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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application and Petition of Feather River Railway Company, a California corporation,

(a) for an order under Water Code Section 11592 determining and deciding the character and location of new facilities to be provided by the State of California under Article 3, Chapter 6, Part 3, Division 6 of the Water Code,

(b) for an order determining and deciding all controversies between Applicant and the State of California concerning requirements imposed by said Chapter 6, Part 3, Division 6 of the Water Code,

(c) for an order to show cause why the Commission should not, after hearing, proceed under Section 11592 of the Water Code to make the aforesaid determinations and decisions, and

(d) for other relief.

Application No. 44283

(Appearances are listed in Appendix A)

O P I N I O N

Sections 11590-11592 of the Water Code provide as follows:

"11590. The department has no power to take or destroy the whole or any part of the line or plant of any common carrier railroad, other public utility or state agency, or the appurtenances thereof, either in the construction of any dam, canal, or other works, or by including the same within the area of any reservoir, unless and until the department has provided and substituted for the facilities to be taken or destroyed new facilities of like character and at least equal in usefulness with suitable adjustment for any increase or decrease in the cost of operating and maintenance thereof, or unless and until the taking or destruction has been permitted by agreement executed between the department and the common carrier, public utility, or state agency.

"11591. The expense of the department in complying with the requirements of this article is part of the cost of constructing the project.

"11592. In the event the department and any common carrier railroad, other public utility, or state agency fail to agree as to the character or location of new facilities to be provided as required in this article, the character and location of the new facilities and any other controversy concerning requirements imposed by this chapter shall be submitted to and determined and decided by the Public Utilities Commission of the State."

Being unable to reach an agreement regarding the relocation or other disposition of its railroad property, applicant, Feather River Railway Company, on March 21, 1962, filed its application and petition herein requesting that the Commission issue an order directing the Director of the Department of Water Resources, the Director of the Department of Finance, and such other officials of the State of California as may be concerned, to show cause why the Commission should not proceed (a) after hearing to make the determination and decisions prayed for in said application; (b) proceed to determine and decide the character and location of the new facilities to be provided as required by Section 11590; (c) determine and decide all other controversies between applicant and the State of California concerning the requirements imposed by Section 11590; and (d) grant such other relief as may be just in the premises.

On March 27, 1962, the Commission issued the requested order to show cause directed to respondents William Warne, Director of the Department of Water Resources, and Hale Champion, Director of Finance. At the hearing on the order to show cause in San Francisco before Examiner Cline on April 25, 1962, respondents filed a return by way of motion to dismiss and in the alternative moved that the proceedings be stayed until the determination has been made by the Interstate Commerce Commission in proceedings pending before it whether relocation of the railroad facilities of applicant will be permitted at all. Points and authorities were filed by the parties to this proceeding and oral argument on the order to show cause and the motions was held before Commissioner McKeage and Examiner Cline

in San Francisco on May 31, 1962. At the close of the argument Presiding Commissioner McKeage denied the motion to dismiss and the motion to stay the proceedings.

On November 21, 1962, applicant filed its application for a cease and desist order and for other interim protection and relief. This matter was heard on December 10, 1962 pursuant to an order to show cause issued November 27, 1962, Decision No. 64581, but prior to decision applicant upon authorization of the Commission by Decision No. 64785 issued January 15, 1963, withdrew its application for a cease and desist order.

The concluding hearing in this matter was held before Commissioner McKeage and Examiner Cline in San Francisco on January 31, 1963. The matter was taken under submission on the filing of the reply brief by applicant on April 23, 1963.

The following documents supplementary to Exhibit 18, submitted by the parties to the Commission, are hereby made a part of Exhibit 18 in this proceeding as Folder 6 thereto:

1. Letter dated February 15, 1963, from Stanley Mosk, Attorney General, to the Commission together with the Examiner's Report in Interstate Commerce Commission Finance Docket No. 22060.

2. Memorandum dated April 1, 1963, from F. G. Girard, Deputy Attorney General, to the Commission together with the Exceptions and Brief in Support of Exceptions filed in Interstate Commerce Commission Finance Dockets No. 22060 and No. 22138.

