

Decision No. 65344

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MILDRED LIGDA, DONALD W. AITKEN, JR.,)
 ELIZABETH J. AITKEN, BERNAL L. LEWIS,)
 JOHN S. SILLS, JAMES D. RAPLEY, NANCY)
 ARKLEY, M. D. HILLS, M. H. STREETER, JR.,)
 BERNARD ELSPAS, DAVID R. BENNION, MILTON)
 W. GREEN, ELIZABETH M. WILLIAMS, WILLIAM)
 E. SEAMAN, DORA F. DYER, MARVE M. C.)
 McCABE, HOWARD E. MARKS, ROGER PAGE,)
 EDITH C. McDONALD, WALLACE LANE CHAN,)
 M.D., RUSSELL F. SWANSON, JOHN F. DAHL,)
 EMMETT BURNS, COLIN PETERS, MARY C.)
 MOFFAT, RHONA W. WILLIAMS, MORGAN STEDMAN,)
 GEORGE H. HOGLER, C. MARTIN LITTON, MARTIN)
 WUNDERLICH)

Case No. 7585

Complainants,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Defendant.

Paul N. McCloskey, Jr., for complainants.
Robert J. Lewis, for Mr. & Mrs. William McDonald;
 complainants.
F. T. Searls, John C. Morrissey, John A. Sproul and
Leland R. Selna, for Pacific Gas and Electric
 Company; respondent.
Kenneth J. Kindblad, for the Commission staff.

BENNETT, William M., Commissioner

O P I N I O N

The complaint filed herein purports to present a clash between that which is aesthetic and that which is practical. It was filed on March 29, 1963 by thirty persons who own or reside on lands in Santa Clara and San Mateo Counties. These lands are subject to, adjacent to or downhill from an easement owned by defendant Pacific Gas and Electric Company (hereinafter called P.G. & E.) which runs approximately 20 miles from P.G. & E.'s

Monta Vista substation in Santa Clara County to its proposed Jefferson substation in San Mateo County. The complaint alleges that the proposed transmission line crosses for the majority of its length, some of the most scenic areas of the foothills of the San Francisco Peninsula, and parallels, for a considerable distance, the topographical crest of the Coast Range known as "the Skyline"; that P.G. & E. originally planned a sixty kilovolt (60 KV) transmission line over the easement; that P.G. & E. now is in the process of constructing a two hundred and twenty kilovolt (220 KV) transmission line on the easement; and that "the proposed increase in size and the route of the proposed transmission lines are not in the public interest and convenience, and, are unreasonable and improper under existing circumstances as described in this complaint". The complaint requested that the Commission issue a temporary restraining order pending a hearing on the complaint. It was alleged that "Unless P.G. & E. is temporarily restrained from proceeding further with construction work pending the hearing of this complaint, the public interest and convenience will be irreparably damaged..." The Commission, having before it the complaint without a responsive pleading by P.G. & E., adopted a most liberal construction of the complaint, and, on April 16, 1963, issued an Interim Order restraining P.G. & E. from proceeding with the construction of the proposed transmission line until further order of the Commission. The issuing of the temporary restraining order under the circumstances here involved was consonant with the authority of the Commission to, in the first instance, determine its jurisdiction in the matter (United States v. Superior Court, 19 Cal. 2d 189; Ohio ex rel Cleveland Electric Illum. Co. v. Ohio P.U.C., 133 N.E. 2d 782.)

and to protect that jurisdiction by preserving the status quo by issuing a temporary restraining order under the authority of Section 701 of the Public Utilities Code. The interim order also set the matter for hearing on April 24, 1963.

A duly noticed public hearing was held in the matter before me and Examiner Jarvis at San Francisco on April 24, 25 and 26, 1963. The matter was submitted on April 26, 1963.

Complainant's Case

Four of the complainants and another resident of the area testified in support of the complaint. Their testimony, generally, was that they objected to the proposed transmission line for reasons of personal taste. None of these witnesses gave any evidence whatsoever which would tend to show that the proposed transmission line was unsafe, that it violated any provision of the Public Utilities Code or that it violated any of the General Orders promulgated by this Commission.

Complainants suggested that other physical routings of the proposed transmission line were possible. Among the suggestions were: (1) a multitude of 60 KV lines; (2) a 220 KV line along the easement which the State Division of Highways is acquiring for the proposed Junipero Serra Freeway; and (3) underground facilities. Aside from testimony which was not helpful to complainants, elicited from P.G. & E. employees, who were called as adverse witnesses, complainants introduced no evidence to show the technical costs, feasibility, ability to acquire requisite easements and time factors involved in any of the suggested alternate routes. Furthermore, there was no showing that any other route would not run afoul of the very same objections, by other property owners or residents of the area involved, that complainants make herein.

