

ORIGINAL

Decision No. 76883

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHILIP H. ANGELL, JR.,

Complainant,

v.

PACIFIC GAS & ELECTRIC CO.,  
a corporation,

Defendant.

Case No. 8929  
(Filed June 23, 1969)SIERRA CLUB, a Non-Profit  
California Corporation,

Complainant,

v.

THE PACIFIC GAS AND ELECTRIC  
COMPANY,

Defendant.

Case No. 8952  
(Filed August 12, 1969)

## Appearances for or on behalf of Complainants:

Graham & James, by Boris H. Lakusta, for  
Philip H. Angell, Jr., complainant  
and for Edward A. Cutter III et al.,  
intervenor in Case No. 8929.Angell, Adams & Holmes, by Jon H. Kouba,  
for The Sierra Club, complainant in  
Case No. 8952 and intervenor in Case  
No. 8929, and for Associated Sports-  
men of California et al., intervenors  
in Case No. 8952.Richard D. Gravelle and Timothy E. Treacy,  
for the Commission staff, intervenor.  
Carl J. Weber, for Orinda Association,  
intervenor.

## Appearances for or on behalf of Defendant:

F. T. Searls, John C. Morrissey, Charles T.  
Van Deusen and Ross Workman, for  
Pacific Gas and Electric Company,  
defendant.Thomas J. McIntosh, of the law office of  
Robert J. Foley, for Charles L. Fry,  
intervenor.

O P I N I O N

These complaints, heard on a consolidated record covering 23 days of duly noticed public hearings held between July 22 and December 15, 1969, concern the location of a 230 kv transmission line under construction by Pacific Gas and Electric Company (PGandE). Briefs were filed on December 22, 1969 and the matters were submitted as of such date. The record consists of 2,343 pages of reporters' transcripts in 23 volumes, of 79 exhibits (exhibit marked 58, not in evidence), the testimony of 22 witnesses called by complainants, the testimony of 8 witnesses called by defendant, the testimony of one witness called by the Examiner and the oral arguments and written briefs of counsel.

The transmission line, a portion about which complaint has been made, is a 230 kv line to be carried by large steel towers a distance of about 23 miles between defendant's Pittsburg Power Plant and its El Sobrante Substation, all within Contra Costa County. It is being constructed along a right-of-way obtained by PGandE for such purposes about 15 years ago. The initial construction, now under way, is for a single circuit consisting of three conductors of bundled cables. At a later time, as load growth requires, a second and similar circuit will be added to the same towers.

The complaints, which were duly served and answered, requested that the Commission issue a temporary restraining order to halt construction of the line pending hearing on the complaints. Such an order was issued.<sup>1/</sup> It was subsequently modified<sup>2/</sup> to permit construction to be resumed on that portion of the line between

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<sup>1/</sup> Decision No. 76213, issued September 23, 1969.

<sup>2/</sup> Decision No. 76256, issued September 30, 1969.

Pittsburg Power Plant and Tower No. 83 of the line, said tower being adjacent to but outside of the areas of complaint and nearly six miles distant from the line's intended termination at El Sobrante Substation.

Between said Tower No. 83 and El Sobrante Substation the PGandE transmission line right-of-way traverses portions of the lands of the East Bay Regional Park District, the East Bay Municipal Utility District, and four private parcels (Santos, Swenson, Pereira, Cutter), with the major length thereof being across Briones Regional Park and Briones Reservoir. The transmission line would be visible from the homesites of complainant Angell, intervenor Cutter and certain others in the same neighborhood and from a goodly portion of the park area. In response to the requests and agreements of counsel for the parties, a field view of the right-of-way and surrounding areas was undertaken<sup>3/</sup> after the receipt of all evidence and prior to oral argument thereon.

Complainants' Case

Complainants presented a number of exhibits and the testimony of 22 witnesses,<sup>4/</sup> 18 of whom testified generally to the effect that the prospective transmission line's routing through the park and reservoir areas would destroy the natural beauty and public recreational purposes of the areas and, further, would thereby "shock the conscience of the community as a whole".<sup>5/</sup> Complainant

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<sup>3/</sup> By the assigned Commissioner and Examiner together with counsel and certain of their aides.

<sup>4/</sup> Four were employees of defendant, hence assumed to be adverse.

<sup>5/</sup> A phrase taken from this Commission's Decision No. 65344 in Case No. 7585 (Ligda v. PG&E, 61 CPUC 1, 5).