3. Letter dated April 29, 1963, from Stanley Mosk, Attorney General, to the Commission together with Reply of State of California to Exceptions in Interstate Commerce Commission Finance Dockets No. 22060 and No. 22138.

4. Letter dated July 26, 1963, from Gerald H. Trautman, of McCutcheon, Doyle, Brown, Trautman and Emerson, to the Commission together with a copy of the official reporter's transcript of the Oral Argument before Division Three of the Interstate Commerce Commission in Finance Dockets No. 22060 and No. 22138.

On January 25, 1963, the parties hereto filed a stipulation that for the purpose of determination of the merits and legal issues the facts hereinafter set forth are undisputed and may be treated by the Commission as facts proved in open hearing, except where otherwise provided therein.

Based upon such stipulation and the evidence in this proceeding the Commission finds that:

1. Feather River Railway Company, the applicant herein, is a common carrier railroad operating under a certificate of public convenience and necessity issued by the Interstate Commerce Commission in Finance Docket No. 12856, 240 I.C.C. 203 (1940) between Feather Falls, Butte County, California, and a junction with The Western Pacific Railroad Company, hereinafter called Western Pacific, at a point known as Land, Butte County, California, where physical interchange of cars is accomplished pursuant to authority granted by this Commission in Decision No. 33592 on Application No. 23686 (1940). Applicant has operated continuously since 1940 and is the only common carrier of property now serving Feather Falls. Applicant is a wholly-owned subsidiary of Georgia-Pacific Corporation which owns and operates a lumber mill at Feather Falls. Stipulation Exhibit 1 is a copy of applicant's balance sheet as of December 31, 1961.

2. Applicant's line is located in mountainous terrain northeast of Oroville, California, extending approximately 18 miles in a generally easterly direction from Land to Feather Falls. It is a single track, standard gauge railroad, rising from 200 feet elevation

at Land to 3,000 feet elevation at Feather Falls, having a maximum grade of 5.2 per cent compensated eastbound, and a maximum rate of curvature of 28 degrees. The line was originally constructed as a logging and lumber railroad in 1921-1922. The rail weight runs from 70 to 85 lbs. The line crosses the South Fork of the Feather River by means of a wooden bridge reconstructed in 1956. The junction at Land consists of four side tracks having a total holding capacity of 75 cars. The junction of applicant's line at Land and approximately six miles of track immediately to the east of Land will eventually be inundated by the Oroville Reservoir which will be formed by the Oroville Dam, currently being constructed by the Department of Water Resources of the State of California south of Land. Said Department has heretofore relocated the Western Pacific's line and U. S. Highway 40A which formerly passed through the Feather River Canyon.

3. Motive power on applicant's line is provided by a modern General Electric diesel locomotive, leased from Georgia-Pacific Corporation, and two Shay-type steam locomotives are available for standby service. Applicant has or has available to it motive and track maintenance equipment as well as maintenance facilities which are adequate for its operations.

4. The state of maintenance of applicant's line is safe and adequate for applicant's operations. This line has been from time to time inspected by inspectors of this Commission and the Interstate Commerce Commission and has been maintained in compliance with their requirements. Applicant's maintenance expenditures for the period 1940-1961 are shown on applicant's statement of income and expense on Stipulation Exhibit 2. The maintenance expense for the year 1956 includes the sum of approximately \$70,000 expended for the reconstruction of the South Fork Bridge which burned during that year.

5. Outgoing traffic over the line consists of a variety of finished lumber products, a substantial part of which are shop and

select grades of lumber. Inbound movement includes petroleum products, heavy construction equipment, supplies, equipment and miscellaneous commodities. Most of the inbound traffic is used, directly or indirectly, in connection with the lumber operations at Feather Falls. Applicant's car movement, and car, train and locomotive mileage, 1952-1961, are shown on Stipulation Exhibit 3. Train trips by month, 1952-1961, are shown on Stipulation Exhibit 4. Traffic volume and value, 1952-1961, are shown on Stipulation Exhibit 5.

