

Decision No. 67959

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BUCKEYE SCHOOL DISTRICT,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 7836  
(Filed February 5, 1964)

Jere E. Hurley, Jr., for complainant.

F. T. Searls, John C. Morrissey, Malcolm A. MacKillop  
and Ross Workman, for defendant.

W. E. Waldrop, for the Commission staff.

O P I N I O N

After due notice, public hearing in this matter was held before Examiner Coffey on April 2, 1964, in Redding. On June 24, 1964, counsel for complainant requested that the matter be submitted without opening and closing briefs by the complainant as ordered. Defendant's opening brief having been received, the matter was submitted for decision on June 24, 1964.

The complaint alleges, and the answer admits, that defendant provides electric service to complainant's Buckeye School under defendant's filed Schedule A-13, and that defendant provides electric service to Toyon School and Toyon House of Shasta Lake School District at a lower rate. Complainant requests an order that the rates charged Buckeye School be equal to those charged Toyon School and Toyon House.

The Shasta Lake School District operates four schools, three of which are located within the boundaries of Shasta Dam Area Public Utilities District (PUD) and one of which, Toyon, is approximately three-fourths of a mile outside the PUD boundary. A U.S. Bureau of Reclamation 13.8 kilovolt (kv) distribution line is located approximately one-quarter of a mile from Toyon School and Toyon House. A witness for defendant estimated that by an investment as low as \$3,500 PUD could provide service to the facilities at Toyon.

The Buckeye School District boundary adjoins that of PUD, Buckeye School being approximately one and one-half miles from the nearest adjoining boundary. Buckeye School is approximately six-tenths of a mile from the city limits of the City of Redding, said city being in the business of selling electric power. A PUD 115 kv transmission power line is located less than one half mile from Buckeye School. A witness for defendant estimated that an investment of as much as \$125,000 would be required to provide service to the Buckeye School from the transmission line.

The Buckeye School and the Toyon School are approximately three miles apart on the road going north from the City of Redding to Shasta Dam.

Initially PUD received its power over said 13.8 kv power line from Shasta Dam at a termination near the northwest corner of PUD territory. In 1962, said 115 kv power line was built to extend in a generally southwesterly direction, outside PUD territory, to obtain another source of power from the Bureau of Reclamation at Keswick Dam. Most of PUD's power is now obtained over the 115 kv power line, with the 13.8 kv power line continuing to be available, and used for emergency service. Although PUD has on occasion served electricity in an area outside its boundaries, such area was annexed subsequently to PUD.

Prior to 1957, all of the schools operated by the Shasta Lake School District were served by defendant at its regularly filed tariffs. In November of 1957, at the time PUD was installing its competing electric system, the Shasta Lake School District advertised for bids for electric service to its schools. Both defendant and PUD submitted bids, each offering rates lower than their respective filed rates. PUD did not bid on Toyon School, although defendant's prior information and belief was that PUD would bid on the school. When the bids were opened PUD was found to have bid 5 percent below its published rates with an additional discount of 15 percent for Deer Creek School, and defendant had bid about 6 percent below PUD's published rates. Defendant was thus awarded all the schools except Deer Creek which went to PUD.

In May of 1963 the Shasta Lake School District again advertised for bids for electric service to the schools after the expiration of the 1958 contracts. Defendant's witness testified that the competition was no less intense in 1963 and that PUD had more power available to it and at a cheaper cost to PUD than in 1957. Defendant again submitted a special rate bid on each school, including the Toyon School. Defendant's stated reasons for bidding on the Toyon School were: (1) the school is located near the 13.8 kv distribution line from which, it was believed, PUD could arrange to get service for the school; (2) the sealed competitive bidding prevented defendant from being informed as to whether PUD would bid and caused defendant to fear that defendant might lose all schools if PUD did bid a low rate on Toyon School so that the total charge for all schools was lower; (3) defendant had an investment in serving Toyon School that it wanted to protect; and (4) PUD had a greater power

supply available in 1963 and at a lower cost.

PUD did not bid on Toyon School but it did bid below its published rates for the other schools. Defendant was awarded the contract to serve all of the schools, its proposal being about 10 percent less as to total charges than the bid of PUD when all schools were considered. Said contract was filed with the Commission on October 23, 1963 under the provisions of Section X, Paragraph B of General Order No. 96-A. The Commission reserved the right to review the reasonableness of the provisions of said contract.

Buckeye School is served under defendant's filed Schedule A-13, General Service - Demand Metered, which is available throughout defendant's territory to schools with requirements similar to Buckeye School. A witness for complainant testified that PUD officials had stated it would not be feasible for PUD to serve the Buckeye School District simply due to proximity of the schools to PUD, but that there would be a good possibility of being served by PUD if the area were annexed to PUD. The witness further testified there had been no effort to establish PUD service to the Buckeye School and that there was not any immediate prospect of obtaining PUD service. City of Redding officials advised the witness for complainant that it would not be possible to serve the Buckeye School because of an agreement between the city and defendant that the city would not service outside of its limits. However, the witness stated his belief that the city could serve outside its limits if the council approved, since the city is presently serving one of complainant's schools within the limits of the city, said school being six-tenths of a mile from Buckeye School.

The principal issue before the Commission is whether defendant, by providing service to Toyon School and Toyon House at lower rates than the rates charged for service to Buckeye School is in violation of Section 453 of the Public Utilities Code. The question

of reasonableness of the level of the rates is not before the Commission.