Angell testified, among other things, that he would not advocate a changed route if the only effect would be to remove the line from the view of one landowner and place it in the view of another. The Sierra Club held to no such premise. Its witnesses urged either the undergrounding of the line or its relocation across the private lands of about seven other landowners.

In addition to testimony respecting the undesirability of placing an electric line on public lands devoted to recreation, complainants presented testimony respecting a number of alternate routes as well as the testimony of an engineer who first espoused a proposition to place the entire length of the line between Tower No. 83 and El Sobrante Substation underground but who later espoused a proposition of placing the portion through Briones Park underground, placing the portion through Briones Reservoir under water and leaving the intervening distance overhead on the towers as originally planned by PGandE. Neither the engineering nor the economic feasibility of these schemes, albeit several hearing days were devoted to their examination, were convincingly demonstrated.

Complainants presented no evidence to show that defendant had violated or was about to violate any provision of the Public Utilities Code, that the transmission line is or would in any way be unsafe,<sup>6/</sup> or that it violates or would violate any orders of this Commission. The thrust of their entire presentation related to aesthetic considerations.

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<sup>6/</sup> While at one point in his testimony, complainants' engineer stated that the line would be electrically "unstable" and might cause a blackout of the PGandE system, such testimony was amply refuted by defendant's engineering witnesses. In any event, we cannot find that "electrical stability" and "safety" are synonymous in the context of this witness's remarks.

Defendant's Case

PGandE presented numerous exhibits and the testimony of 8 witnesses, all but two of whom were in its employ. Its presentation was to the effect that growing electrical loads, long foreseen and planned for, demand that the transmission line be constructed in order to transmit power from the electrical busbar at its Pittsburgh Power Plant to the busbar at its El Sobrante Substation, that it obtained a right-of-way for such line about 15 years ago and prior to the existence of either Briones Reservoir or Briones Park, that the initial circuit is now needed to meet anticipated power demands during the summer of 1970 and that any delay in its completion could seriously affect its ability to adequately serve the public in the East Bay area. The initial single circuit is designed for a normal winter capacity of about 1552 MVA, with the second circuit scheduled for about the year 1972, thus providing something over 3100 MVA as the ultimate capacity of the line. One of its engineers testified that PGandE's load in the East Bay area will be on the order of 9,000 to 10,000 MVA by the year 1990 and that by such year an additional transmission capacity on the order of 6,000 MVA will be required. No existing lines or combination of such lines can carry loads of this magnitude.<sup>7/</sup> PGandE engineering witnesses were unanimous as to the need for this line as part of the integrated PGandE transmission network.

PGandE also developed evidence respecting its acquisition of the right-of-way and the acquisition of Park and Reservoir lands

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<sup>7/</sup> Complainants do not seriously question the need to meet the electric power demands of the public in this area, even though their engineering witness testified to the effect that the capacity of the line is greater than needed.

(with the rights-of-way as encumbrances thereto) by the public agencies involved. It developed cost figures for its own construction and provided cost estimates for the alternate proposals made by complainants.<sup>3/</sup> In addition it attempted to measure the public's use of recreational facilities in public areas where transmission lines exist and where they do not exist. In this respect, its witness noted no curtailment of public recreation in areas where transmission lines exist.

PGandE introduced testimony which tended to show that the several alternate routes suggested by complainants were not feasible and, finally, that if the most enthusiastically suggested alternate overhead route were in fact to be undertaken, delays caused by prospective litigation involving the obtaining of substitute rights-of-way could not possibly be less than one year and might be several years.

#### Discussion

These complainants ask the Commission to arbitrate and decide what amounts to a question of aesthetics, the visual impact of a transmission line on those who may use the areas for one form or another of recreation, now an element of public concern and interest. Opposed is an important public interest in the adequacy, reliability and cost of electric service. These latter elements of the public interest are directly within the province of this Commission. Indeed, the Commission has the statutory duty of bringing into proper balance the many complex factors involved in

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<sup>3/</sup> The overall underground proposal of complainants would cost some \$16,000,000 for a line of about one-fourth the capacity of the PGandE line. This compares with a cost on the order of \$1,000,000 for a full capacity overhead line.

determining the public interest, convenience and necessity in these latter regards. We shall herein discuss only those facets of the evidence and those elements of contention which will lead to an understanding of the ultimate findings and conclusions herein.