6. Applicant hauls approximately 70 per cent of the output of the mill owned by Georgia-Pacific at Feather Falls. This traffic moves to destinations throughout the United States, approximately 87 per cent of this volume moving to destinations outside of the State of California. The out-of-state destinations of these shipments during 1959, a representative year, are shown on Stipulation Exhibit 6. The balance of the production at Feather Falls, much of which consists of lumber products below the shop and select grades such as framing, moves to Northern California destinations, largely by customers' trucks. Applicant does not transport logs.

7. The tariffs and rates applicable to interstate and intrastate movement by rail of lumber products blanket Feather Falls into the origin territory comprising the other Northern California lumber mills competing with the operations at Feather Falls; as a result, rail rates to the major destinations in the United States are essentially the same from Feather Falls as they are from competing lumber producing points in California. Applicant receives divisions from other rail carriers participating in the movement which in most recent years have been sufficient to pay its operating expenses as shown on Stipulation Exhibit 2. The applicable rail rates from Feather Falls to all important destinations are the same as those from Oroville, the closest alternative railhead. A copy of the index of Feather River's Freight Tariffs Classifications and Circulars is Stipulation

Exhibit 7.

8. Approximately 54 million board feet of timber per year will be available for lumber operations at Feather Falls for the indefinite future, including one of the most valuable remaining stands of Sugar Pine. Operations are conducted on a sustained yield basis and are expected to continue indefinitely. Seventy per cent of the lumber production will continue to move by rail.

9. The relocated rail line should follow the line shown as the "B" line on Stipulation Exhibit 8. This relocated route runs generally from Craig (which is 12 miles by rail from Feather Falls) to Palermo and is approximately 16 miles in length. The tentative design criteria for the line should be those shown on Stipulation Exhibit 9. The cost of acquisition of land for and construction of this relocated line (not including the bridge across the South Fork of the Feather River) is approximately \$3,955,000, which sum includes engineering charges and reserves for contingencies but excludes interest during construction. In addition to this cost, it will be necessary for the railroad to operate over a bridge to be constructed across the South Fork of the Feather River. If a railroad bridge alone is constructed, it would cost an estimated \$5,000,000. If a joint highway and railroad bridge is constructed, it would cost an estimated \$6,200,000 (both figures include a 30 per cent factor for engineering charges and reserves for contingencies but exclude interest during construction). At this time, the State of California and the County of Butte have not yet reached a decision as to whether the county road (which will be inundated) will be relocated so as to require construction of the highway bridge across the South Fork at the location of the rail crossing. No transportation facilities

other than a rail line generally as described in this paragraph, would constitute "facilities of like character and at least equal in usefulness", within the meaning of Water Code Section 11590.

10. The mill at Feather Falls has a payroll of \$1,500,000 per year; it pays an average of \$250,000 per year to the United States Forest Service for stumpage of which \$50,000 is paid to the local counties; it accounts for about \$142,500 per year in payroll taxes and \$277,500 in taxes withheld from employees. It makes annual purchases of about \$500,000 and pays sales and property taxes of about \$56,000 per year.

11. Applicant's railroad property is worth \$225,000. This figure does not include any value of the railroad properties to the customers it serves.

12. These proceedings were initiated by applicant in March, 1962, upon the failure of applicant and the Department of Water Resources to agree as to the character of new facilities to be provided under Section 11590 of the Water Code. At or about the same time, proceedings were initiated before the Interstate Commerce Commission, which are still pending, to determine whether applicant should be required to abandon its operations. The State of California is a Federal Power Commission licensee, authorized to construct Oroville Dam. In May, 1962, applicant sought to intervene in the proceedings before the Federal Power Commission in which the Department of Water Resources' project license was issued but leave to intervene was denied. A true copy of applicant's petition, the Department of Water Resources' answer, and the Federal Power Commission's order are Stipulation Exhibits 10, 11 and 12, respectively. In December, 1962, said Department requested the Western Pacific to exercise the authority previously granted by the Interstate Commerce Commission to abandon its line through the

Feather River Canyon, and it is expected that the portion of said line between Oroville and Land will be abandoned imminently.

