

ORIGINAL

Decision No. 69253

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BUCKEYE SCHOOL DISTRICT,  
 Complainant,  
 vs.  
 PACIFIC GAS AND ELECTRIC COMPANY,  
 Defendant.

Case No. 7836

Jere E. Hurley, Jr., for complainant.

Malcolm A. MacKillop, for defendant.

W. E. Waldrop, for the Commission  
staff.

OPINION AND ORDER ON REHEARING

On February 5, 1964, Buckeye School District (Buckeye) filed a complaint against Pacific Gas and Electric Company (PG&E) alleging that PG&E charges Buckeye Elementary School considerably more for electric service than it charges Toyon School and Toyon House. Complainant requested an order making the rates to Buckeye School equal to those charged Toyon School and Toyon House.

Public hearing in this matter was held on April 2, 1964 in Redding. Upon receipt of defendant's opening brief, the matter was submitted for decision on June 24, 1964.

On October 6, 1964, the Commission issued its Decision No. 67959. The Commission found that "Competition to render electric service to Toyon School and Toyon House has not existed and does not exist." The Commission also found that "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." Based on these findings, the Commission ordered PG&E to remove the undue discrimination.

On October 26, 1964, PG&E petitioned for rehearing and requested a stay of the order, alleging that the two findings (supra) were without the support of any substantial evidence in the record and thus contrary to law.

On November 30, 1964, the Commission issued its order staying the operative effect of said decision pending further order. On December 22, 1964 an order granting rehearing was issued.

After due notice, public hearing was held before Examiner Gillanders on March 17, 1965, in Redding. The matter was submitted subject to receipt of transcript and is now ready for decision.

Neither complainant nor defendant presented additional evidence. Defendant, however, did make available a witness to clarify the testimony of its previous witness, since deceased.

Defendant's witness testified that "After considering all of the factors, examining all of the information that we had at hand, it was our conclusion we had competition, and it was likely that there would be a bid by the Shasta Dam P.U.D."

He further testified that the reasons for expecting that the PUD would bid "...were, first, that it was entirely feasible for the P.U.D. to serve the school from the 13.8 line. Second, in the competitive bidding process, we would have no way of knowing whether or not the P.U.D. would bid. Third, that we had an

investment in serving the school and that we were desirous of protecting that investment. And fourth, that the P.U.D.'s power situation had been improved in recent years and it had power available, certainly, to render this service."

Questioning by the examiner developed that defendant's conclusion that it had competition was not substantiated.

During questioning regarding his conclusion that it was entirely feasible for PUD to serve the Toyon School from the 13.8 kv line owned by the United States Bureau of Reclamation, defendant's witness testified that he knew of no instance where the Bureau allowed the district to tap the line between the beginning and the end of such line to serve a district customer. He also testified that he was aware that the limits of PUD did not encompass the Toyon School location. He was unaware that there was government land between the PUD boundary and the Toyon School. Exhibit 4 (obtained during the noon recess) clearly shows that government land separates Toyon School from PUD's boundaries. Section 17301 of the Public Utilities Code states, in effect, that territory must be contiguous to a district to be annexed. Section 17360 of the Public Utilities Code states that an area, if not contiguous, may be annexed if it is already part of some other district. Toyon School property meets neither of the annexation requirements. The record shows, and we find, that PUD could not serve Toyon School from the 13.8 kv line. Defendant's management should have been aware of this fact and based its judgment of whether or not PUD would bid on Toyon School accordingly.

During questioning of defendant's witness concerning its investment in facilities serving Toyon School, he admitted he did not know how much the investment was. He also admitted he had no knowledge of whether or not the facilities serving Toyon School served any other customers. We find defendant's position regarding protecting its investment unreasonable.

Counsel for defendant pointed out that Public Utilities Code Section 16473 indicates that whenever a public utility district has surplus power it may sell that power outside of its boundaries and may use facilities outside of its boundaries. However, defendant's witness testified that his conclusion regarding the availability of surplus power, as far as Toyon School was concerned, was based on delivery over the 13.8 kv line. In the light of the record concerning the availability of the 13.8 kv line, we find his conclusion to be unjustified.

The Commission also finds that defendant's overall conclusion that it had competition for rendering service to Toyon School was unjustified.

The Commission finds again that competition to render electric service to Toyon School and Toyon House has not existed and does not exist.

IT IS ORDERED that Decision No. 67959 is affirmed.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of JUNE, 1965.

*I concur in the result and will file a separate opinion.*  
*George H. Grover*

*Frederick B. Halliday*  
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President  
*John J. ...*  
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*William W. ...*  
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Commissioners

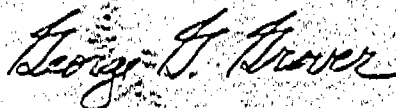
Commissioner George G. Grover, Concurring Opinion:

I concur in the result, but I am unable to join in all of the comments contained in the Commission's opinion.

It is there stated, for example, that the Toyon School property does not meet the requirements for annexation to the Public Utilities District. At the hearings, however, it was never definitely shown that the property might not be joined with other property, contiguous to the district, to make up a large annexation parcel which, as a whole, would be contiguous. The Commission's opinion appears to suggest that annexation was impossible; in fact, on this record, we are not in a position to say more than that annexation was very unlikely. Moreover, there was evidence that the district had in the past served certain property for a matter of years without annexation.

Again, the Commission's opinion expressly states that the district "could not serve Toyon School from the 13.8 kv line." I do not believe that that was proved. It is true that PG&E did not prove that the Bureau of Reclamation would permit the line to be tapped for that purpose, but neither did complainant show that the Bureau would not do so. (Offhand, in the absence of a better record on this point, I see no reason why the United States would not be willing to assist the district by allowing such a tap if it were requested.)

In short, although I agree that there was not sufficient justification for expecting competition from the district, I feel that the Commission's opinion somewhat overstates the case.



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Commissioner

San Francisco, California  
July 15, 1965