The complainants and the intervenors which have lent support to their cause are vehemently opposed to the construction of an overhead electric line, along a right-of-way which PGandE acquired some years ago, on the ground that the line would destroy the natural environment in areas which are largely dedicated to the preservation of natural surroundings and which are publicly owned and thus available to the public at large. They concede, however, that PGandE needs additional transmission facilities. They are in every sense serious and have rallied to their cause numerous persons and organizations who acclaim widespread concern and support. With respect to Briones Park, an area of 3057 acres, one of their witnesses estimated that the public would make use of it to a total of 1,000,000 visitors a year, while another of their witnesses (an employee of the park district) estimated a maximum usage of 58,000 visitors a year, the latter witness indicating that overuse by the public would not be permitted. It must be conceded that the park will be used. Indeed, it would not have been created if such were not in prospect.

In the overall area (Park and Reservoir) the public is now provided parking areas and will hike, picnic, camp, boat, ride trails, fish, attend nature-study classes, hold group and organization meetings and generally enjoy the out-of-doors and such wildlife as may continue to exist therein. Much of the area is now devoted to cattle grazing and such use will also be continued. In the light of

the testimony in such regard we cannot agree with complainants' contention that the area is now or will remain a "wilderness" area or that the aforementioned public activities will leave it unspoiled.

We next turn our attention to some of the pertinent recent history of this area as disclosed by the record herein. In 1957, PGandE acquired a transmission line easement from the East Bay Municipal Utility District (EBMUD). In such year Contra Costa County had the responsibility for regional public recreation within the county (the East Bay Regional Park District did not then operate in Contra Costa County). In such year the county entered into a contract with EBMUD by which the county would ultimately acquire ten large parcels of EBMUD land for park purposes. The contract specified that the land acquired was to be transferred subject to all encumbrances, leases, easements and rights-of-way of record.<sup>9/</sup> One of the encumbrances was the PGandE right-of-way. Others included the right of EBMUD to itself erect electric transmission lines and other electric facilities. The land is today still subject to such encumbrances.

In about 1964, the East Bay Regional Park District (EBRPD) started expanding its operations into Contra Costa County and began taking over the park and recreational functions of the county. Lands of certain private landowners as well as the park lands of the county have since been acquired by EBRPD. In these acquisitions the lands were encumbered by the PGandE rights-of-way. They are today still so encumbered.

The East Bay Regional Park District has investigated the acquisition of additional private lands abutting Briones Park. It

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9/ Exhibit No. 35.



apparently intends to acquire them when funds permit. At least two of these parcels are presently encumbered by the PGandE right-of-way.

We thus find that the public lands here involved, over which complainants have raised their voices respecting aesthetics, have for some years been encumbered by specific reservations for a PGandE electric transmission line.

This Commission must assume that the many public officials involved in the various land acquisitions, in the proper discharge of their public duties, were fully aware of the existence of the PGandE right-of-way. In all the years to date, we are aware of no action having been taken looking towards the removal of such encumbrance. This record indicates that the only action taken has been a recently suggested minor realignment of a short portion of the right-of-way. Even in this present proceeding, which ran for several months and which received substantial newspaper, radio and television coverage and in which EBRPD's own employees testified in opposition to the transmission line, neither of the public agencies whose lands will be crossed informed this Commission that the PGandE transmission line would in any adverse way affect the recreational purposes to which their lands are being put or are intended to be put. We attach some significance to their lack of intervention in this proceeding. It would be contrary to reason to assume that these two districts (EBMUD and EBRPD), whose public duties involve the providing of recreational facilities, would not have themselves used or instituted the use of their powers in eminent domain to condemn the right-of-way or, in the alternative, to have been a participant in these complaint matters, if they had determined that the transmission line location was inimical to

the interests of that segment of the public which by law they represent. It is these districts which are charged with the primary responsibilities for recreation in their respective jurisdictions. Since they have not spoken, it ill behooves us to attempt to speak for them.