In conjunction therewith, applicant and said Department entered into an agreement under which applicant will be able to continue its operations at said Department's expense over a portion of the abandoned Western Pacific line between Land and Intake during the pendency of the litigation, and said Department will be able to proceed with construction without impediment and will be able to remove applicant's operations from the construction area if necessary by providing temporary substitute service. A copy of the agreement is Stipulation Exhibit 13.

13. The State of California, pursuant to Section 21 of the Federal Power Act, on May 25, 1962, filed a suit in eminent domain in the Federal District Court, Northern District, Northern Division, No. 8486, seeking to condemn the railroad facilities owned by applicant. All proceedings in that action have been stayed pursuant to stipulation a copy of which is Stipulation Exhibit 14.

14. The two proceedings presently pending before the Interstate Commerce Commission referred to in paragraph 12, above, are Finance Dockets No. 22060 and No. 22138. Finance Docket No. 22060 involves an application filed with the Interstate Commerce Commission by applicant herein asking for a certificate that public convenience and necessity permit abandonment of the portion of the existing line to be flooded and authority to operate over a relocated line to be constructed by the State pursuant to Water Code Section 11590. Finance Docket No. 22138 involves an application filed by the Department of Water Resources asking for a certificate that public convenience and necessity require total abandonment of applicant's line. These two dockets were consolidated for hearing, hearings have been held before a hearing examiner of the Interstate Commerce Commission and an examiner's report has been issued. Exceptions and a reply to the

exceptions have been filed in connection therewith, and oral argument has been held before Division Three of the Interstate Commerce Commission, but no decision as of this date has been issued by said Commission.

There are two issues in the present proceeding which must be resolved by this Commission.

1. Are Sections 11590 to 11592 of the Water Code invalid?
2. If said statutory provisions are valid, should this Commission stay these proceedings pending final determination by the Interstate Commerce Commission of Finance Docket No. 22060 pertaining to partial abandonment and Finance Docket No. 22138 pertaining to total abandonment of applicant's railroad line.

A preliminary determination of these issues in favor of the applicant has previously been made by the Presiding Commissioner at the hearing on the order to show cause on May 31, 1962, when the ruling was made denying the motion to dismiss and the motion to stay this proceeding.

The Commission will now make its final determination respecting these two issues in the order presented above.

The respondents urge that the Interstate Commerce Commission has exclusive jurisdiction of the matter herein presented to this Commission for decision.

The decisions of this Commission, the Interstate Commerce Commission, and of the courts in connection with the construction of the Los Angeles Union Station point the way toward accommodation of the jurisdictions both of this Commission and of the Interstate

Commerce Commission.^{1/}

This Commission pursuant to statutory direction must determine what substitute facilities the State shall furnish providing the Interstate Commerce Commission will authorize the partial abandonment and relocation of the facilities. The Interstate Commerce Commission will determine whether public convenience and necessity (1) permit the partial abandonment and relocation of the service or (2) require the continuance or total abandonment of the present service.

No conflict exists between Water Code Sections 11590 to 11592 and the Federal Power Act.

The Department of Water Resources and the Department of Finance are agencies of the State of California and are creatures of the Legislature and are subject to the statutory limitations imposed by the Legislature respecting procedure to be followed in the construction of the dam pursuant to the license issued by the Federal Power Commission under the Federal Power Act, provided such statutory provisions are not unconstitutional. The agent can have no greater power than its principal gives it.

Sections 11590 to 11592 of the Water Code do not violate the California Constitution (a) by being a special law, as contended by respondents, or (b) by authorizing a gift of public funds.

^{1/} Railroad Commission v. Southern Pacific Company, 264 U.S. 331 (1924); Los Angeles Passenger Terminal Cases, 100 I.C.C. 421 (1925); Municipal League v. Southern Pacific Company, 30 C.R.C. 151 (1927); Los Angeles Passenger Terminal Cases, 142 I.C.C. 489 (1928), aff'd. sub. nom. I.C.C. v. Los Angeles, 280 U.S. 52 (1929); Atchison, Topeka & Santa Fe Railway v. Commission, 283 U.S. 380 (1931).

Section 22 of Article XII of the California Constitution in part provides:

"No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution."

