

Decision No. 77063**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHILIP H. ANGELL, JR.,

Complainant,

Case No. 8929

v.

PACIFIC GAS & ELECTRIC CO.,
a corporation,

Defendant.

SIERRA CLUB, a Non-Profit
California Corporation,

Complainant,

Case No. 8952

v.

THE PACIFIC GAS AND ELECTRIC
COMPANY,

Defendant.

SUPPLEMENTAL OPINION AND ORDER
DENYING REHEARING

By Decision No. 76883 dated March 3, 1970 it was found that complainants herein were entitled to no relief on their complaints. On March 13, 1970 complainants and intervenors filed a petition for rehearing. An answer thereto was filed by defendant on April 1, 1970. A supplement to the petition for rehearing was filed on April 6, 1970.

By way of clarification, and in order that there be no doubt as to what issues were considered material by the Commission, we issue this supplemental opinion and order.

To state that the Commission's primary duty is to determine the adequacy, reliability and cost of present and future utility

service is not to say in the same breath that economic or cost factors invariably outweigh intangibles. Our previous opinion herein should leave no doubt that the Commission will, in the exercise of such primary duty, attribute reasonable weight to the ecological and aesthetic impact of expansion of utility facilities and will balance cost factors and the impact to the ratepayers, if any, against the conservation of public resources and the preservation of scenic beauty, public recreational facilities and private property values.

It should be remembered, however, that without a specific statutory mandate of the sort relied upon in Scenic Hudson Preservation Conference v. Federal Power Commission (1965) 354 F.2d 608, such balancing must be done carefully and a clear showing that aesthetic and conservation factors preponderate must be made before the Commission will substitute its judgment for that of a utility as to the location of transmission lines and other facilities. Ligda v. Pacific Gas and Electric Co. (1963) 61 CPUC 1.

While the courts of this State have held that aesthetic factors are a proper subject for exercise of the police power, the cases so holding do not go so far as to suggest that aesthetics may be considered in a vacuum and that the police power may be exercised to arbitrate differences of taste. Desert Outdoor Advertising, Inc. v. County of San Bernardino (1967) 255 Cal.App.2d 765; 63 Cal.Rptr. 543. The aesthetic factors involved in this case must be related to their effect on the general public enjoyment of the recreational area which is the subject of this proceeding. Of course, petitioners' evidence establishes that a park or recreational area (or any other location, for that matter) is more attractive without any transmission lines located therein. Such evidence does not, however, show that necessarily or categorically

such transmission lines substantially affect the use of such areas for recreational and other public purposes. Photographic evidence of other parks and recreational areas, introduced by defendant, establishes that no such categorical claims of complainants can be substantiated.

It should therefore be clear, from this and the previous opinion, that the Commission has balanced the interests involved and decided what petitioners for rehearing deem to be the "relevant issue."

Petitioners claim the Commission also assigns undue weight to the nonparticipation of the East Bay Regional Park District (EBRPD) and ignores the testimony of Mr. Hulet Hornbeck.

While we do not suggest that inaction on the part of recreation districts directly affected in every case should be construed to mean that no action on the part of the Commission is necessary, such silence is entitled to reasonable weight in determining whether the Commission should order a utility, at the utility's expense, to relocate proposed facilities. As was stated in Ligda v. PG&E, supra,

"The Commission should only interpose its jurisdiction in adjudging public convenience and necessity in matters relating solely to aesthetics where the proposed action of a utility is of the type which would shock the conscience of the community as a whole." 61 CPUC 1, 5.

This record does not present such a case.

In any event, meaningful evidence in this proceeding would consist not of a formal resolution from EBRPD stating the District's opposition, but testimony offered by EBRPD to show how or in what manner the proposed line interferes with recreational or other public purposes of the area. None was offered.

Mr. Hulet Hornbeck, Chief of Land Acquisition and Management for EBRPD testified in favor of rerouting the line. The Board of

Directors of the District were aware he was to testify (Tr. 1131) and approved his attendance at the hearing (Tr. 1132). However, he was unable to state at any point in his testimony that his views were the official position of the District or of the District's Board, and a fair reading of his testimony would seem to indicate that in fact his views are not necessarily those of the District. For instance, this witness testified (Tr. 1123) that the Board has not considered exercising the right of eminent domain against the proposed PG&E right-of-way, that "We [the staff] have made no recommendation" to condemn the right-of-way, and the reason for this, according to this witness was "because it is the staff's feeling and belief that we have had a good on-going relationship with the Pacific Gas and Electric Company for a good number of years and the relationship is increasing." (Tr. 1123) In response to a question as to whether he sponsored or recommended any specific alternate to the proposed route, this witness answered "I do not and the District does not." (Tr. 1207-1208)

In order to further clarify the weight assigned to the evidence and various issues, the Findings of Fact in Decision No. 76883 are hereby amended to read as follows:

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 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. In authorizing the location and the cost of such transmission line, the Commission will, in the exercise of its primary duty to determine the adequacy, reliability and cost of present and future electric service in the area concerned, balance cost factors and the impact to the ratepayers against conservation of natural resources and the preservation of scenic beauty, public recreational facilities and private property values.

4. In balancing such interests, the Commission finds that:

- a. PG&E ratepayers have already paid the cost of acquiring the existing right-of-way for the aforementioned 230 kv transmission line, and all such costs are already reflected in rates charged by PG&E;
- b. To require relocation and therefore the acquisition of a new right-of-way would place upon PG&E ratepayers additional costs of at least \$400,000, plus costs of acquisition of the right-of-way, plus at least one year's delay, or, in the alternative of such delay, an additional expense of \$128,000 for a temporary line;
- c. Complainants' several suggested alternatives to the placing or routing of PG&E's line all achieve slight or minimal ecological and aesthetic advantage while causing substantial financial, service, and engineering burdens to the defendant;
- d. The evidence preponderates that the aforementioned delay of at least one year may cause an interruption or temporary breakdown in electric service in the area concerned;
- e. The preponderance of the evidence favors the immediate resumption of construction of the line as proposed by PG&E between the Pittsburgh Power Plant and El Sobrante Substation.

5. PG&E's routing of such line is the least costly of the routes considered, is engineeringly sound, violates no provision of the Public Utilities Code, nor any order of the Commission, is not unsafe, and is not adverse to the public interest.

6. PG&E's routing of such line will not materially interfere with the physical use and development of Briones Regional Park and Briones Reservoir as recreational areas.

7. Complainants have failed to establish by a preponderance of the evidence that they are entitled to any relief in these proceedings.

Conclusions of Law

The Commission has considered each and every allegation in complainants' and intervenors' petition for rehearing and concludes that good cause for rehearing of Decision No. 76883, as supplemented, has not been made to appear.

O R D E R

IT IS ORDERED that:

1. Rehearing is denied.
2. Decision No. 76883, which was suspended by the petition for rehearing pursuant to the provisions of Public Utilities Code Section 1733, is hereby reinstated, as supplemented by this opinion and order.
3. The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 7th day of APRIL, 1970.

I dissent
Argue

William J. Sproule, Jr.
President
John J. [illegible]
[illegible]
[illegible]
Commissioners

The Supplemental Opinion and Order is merely an attempt to "beef up" the Opinion and Order of March 3, 1970 with some fine-screen gleanings (some lifted out of context) from a record which does not support the majority's view. I would grant a rehearing.

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