P.G. & E.'s Case

P.G. & E. presented evidence which indicates that plans for the transmission line here involved were conceived in the 1940's;^{1/} that the present route was approved in 1952 and 1962 by the San Mateo County Planning Commission and the Board of Supervisors of that county; and that it took almost 10 years to acquire the easements for the present route.

P.G. & E.'s Chief Electric Generation and Transmission Engineer testified that for purposes of electric power the Peninsula Area is considered to include an area extending from San Bruno southward to and including Los Altos; that during the winter of 1962 the total peak load for that area was 325 megawatts; that the anticipated load for the area during the winter of 1963 is 369 megawatts; that the area west of the Peninsula Area is referred to as the Skyline and Coastal Area; that the peak load for this area during the winter of 1962 was 93.7 megawatts; that the anticipated load for the area during the winter of 1963 is 112 megawatts; that the present transmission facilities are not adequate to give satisfactory service to these areas during the anticipated 1963 peak loads; and that the proposed transmission line will insure adequate peak load capacity for the two areas during the winter of 1963 and for the foreseeable future.

The record discloses that one of the purposes of the transmission line is to provide, through a tie line, 220 KV service to the Stanford Linear Accelerator. An assistant to the president of Stanford University, who is also an Associate Director

^{1/} In the 1940's a 60 KV line was contemplated. In the 1950's additional load studies indicated the need for a 110 KV line, and studies for the line were made on that basis. Load studies made in 1960 caused P.G. & E. to decide to construct a 220 KV line. The easements acquired for the transmission line were for one of 110 KV capacity.

at the Stanford Linear Accelerator Center, was called as a witness by P.G. & E. He testified that the linear accelerator could only sensibly be served by a 220 KV source and that this source of power was required to be at the accelerator site by January 1, 1965. He also testified that if the accelerator project were delayed for lack of power it would be extremely hard to retain the staff of approximately 750 people having special qualifications which are in great demand elsewhere. He estimated that the cost of delay would be between \$8,000,000 to \$10,000,000 per year, not including the cost of delayed research, which cannot be measured.

P.G. & E. also introduced testimony which tended to show that the alternate routes suggested by complainants were not feasible. For example, a witness testified that the right of way along the proposed Junipero Serra Freeway could not be used because it was to be a part of the Interstate Highway System; that a policy memorandum of the United States Bureau of Public Roads provides that: "Where an Interstate highway is on new location, a utility will not be permitted to be installed longitudinally within the control of access lines of such highway and any utilities located outside the control of access lines cannot be serviced by access from the through-traffic roadways or ramps."; and that it would not be possible to service the proposed transmission line unless access was had from through-traffic roadways and ramps.

The Manager of P.G. & E.'s Land Department testified that if the proposed transmission line were rerouted, a minimum of 48 months would be required to secure the necessary easements. It was his further opinion that under the circumstances it would take approximately 10 years to acquire a new route.

Discussion

Complainants' counsel indicated at the outset of the hearing that complainants' case was based upon questions of aesthetics. Counsel for P.G. & E., in closing argument, conceded that this Commission should properly be concerned with broad questions of aesthetics in adjudging public convenience and necessity. Needless to say, a precise legal definition of the word "aesthetics" was not submitted in the hearing; however, it is usually understood as pertaining to matters affecting the sense of sight alone, probably because unpleasant noises and odors have long been subject to control as nuisances, (Rodda, "The Accomplishment of Aesthetic Purposes Under the Police Power", Southern California Law Review, Volume 27, page 149, May, 1960.).

While jurisdiction to give due weight to the question of aesthetics has been conceded in this case, the courts have been reluctant to allow aesthetic values alone to control the regulation of the use of property. "The failure of the courts to liberalize their policy toward aesthetic zoning appears to be largely caused by the indefiniteness of the standard of what is reasonable aesthetic regulation. Courts are wary of an application which would leave too much scope for the personal judgment of the particular court." ("Aesthetics As a Zoning Consideration", Hastings Law Journal, Volume 13, pages 374, 375, February, 1962.) A famous philosopher has succinctly stated the problem: "[O]ne and the same thing may at the same time be both good and evil or indifferent. Music, for example, is good to a melancholy person, bad to one mourning, while to a deaf man it is neither good nor bad." (Spinoza Selections, Charles Scribner's Sons, p. 225.)