Section 23a of Article XII of the California Constitution provides:

"The Railroad Commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the Legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the State or any county, city and county, incorporated city or town, municipal water district, irrigation district or other public corporation or district, and the right of the Legislature to confer such powers upon the Railroad Commission is hereby declared to be plenary and to be unlimited by any provision of this Constitution. All acts of the Legislature heretofore adopted which are in accordance herewith are hereby confirmed and declared valid."

With respect to the powers of the Legislature under Section 23a of Article XII of the California Constitution the Supreme Court in Marin Municipal Water District v. Marin Water and Power Company, 178 Cal. 308 at 314-316 (1918) has held:

"So far as the provisions of the constitution of California are concerned, the proposition is without merit. In November, 1914, after the amendment of Section 47 in 1913, the constitution itself was amended by the addition thereto of Section 23a, Article XII, giving the legislature authority to confer upon the railroad commission the power to fix the just compensation to be paid for existing public utilities as provided in Section 47, and confirming and declaring valid all acts of the legislature previously adopted, which, of course, includes said amendment of Section 47. It follows that if any of the provisions of said section should be deemed to be in violation of any provision of the constitution on the subject of eminent domain, the amendment of 1914 to Article XII would supersede such provision and render the act immune from attack on such grounds."

* * *

"The contention that the procedure authorized by the Public Utilities Act deprives the appellant of the equal protection of the laws is based upon the discriminations to which we have just referred between the mode of condemning property under the general law and that provided by Section 47 for condemning the property of public utilities in certain cases. None of these discriminations, as we have seen, goes to any matter of essential justice or fundamental right. The constitutional provision under consideration does not prohibit a state from establishing different rules of procedure for different classes of cases or of litigants, provided the variations relate merely to matters of procedure, and do not operate to deprive any class of substantial equality in the adjudication of its rights or liabilities.... In condemnation proceedings, so long as the state provides a fair and equitable judicial inquiry, in which the parties interested are allowed to be heard and present evidence, and are protected in their right to have just compensation, they are not deprived of the equal protection of the laws because the state, under authority of its own constitution, has seen fit to provide for other classes of cases a different method or a different tribunal for accomplishing the same result. Whether the property of public utilities forms a class which may fairly be thought to require a different kind of procedure from that adopted for the taking of other property by eminent domain is primarily a question for the state itself. Elements of peculiar complication and difficulty are often involved in the valuation of the property of a public utility. The fact that public utilities are subject to constant regulation and examination by the railroad commission may well have led the legislature to conclude that that commission was best able to make a just and equitable appraisalment of their property.... So far as defendants are concerned, the classification made by the act cannot, therefore, be regarded as purely arbitrary."

Pursuant to House Resolution No. 59, 1958 Extraordinary Session, the Assembly Interim Committee on Public Utilities and Corporations (Exhibit E to respondent's reply memorandum filed May 16, 1962) in considering the advisability of revision of the law to place the acquisition of utility property on the same basis as the acquisition of other private property subject to condemnation found as follows:

"3. That the various officials of the State having to do with the acquisition of property for state purposes will be presumed to act in the very best interest of the State at all times and will acquire such property at a figure most beneficial to the State.

"4. That where there is a possibility of large severance damages, as would ordinarily be the case when railroad, state agency or public utility property is taken, the alternative of providing new facilities of like character is beneficial in that there is a minimum of economic dislocation in the area and lengthy litigation is avoided.

"5. At the present there is no evidence that a special privilege is being given to public utilities other than the guarantee that they will be allowed to carry on their functions during the construction of the Central Valley Project."

In view of its findings the Assembly Interim Committee concluded that revisionary legislation relative to Sections 11590, 11591 and 11592 was not warranted.

The respondents make the argument that to relocate the railroad facilities at a cost of \$3,955,000 plus the railroad's share of the cost of constructing a bridge across the South Fork of the Feather River, which share of the cost may vary from \$1,200,000 to \$5,000,000 depending on whether a single railroad bridge or a joint-use railroad and highway bridge is constructed and on the method of cost allocation used, will constitute a gift where the fair market value of the petitioner's property is only \$225,000. We have found contrary to this contention.