Turning now to the economic and time factors involved, the record discloses that the rerouting of the line whereby it would be placed across private lands not now encumbered with rights-of-way, would lengthen a 5-mile section of the line by nearly 1-3/4 miles and would increase costs by more than \$400,000 exclusive of the costs of condemning or otherwise obtaining the new right-of-way. Of the several alternate route proposals, this is the one which complainants most earnestly espoused. Complainants' proposal for undergrounding of the line, to which lengthy attention was given in this proceeding, would cost some \$16,000,000 for a line of only one-fourth of the desired capacity (even assuming it was engineeringly feasible which, we believe, the evidence clearly shows not to be the case). These added costs, completely unnecessary as far as electric power transmission is concerned, complainants would saddle upon the electric customers of PGandE and not upon the users of the recreation areas about whose aesthetic sensibilities they express such concern. The evidence shows that the minimum time for obtaining a new right-of-way is on the order of 12 months and that such period, because of litigation, might be extended for years. In this latter regard, it should be kept in mind that a public utility does not enjoy the advantage by which a public body may, through condemnation, take

immediate possession of land and pay for its taking at a later date; the public utility can not, as a matter of right, occupy the land until litigation comes to an end and damages have been paid in full. Inordinate delays in completion of this transmission line will redound to the public inconvenience. We cannot believe that a person or business caught in a "brown out" would find much solace in the prospect that at some future time he need not discover a tower line in a nearby recreation area. It is true, of course, that PGandE has suggested that if this Commission were to order a rerouting of the line, it should be permitted to construct a "temporary" overhead line along its existing right-of-way pending conclusion of litigation and construction along some alternate route. Even such a "temporary" line would cost no less than \$128,000 and in the final analysis be largely irrecoverable and a waste of ratepayers' money. We are thus led to the conclusion that the economic and time considerations run counter to the position of complainants.

Our duty, indeed our primary duty, as set forth by statute, is to assure that adequate, reliable public utility service is provided to the public at rates which are just and reasonable. This Commission can and will take into consideration questions relative to aesthetics but it should do so in association with its primary duty to assure that adequate and reliable public utility service is provided to the public at rates which are just and reasonable. The complainants herein view the proposed transmission line as aesthetically objectionable because it would cross recreational lands and potential recreational lands. These lands,

however, are owned and maintained by two other governmental agencies as hereinabove explained, to wit, the East Bay Municipal Utilities District and the East Bay Regional Park District. Recreational needs and the aesthetic aspects thereof are a primary responsibility of these two governmental agencies. Either one or both of these agencies could bar the transmission line from their property simply by condemning the existing easements if they deemed such to be in the public interest. However they not only have not done so, but as pointed out hereinabove neither of said governmental bodies has even so much as suggested to this Commission that they view the proposed transmission line as a project which would adversely affect the use of these lands from the standpoint of aesthetics, recreation, or, indeed, from any other standpoint. As sympathetic as we may be to the aesthetic sensibilities of those individuals who may use the recreational areas or who own land from which they may be able to see the transmission lines when the same are constructed upon the existing easements, we cannot place an unreasonable burden upon all the utility ratepayers merely to please those few. We reiterate that this Commission does and shall continue to evaluate and balance all public interest factors involved in matters of this kind, including both the aesthetics of the areas in which proposed facilities are to be located as well as the resulting impact on the adequacy, reliability and cost of electric service.

This Commission is deeply concerned with the preservation of green or open spaces and with the impact man-made structures and systems, such as overhead transmission lines and their supporting towers, have on the environment. It has opened investigations and established rules on underground conversions<sup>10/</sup> and extensions and

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<sup>10/</sup> Case 8209, Decision 76394, issued November 4, 1969.

is pursuing these matters<sup>11/</sup> in arriving at regulations establishing long-range standards which will preserve aesthetic amenities to the maximum extent possible.

Complainants had the burden of proof in these matters. They failed to meet it.

Findings of Fact

Based upon the evidence of record in these matters, the Commission makes the following findings of fact:

1. Electric load and load growth in the East Bay area require and will require the 230 kv transmission line now being constructed by PGandE between termini at its Pittsburg Power Plant and at its El Sobrante Substation.

2. PGandE has long held a right-of-way specifically for said transmission line, said right-of-way crossing both public and private lands between such termini.

3. PGandE ratepayers have already paid the cost of acquiring said existing right-of-way as all such costs are reflected in rates charged by PGandE. To require a relocation and therefore the acquisition of a new right-of-way would place upon PGandE ratepayers additional costs of more than \$400,000, and the evidence indicates that such additional costs might well amount to more than \$1,000,000.

4. Complainants' several suggested alternatives to the placing or routing of PGandE's line are either impracticable, engineeringly unfeasible, or unreasonably costly, and, furthermore, would do no more than transfer to and subject others to the same private feelings of distaste which they themselves express.

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<sup>11/</sup> Case No. 8993, Commission Investigation Regarding Underground Extension of all Electric and Communication Public Utilities in California; and

Case No. 9015, Commission Investigation into Requirements for a General Order on Siting of New Electric Generating Plants and Certain Electric Transmission Facilities of all Electric Public Utilities in the State of California.

5. PGandE's routing of the line is engineeringly sound and being the most direct of all routes considered is the least costly, will place the least monetary burden upon its electric ratepayers, is preferable to any of the routes selected by complainants and is not adverse to the public interest. ✓

6. Complainants have failed to establish that they are entitled to any relief in these proceedings. ✓

Conclusions of Law

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

1. The temporary restraining order by which construction of PGandE's 230 kv transmission line between Pittsburg Power Plant and El Sobrante Substation was interrupted, should be dissolved forthwith.

2. Complainants should be granted no relief upon their complaints.

O R D E R

IT IS ORDERED that:

1. Decision No. 76213, issued September 23, 1969 and Decision No. 76256, issued September 30, 1969, by which said Decision No. 76213 was modified, are and each of them is hereby rescinded, thus now terminating and dissolving the restraints therein placed upon Pacific Gas and Electric Company respecting construction of its 230 kv electric transmission line between Pittsburg Power Plant and El Sobrante Substation.

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2. Complainants are entitled to no relief upon their complaints.

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

Dated at San Francisco, California, this 3rd day of MARCH, 1970.

William S. Brown  
President

Thomas J. Brown  
Vernon L. Sturgeon  
Commissioners

*I will file a  
dissent.*

*Angela*

*I abstain. I shall issue a statement of Clarification*  
*R. B. Adams*

COMMISSIONER A. W. GATOV, Dissenting:

I dissent.

Overhead lines are one of the serious threats to the aesthetic quality of our State and one which requires urgent and immediate attention if we are to avoid irreversible damage to our natural beauty through visual pollution. The unprecedented nationwide public demand for and public commitment to environmental quality is being wholeheartedly responded to in our Legislature, in the Governor's office, in the Congress of the United States, and in the White House. The Commission majority remains blind and impervious to the tidal wave of change in its apparent view that a utility's role remains one of exclusive devotion to commercial enterprise.

The majority must, furthermore, be totally unaware of or consider meaningless the Commission's bold and promising language in its own recent Decision No. 73078, which states, for example:

" . . . . However useful and often necessary had been the seemingly total preoccupation with the engineering and commercial aspects of our utilities, the time had long passed when we could continue to ignore the need for more emphasis on aesthetic values in those new areas where natural beauty has remained relatively unspoiled or in established areas which have been victimized by man's handiwork."

With particular reference to transmission lines, the subject of the complaint, the same decision states:

"The record indicates that respondent utilities should seriously consider undergrounding of such transmission lines in conjunction with undergrounding of distribution lines carried on the same poles. If such undergrounding of transmission lines is not considered practical, then such overhead lines should be routed to another area."

Comments on some of the decision's specific language are in order.

Mimeo, p. 6: It is stated the case involves an opposition



of aesthetic versus adequacy, reliability and cost of electric service. Actually, adequacy and reliability have nothing to do with the case. It is purely and simply a question of balancing the public interest served by rerouting the line away from the park against the added cost.

Mimeo, p. 8: An attempt to discredit the complaint is made by questioning the use of the term "wilderness" area. What relevancy is there to what the area is called? No matter that they call it, it is still a park and recreational area devoted to the public use.

Mimeo, p. 9: An effort is made to justify the status quo by giving weight to the age of the present easement. This case must be decided on today's conditions, attitudes, and requirements, not those of 1957. A strawman of the flimsiest kind is also put forth by suggesting a lack of intervention by the Park District and EBMUD, both of whom are accused of being aware of the easement. This argument is meaningless because the Commission has asserted jurisdiction. What possible logic is there to the majority's posture that we should refuse to exercise our jurisdiction and perform our duty because other public agencies have not asserted theirs? The suggestion that neither of the above two agencies expressed a viewpoint in a widely publicized proceeding is, furthermore, not borne out by the record. A Park District representative who appeared with the approval of his Board testified that the proposed line would be in conflict with park usage and that the Park District did not favor it. He explained further that because of limited staff, limited funds, and higher priority projects, the District had not sought to intervene or condemn the easement. Had the District condemned the easement, it seemed certain it would have had to compensate PGandE for the value

of another easement. With its limited funds, this would be a financial obligation it could not undertake.