It is clear, particularly in a state such as California where unplanned suburban expansion coupled with our population explosion may quickly result in a depletion of our scenic attractions, the citizenry must become more and more vocal in their desire to maintain the native landscape, (See: "Techniques for Preserving Open Spaces", Harvard Law Review, Volume 75, p. 1622; "Preservation of Open Spaces Through Scenic Easements and Greenbelts", Stanford Law Review, Volume 12, page 638.). The ever-growing and oft expressed desire of more and more Californians for green space conservation should be acknowledged by California public utilities in their planning. Particularly is this so in view of the fact that the people of California have conferred upon utilities the power of eminent domain. However, this Commission is not the planning commission for the utilities of the State. There are few areas in California where the establishment of transmission lines and other utility facilities does not invoke the displeasure of some persons. If the utility's choice of route or location for its facilities is reasonable--in terms of aesthetics--the Commission will not substitute its judgment on aesthetics for that of the utility, even though there are other reasonable choices. The Commission should only interpose its jurisdiction in adjudging public convenience and necessity in matters relating solely to aesthetics where the proposed action of a utility is of the type which would shock the conscience of the community as a whole.^{2/} This record does not present such a case.

^{2/} It is not here meant to suggest that in a given case where aesthetics is not the sole factor present, the balancing of factors may not be resolved in favor of other factors even though the result is aesthetically displeasing to the community. E.g., (1) the erection of a transmission line required for national defense. (2) The erection of a transmission line through one objecting community for the benefit of many other communities or the state as a whole.

The burden of proof rested upon the complainants in this matter and they have failed to meet it. They have failed to demonstrate that the proposed transmission line does, to any degree at all, offend against public aesthetics.

Findings of Fact

Based upon the evidence of record in this matter, the Commission makes the following findings of fact:

1. P.G. & E.'s Peninsula Area will require for the winter of 1963 transmission lines capable of supplying to it 369 megawatts of power during periods of peak loads. The presently existing facilities in the Peninsula Area are not adequate to satisfactorily meet these requirements. The proposed 220 KV transmission line between P.G. & E.'s Monta Vista and Jefferson substations will permit P.G. & E. to meet said requirements and render satisfactory service to the area.

2. P.G. & E.'s Skyline and Coastal Area will require 112 megawatts of power for periods of peak loads during the winter of 1963. The presently existing facilities in the Skyline and Coastal Area are not adequate to satisfactorily meet these requirements. The proposed 220 KV transmission line between P.G. & E.'s Monta Vista and Jefferson substations will permit P.G. & E. to meet said requirements and render satisfactory service to the area.

3. The Stanford Linear Accelerator requires a 220 KV source of power on or before January 1, 1965. The only practical way to furnish this power to said linear accelerator on or before January 1, 1965 is by constructing the proposed 220 KV transmission line between P.G. & E.'s Monta Vista and Jefferson substations.

4. The construction of the proposed 220 KV transmission line between P.G. & E.'s Monta Vista and Jefferson substations is not adverse to the public interest.

5. Complainants have failed to establish any facts which would entitle them to relief in this proceeding.

Conclusions of Law

Based upon the findings of fact herein made, the Commission concludes that:

1. The temporary restraining order prohibiting construction of the proposed 220 KV transmission line between P.G. & E.'s Monta Vista and Jefferson substations should be dissolved forthwith.
2. Complainants should be granted no relief upon their complaint.

O R D E R

IT IS ORDERED that:

1. The portion of Decision No. 65247 which states, "Good cause appearing, IT IS ORDERED that Pacific Gas and Electric Company, a corporation, and its officers, agents, and employees, pending further Commission order herein, shall immediately cease and desist and shall refrain from proceeding with the construction of the proposed transmission line hereinabove mentioned, or any "feeder" transmission line in connection therewith" is terminated and dissolved forthwith.
2. Complainants are entitled to no relief upon their complaint.

The effective date of paragraph 1 of this order shall be the date hereof. The effective date of paragraph 2 of this order shall be twenty days from the date hereof.

Dated at Los Angeles, California, this 17th day of May, 1963.

[Signature] President

[Signature]

_____ Commissioners

I concur in the conclusions of law and the Order herein. However, I would have preferred that the decision had dealt with and resolved the jurisdictional question presented by the pleadings.

Fredrick B. Halbach
Commissioner

C. 7585

I concur in the foregoing findings of fact, conclusions of law, and order, for I agree that, even if our jurisdiction over the subject matter be assumed, complainants have not established their case. I also agree that it is proper to dispose of this matter without a full consideration of our jurisdiction; the jurisdictional question is difficult, and the existence of the temporary restraining order has made it important to reach a decision as soon as possible. For that very reason, however, I believe we should not rule upon our jurisdiction in this decision. The jurisdictional issue was not contested at the hearing, nor have I independently explored it. The conclusions reached on the other issues have made it unnecessary to do so.

May 7, 1963



President