

Decision No. 78102

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARY HARTZELL, individually
and as Trustee of the
GUISEPPINI BIAGGINI TRUST,

v.

PACIFIC GAS AND ELECTRIC COMPANY

Case No. 9075
(Filed June 8, 1970)

Charles B. Ogle, for complainant.
F. T. Searls, John C. Morrissey,
Charles T. Van Duesen, Arthur
L. Hillman, Jr., and Sanford M.
Skaggs, by Arthur L. Hillman, Jr.,
for defendant.

ORDER DENYING MOTION TO DISMISS

By the complaint Mary Hartzell, individually and as trustee of the Guiseppini Biaggini Trust (hereinafter complainant) alleges the trust owns real property located in San Luis Obispo County, comprising approximately 3,178 acres (Appendix A); that the Pacific Gas and Electric Company (defendant) proposes to install and is in the process of installing for later operation two or more nuclear fueled generating units of approximately 1,060,000 kilowatts capacity each at Diablo Canyon, and in addition thereto it proposes to install and is in the process of installing two series of 500 kv single circuit transmission lines; that one line, when completed, will extend generally northeastward 79 miles from Diablo Canyon to defendant's Gates substation in Kings County; that the line to Gates was authorized by certificates of public convenience and necessity issued by this Commission on November 7, 1967, and on March 25, 1969, pursuant to defendant's applications numbered 49051 and 50028 respectively; and that the routes for

said transmission line were shown by approximation only by defendant by map annexed to the first above numbered application.

The application further alleges that transmission lines running from Diablo Canyon to the Gates substation will cross the complainant's real property; that said property lies between State Highway 1 and northwest of State Highway 41 and adjacent to the Los Padres National Forest; that the area is dominated by the Santa Lucia Mountains, and the area is presently one of surpassing beauty; and that the topography is broken with peaks rising to 1,500 feet and much of the terrain is covered by forest.

The complainant further alleges that the transmission line route across complainant's property runs from peak to peak or prominence to prominence; that this means that although the transmission lines will be supported by a minimum number of towers, the towers necessarily stand on the most conspicuous land features; that it is obvious that the route was selected solely on the basis of a cost quotation (sic) with callous disregard to the effect on the landscape; that when completed the lines will stand hideously against the sky for as long as steel may endure, thus spoiling the beauty of complainant's property and representing a permanent intrusion into the natural state of the Santa Lucia Mountains as preserved by the Los Padres National Forest; and that these lines will be visible from a large area of said national forest and thereby constitute an imposition upon untold numbers of people who use the park for recreational purposes.

The complainant further alleges that the defendant has acquired the right of way and completed, or virtually completed, its lines along the northeasterly route from Diablo Canyon to the State Highway 1, approximately 2 miles south of complainant's property; that this is in the area of the prominence known as Point Buchon; that it is one of the few primitive areas along the entire

California coast and it is also one of the few places in California in which the rare Bishop Pine grows; that in the course of its foregoing application the defendant unequivocally represented that its construction of these facilities would leave the terrain and flora in the area undisturbed, thus minimizing the damage from the project; that these representations were false at the time they were made; that the defendant had no intention of expending the sums which would have been required to carry on construction and at this time preserve the right of way and natural state; that these representations were made for the sole purpose of inducing the Commission to grant the certificates applied for with calculated callous disregard for the public interest; that in fact the terrain has been devastated by defendant's construction effort along the right of way; and that complainant believes and alleges that the construction of the lines on the right of way to be acquired across their property will be carried on in the same manner as it was across Point Buchon; that the placement of the transmission lines along the proposed route therefore will utterly destroy scenic beauty and violate irreparably the primitive character of both complainant's property and the Los Padres National Forest; and that the proposed route of the transmission lines is against the public interest and convenience and is unreasonable and improper under existing circumstances.

The complainant further alleges that no construction has been commenced on the segment of defendant's line from a point approximately one mile south of State Highway 1; that this segment lies adjacent to Hollister's Peak, which is the most significant land feature in San Luis Obispo County; that defendant's route along this segment was deliberately lengthened, at additional cost to its consumers and the public, in order to avoid lands owned by the United States of America and thus enable the defendant to