Mimeo, pp. 10-11: The economic and time factors on which the decision relies are likewise specious. Alternate Route "C" (about which the majority says little or nothing although it is recommended by the Staff) would cost \$400,000.00 (plus right-of-way) more than the present route. There is no meaningful conclusion to be drawn from this fact. There is no indication that PGandE would be unwilling to spend it or that it could not make the additional investment. The statement on page 10 that the ratepayers would be "saddled" with the added cost of Route "C" is not supported by the record. There is no testimony as to the effects, if any, of the added cost, and its impact on the revenue requirement in any event would be infinitesimal. The matter of cost is given misplaced weight since PGandE stated it is willing to spend additional money for aesthetic purposes, and our rule for aerial to underground conversion is a prime example of what is already being spent in the effort to eliminate visual blight.

The time factor is also an illusory basis for the decision. Prior to the hearing PGandE stated the line was needed by 1972. By the time of the hearing, however, it had moved this to mid 1970. Even so, the cross-examination of PGandE's witness disclosed various alternatives were available, including a temporary line that would provide the needed emergency capacity in 1970. The pressing need for the line in 1970 is only to provide an emergency source of energy in the event of outages in other circuits. There is no discussion of these other alternatives for emergency power in 1970. Starting at page 11, the decision again emphasizes adequacy and

reliability, though as stated these are not issues in this case and no one is arguing about the capacity or number of circuits, etc. The 1970 date, furthermore, is not a date when the line will be needed for normal service but is a fictitious date when the line is allegedly needed as an emergency source. The record exposes the flimsy nature of this contention. Page 11 again refers to the Park District and EBMUD. The Park District's man did appear and testify. In any event as stated heretofore, it is no reason for the Commission to abrogate its duty. One might note the majority directs no criticism to PGandE, although it has known of the plans for the Park for some years and done nothing about it other than to agree to some minor realignment of the easement.

Mimeo, p. 12: There is repeated here the contention that any change of the route will "place an unreasonable burden upon all of the utility's ratepayers merely to please (a) few". This is not only without a shred of support in the record insofar as Alternate Route "C" is concerned, but is in fact untrue. Moreover, any amount spent by PGandE on aesthetics could be said to be unreasonable in that it benefits only those few exposed to it; i.e., those living in a subdivision converted from overhead to underground, adjacent to a beautified substation, the minority of ratepayers who use the facilities at Lake Almanor, or those who can easily view some of PGandE's beautified offices. This reasoning was rejected in our pioneering underground decision.

Mimeo, p. 13: Whereas Findings 1 and 2 are harmless enough as preliminary findings, they do not dispose of the issue before the Commission--the balancing of the extra cost against the public interest in ordering the proposed line moved. Regarding the additional costs noted in Finding 3, the question should be: Is it

unreasonable? Finding 4 is just a conclusion. The decision gives virtually no weight to the fact that there was very little landowner objection to Alternate Route "C" notwithstanding special notice to these landowners. Finding 5 is such a classic expression of the engineering mentality viewing the new horizon through a tunnel that I quote it herewith:

"PGandE's routing of the line is engineeringly sound and being the most direct of all routes considered is the least costly, will place the least monetary burden upon its electric ratepayers, is preferable to any of the routes selected by complainants and is not adverse to the public interest."

The Utilities Division's Staff memorandum to the Commission explaining its refusal to endorse the decision states: "This concept is at odds with the Commission's policy on underground conversions and extensions (Case No. 8209). It is also at odds with the Commission's policy on generation and transmission line certification and with the proposed General Order involving these matters (Case No. 9015)."

I agree with the Commission's Staff that the decision should have been to require PGandE to design a new line.

  
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Commissioner

Dated at San Francisco, California,  
March 3, 1970.

COMMISSIONER J. P. VUKASIN, JR., ABSTAINING

STATEMENT OF CLARIFICATION

Because of the potentially far-reaching consequences and the importance of this decision, the customary brief statement of abstention is inadequate. Therefore, I submit the following Statement of Clarification.

Because I have been acquainted for many years with the original complainant in this proceeding, I deem it appropriate to abstain from participation in the fact-ascertaining and decision-making process herein.