The pertinent part of Section 453 of the Public Utilities Code provides:

"453. ... No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The commission may determine any question of fact arising under this section."

Complainant contended that if defendant, as a competitive measure, adopted a policy of giving reduced rates to schools, then it must give reduced rates to all schools similarly situated. Complainant argued that defendant's reliance solely upon the competitive situation was not sufficient to justify charging for service to Buckeye School three times that charged at Toyon. Further, complainant argued that the facilities at Toyon were not likely to be served by PUD because it cannot be annexed due to intervening land. Even if the situation at Toyon is conceded to be competitive in that the service might be lost by defendant due to an arrangement for service from the 13.8 kv line owned by the U.S. Bureau of Reclamation, complainant argued that at Buckeye School a much more competitive situation exists due to the proximity of the 115 kv line and the City of Redding.

Defendant argued that complainant did not prove that the Buckeye School is in a competitive situation similar to that of Toyon School; that, as complainant's witness testified, there is no present anticipation of Buckeye School receiving electric service from any source other than from defendant; that the physical location of the two schools with respect to proximity to lines from which anyone other than defendant could practically and economically render service in the near future is entirely dissimilar, and that since Buckeye School is not similarly situated to Toyon School, there is

no discrimination as a result of the difference in rates charged the two schools. Defendant pointed out that in Decision No. 56242, in Case No. 6011, authorizing special low rates for the Shasta Dam Rate Area, this Commission said:

"In our opinion, respondent [PG&E] has the legal right to reduce its rates in order to meet in good faith the competitive rates being offered by the Shasta Dam Public Utility District, arguments of certain counsel to the contrary notwithstanding. There is ample precedent for such action, both in this Commission's prior determination and in those of other states. The long and unbroken line of legal authority and precedent in such respect overwhelmingly sustains the right of a utility to meet in good faith a competitive rate without rendering itself subject to a charge of unlawful locality discrimination."

Defendant argued that the law has become so well established that the cases no longer question the power of the Commission to authorize a rate difference in the presence of competition, but are concerned instead with the questions as to whether competition does in fact exist and whether a reduction in rates will burden other customers.

Defendant maintained that the facts establish that: A competitive situation exists at Toyon School, whereas a competitive situation does not exist at Buckeye School; the lower rate at Toyon School will not burden other ratepayers and defendant so stipulated in its Advice Letter by which it filed the 1963 contract with the Shasta Lake School District; and no reason exists to give a lower rate to Buckeye School than any other school receiving service under Schedule A-13.

Defendant moved that the complaint be dismissed.

We take official notice of defendant's filed tariffs.

We note that this record contains no showing of the costs to serve Toyon School or to serve Buckeye School and that it does not contain any showing of service conditions to support price differentials, other than those conditions that relate to competition at

the two localities.

Findings

Upon consideration of the evidence the Commission finds that:

1. The bill for the typical energy consumption of 20,000 kilowatt-hours, with a 200 kilowatt billing demand, at Buckeye School is \$431.60, and the bill for the same consumption at Toyon School and Toyon House is \$162.00.

2. Defendant by Advice Letter No. 219-E filed Cal. P.U.C. Sheet No. 3800-E, effective July 1, 1964, delineating the Shasta Rate Area which surrounds all of the territory of Shasta Dam Public Utility District and the Shasta Dam Rate Area, and said surrounding territory encompasses both Toyon School and Toyon House and Buckeye School.

3. Defendant requested and received by Decision No. 56242 authority to set up the Shasta Dam Rate Area, a special rate area, and to charge less than system rates therein for general service (Schedule No. A-40), for general power service (Schedule No. A-41), and for domestic service (Schedule No. D-40), in order to meet competition within said area of Shasta Dam Public Utility District.

4. The Shasta Dam Rate Area is by defendant's request and by authorization of this Commission defined as the area within which competition exists between defendant and Shasta Dam Public Utility District.

5. Competition to render electric service to Toyon School and Toyon House has not existed and does not exist.

6. Defendant does charge less than system rates for service to four schools in the Shasta Rate Area and the Shasta Dam Rate Area.

7. Defendant does charge less than system rates for service to one school outside the Shasta Dam Rate Area and inside the Shasta Rate Area.

8. The maintenance by defendant of rates for service to a school within the Shasta Rate Area which are lower than the rates available to other schools of similar load characteristics located within said area is an unreasonable difference in rates which unduly discriminates between localities.

9. The maintenance by defendant of rates for service to Toyon School and Toyon House within the Shasta Rate Area that are lower than the rates available to complainant at Buckeye School is an unreasonable difference in rates which unduly discriminates against complainant.

We conclude that defendant should be ordered to remove the discrimination described in the above findings.

O R D E R

IT IS ORDERED that:

1. Defendant's motion to dismiss this complaint is denied.
2. Defendant Pacific Gas and Electric Company is hereby directed, within sixty days after the effective date of this order to remove the undue discrimination, more specifically set forth in the findings in the foregoing opinion.
3. If defendant removes the undue discrimination by lowering rates for electric service to Buckeye School, defendant in future electric rate proceedings shall compute its gross electric revenues as though systemwide rates were applied in the Shasta Rate Area.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 10th day of OCTOBER, 1964.

Fredrick B. Halaloff  
President

George J. Grover

William B. Bennett

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners