific Gas and Electric Company and California Water Service Company are authorized to carry out the terms and conditions of that certain supplemental agreement between the two, dated June 5, 1953, attached to the application herein as Exhibit A.
2. The date on and after which the price provided in Paragraph 2 of said supplemental agreement shall be effective shall be January 1, 1955.
3. Pacific Gas and Electric Company shall file with this Commission, within thirty days after the effective date of this order, two certified copies of the subject supplemental agreement as executed and, further, shall notify this Commission of the date of termination of said supplemental agreement within thirty days from and after said date of termination.

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

San Francisco
Dated at _____, California, this 7th
day of DECEMBER, 1954.

Edward E. Mitchell
President

JUSTUS J. GAEVNER

Fremont Pottier

Gene Suggins

Ralph L. ...
Commissioners