The rates charged by applicant for the shipment of freight over its line are authorized by the Interstate Commerce Commission and by this Commission. If the same quantity of goods is shipped at the same rates on the substituted facilities as would have been shipped on its line had it not been inundated, neither the applicant nor its customers will be benefited or injured, assuming a suitable adjustment is made for any increase or decrease in the cost of operating and maintaining the new facilities and assuming divisions remain the same. The status quo will be maintained.

At such time as applicant seeks to adjust its rates the facts regarding the substituted facilities may be presented to and considered by the appropriate regulatory commission or commissions, and it will be presumed that such commission or commissions will lawfully establish any new rates which may be charged by applicant.

The respondents urge that this Commission stay its proceedings until the Interstate Commerce Commission has issued its decision in Finance Dockets No. 22060 and No. 22138, because, if the Interstate Commerce Commission Examiner's report and recommended certificate and order authorizing the abandonment of the entire line between Land and Feather Falls, California, rather than permitting partial abandonment and relocation thereof between Craig and Palermo, California, is affirmed by the Interstate Commerce Commission and sustained by the courts, it would be unfeasible, they assert, for applicant to operate over a relocated line. On the other hand applicant points out that the Interstate Commerce Commission itself may desire to know what substitute facilities will be required by this Commission before it issues its own decision in Finance Dockets No. 22060 and 22138.

This Commission concludes that Sections 11590 to 11592 of the Water Code are valid and that it should forthwith proceed to issue its order thereunder as requested by applicant. Appropriate provision will be made so that the order of this Commission may be revised so as not to conflict with the order of the Interstate Commerce Commission which subsequently may be issued in Finance Dockets No. 22138 and No. 22060. Also the order will provide that either party may seek its revision should developments subsequent to the issuance of this order such as geologic test drilling indicate that revision of the route of the relocated line or the design criteria therefor may be necessary or desirable.

O R D E R

IT IS ORDERED that:

1. The relocated rail line to be provided by the respondent Department of Water Resources pursuant to Section 11590 and substituted for the facilities of applicant Feather River Railway Company to be taken or destroyed by said Department of Water Resources shall be the line shown as the "B" line on Stipulation Exhibit 8 and said line shall be constructed pursuant to the tentative design criteria set forth in Stipulation Exhibit 9.

2. In the event developments subsequent to the issuance of this order such as geologic test drillings or an order of the Interstate Commerce Commission indicate that revision of the route of the relocated line or the design criteria therefor may be necessary or desirable any party to this proceeding may request modification of this order.

3. In the event the Interstate Commerce Commission orders applicant Feather River Railway to abandon all its operations or its interstate operations over its entire line, any party to this proceeding may file a copy of said order with this Commission and request that this order be modified or rescinded with or without further hearing.

The Commission hereby retains jurisdiction over this proceeding for all purposes.

The Secretary is directed to cause a certified copy of this order to be served upon each respondent and their attorney,

F. G. Girard, and upon applicant and its attorneys, William W. Schwarzer, Craig McAtee and Gerald H. Trautman.

This order shall be effective twenty days after the date hereof.

Dated at San Francisco, California, this 26th day of November, 1963.

William W. Schwarzer
 President

Craig McAtee

Gerald H. Trautman

George A. Grover

Fredrick B. Hallock
 Commissioners

APPENDIX A

LIST OF APPEARANCES

William W. Schwarzer, Craig McAtee, Gerald H. Trautman, McCutchen, Doyle, Brown & Enersen, and Philip C. Wilkins of Wilkins, Little & Mix, for Feather River Railway Company, applicant.

Stanley Mosk, Attorney General, and F. G. Girard, Deputy Attorney General, for William E. Warne, Director of the Department of Water Resources, and Hale Champion, Director of Finance, respondents.

B. Abbott Goldberg, Deputy Director, and P. A. Towner, Chief Counsel, Department of Water Resources, for William E. Warne, Director of the Department of Water Resources, respondent.

Louis Heinzer, Administrative Adviser, and Allan I. Wendroff, Department of Finance, for Hale Champion, Director of Finance, respondent.