There are, however, certain aspects of this decision which require elaboration; accordingly, I issue the following comments and observations.

This decision should not, indeed, must not, be deemed a definitive statement of this Commission's position in matters involving a conflict between environmental considerations on the one hand, and costs of producing an adequate level of service on the other hand. The Commission majority arrived at its decision, and properly so, on the facts in evidence. Facts of such peculiar nature that it is hardly likely they would ever appear in another proceeding before this body. Undoubtedly there are those whose narrow vision, preconceived notions, or political considerations, will prompt them to wail and rail at the decision of the majority herein. It would behoove them to gather the facts before commencing their program of carping criticism.

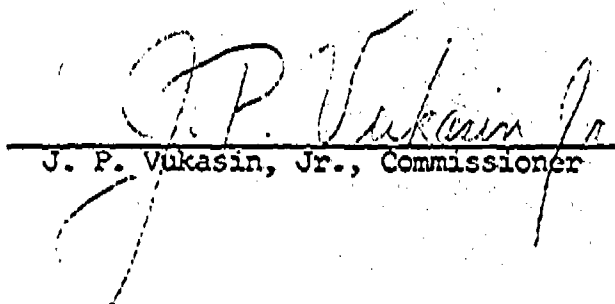
In interpreting this decision, would-be critics should be reminded that the proceeding was originally instituted by a single, private property owner who objected to having the proposed power lines within his range of view. The two parties most directly affected by the proposed construction, the East Bay Regional Park District and the East Bay Municipal Utility District, took no position in opposition to the proposed construction. No reasonable alternatives were presented by the complaining parties. Some complainants originally advocated undergrounding this proposed 230,000 volt transmission line, but abandoned this position as unrealistic upon discovering that the cost for such undergrounding would be \$16,000,000 as contrasted with the cost of \$1,000,000 for the overhead proposal, and in addition, the

undergrounding would reduce the capacity of the facility by 75 percent. The proposal finally advocated by most complainants suggested an alternate route identified as Route C. Any aesthetic advantage to this alternate route apparently escaped the majority of this Commission upon learning that it would not only still cross portions of both the East Bay Regional Park and the East Bay Municipal Utility District property but would require a transmission line one and three-fourths miles longer than the five-mile (approximate) route adopted by the majority. The Commission was not considering the proposal of a new alignment, but was requested to prohibit construction along a right-of-way that had existed for more than 15 years. On these facts, the majority of this Commission deemed the foregoing order to be appropriate.

On other facts, the Commission has, on its own motion, instituted proceedings aimed at preserving the environment, appealing to the aesthetic values, and has required the utilities under its jurisdiction to institute programs, and incur the resulting expenses, based solely on environmental considerations.

Anyone who would, as one participant in this proceeding has already done, accuse this Commission of being insensitive to the environmental needs and considerations of the citizens of this State, is ignoring facts which cannot be disputed. Any such person should be reminded that this Commission, upon its own motion, as long ago as 1965 (long before it was deemed politically astute to support environmental considerations) instituted proceedings to establish rules requiring a program of undergrounding of electric transmission facilities and other overhead wires. In addition, the Commission on its own motion has instituted an investigation into all factors and requirements on the subject of location and siting of new electric generating plants. This Commission's concern with environmental considerations has further been reflected by its own investigation into electric transmission facilities of all electric public utilities in this State.

One more aspect of this case requires comment. The members of this Commission have been bombarded by ex parte communications apparently resulting from an organized campaign waged by one of the parties to this proceeding in an attempt to influence their decision. Such conduct is not only highly improper but a violation of the laws of this State and the Rules of Practice and Procedure promulgated by this Commission. It is the responsibility of this Commission to arrive at its decision solely upon facts introduced into evidence in due and proper hearings conducted pursuant to its rules. Campaigns designed to influence the decision of this Commission by organized public pressure are distasteful and offensive. Such activity is an insult to the integrity of this Commission and a violation of one of the cardinal tenets of the Anglo-American system of jurisprudence. Those who would be inclined to attempt to exert such improper pressure or attempt such ex parte communications would be well-advised to familiarize themselves with the appropriate laws of the State of California and the pertinent Rules of Practice and Procedure of this Commission.

  
J. P. Vukasin, Jr., Commissioner

San Francisco, California

March 3, 1970