retain its negotiating power under the law of eminent domain; that this is completely reprehensible in that it obliterates one of the most beautiful features available in San Luis Obispo County for this generation and future generations; that the entire route was selected by an employee of defendant without any significant consultation with any expert or public agency, or any other group whose interest was to be affected; that the only training or experience for this task possessed by this employee was acquired in the course of his employment with the defendant in its land management division; that unless restrained, enjoined and ordered to cease and desist constructing said transmission lines along the proposed route, complainant's property and the said Los Padres National Forest will be irreparably injured and damaged; that complainant is informed, believes, and therefore alleges that defendant has not fully studied and investigated the placement of the proposed transmission lines in such a way as to be compatible with present land use and adaptability; that defendant has disregarded aesthetics and the primitive character of complainant's property and the violence which its project does to the primitive character of the Los Padres National Forest; and that it is in the interests of the rate payers and consumers of defendant and the general public that a full study be made of the alternate routes both above and below ground, including consideration of all currently feasible undergrounding techniques in order to relocate the lines in such a way as not to inhibit the development of recreational activity in said area.

The complainant further alleges that the landowners to be affected by the construction of the foregoing facilities received no actual notice of the proceedings which resulted in the issuance of the foregoing certificates, and thus were deprived of an opportunity to be heard at a time when they could have acted in

concert and at a time further when defendant would not have been able to claim any prejudice because of acquisition of right of way or other expenditures; that at all times material in this respect defendant knew the owners of the property it proposed to traverse with its lines; and that any constructive notice which may have been given was insufficient because it did not delineate the property to be traversed or otherwise affected, and thus is void.

The complainant seeks the following specific relief:

1. That the Commission make and issue a temporary order restraining defendant from proceeding with right of way acquisition along the segment of the route defined herein, and restraining any further construction along that portion of the route which it has already acquired until alternate routes for the proposed transmission line are examined which will permit the final disposition of the matters complained of herein.

2. That the Commission order the staff of the Commission to undertake an investigation to examine all possible alternate routes and report to the Commission on the results of such an investigation.

3. That the Commission require defendant to undertake the study of alternate routes and to supply detailed cost data for construction and right of way acquisition in connection therewith.

4. That when an acceptable alternative is found, the Commission find that the current proposed route along that segment crossing complainant's property is unreasonable, improper, and against the public interest, and that the Commission make all necessary orders appropriate to enjoin, restrain, prevent and prohibit defendant permanently from constructing that portion of the transmission line of which complaint is made herein.

The defendant admits the commencement of construction of the first nuclear fueled power plant and authority to commence the

second at Diablo Canyon (Decisions Nos. 73278 and 75471); that two 500 kv transmission lines between Diablo and Gates substation will cross complainant's property; that construction of defendant's 230 kv transmission line, certificated in Decision No. 73278 and extending from defendant's Diablo Canyon power plant northwesterly approximately 10 miles to a connection with defendant's Morro Bay-Mesa 230 kv transmission line, has been completed; that the subject Diablo Canyon power plant 500 kv transmission lines are parallel and adjacent to said existing 230 kv transmission line to the point of crossing defendant's Morro Bay-Mesa 230 kv transmission line; that the alternate route proposed and prepared by counsel for complainant and presented, as hereinafter alleged, to the Superior Court for the State of California in and for the County of San Luis Obispo for those portions of these transmission lines would bisect, cut across and run through substantial portions of the Montana Del Oro State Park rather than avoid and go around said State Park as presently located by defendant; that defendant has acquired virtually all of the right of way for approximately 19.9 miles of its said Diablo Canyon-Gates 500 kv transmission line between the power plant switchstation site and the point where said transmission line joins or commences to parallel defendant's Morro Bay-Gates transmission lines; that the remainder of said transmission lines is almost entirely parallel and adjacent to the existing 230 kv Morro Bay-Gates transmission line for approximately 59.1 miles to the Gates substation; that defendant denies that said transmission line or any transmission line mentioned in complainant's complaint crosses the area known as Point Buchon, and alleges that the area known as Point Buchon is located approximately five miles to the west of the north-south line of the transmission line which crosses complainant's property; that the closest point of any of said transmission lines

to Point Buchon is at the power plant site some 3-1/2 miles from Point Buchon; and that complainant's property is approximately 10 to 10-1/2 miles from Point Buchon.

The defendant denies that said Point Buchon, located some five miles to the west of the north-south line of said transmission line is one of the few primitive areas along the entire California coast, and that it is one of the few places in which the Bishop Pine grows; alleges that the Bishop Pine grows in numerous areas along the California coast between Humboldt County and San Luis Obispo County; denies that complainant's property is primitive; and alleges that it is mostly open cattle grazing land with minimal farm improvements and with some indication of mining activities in the area in the past.

The defendant admits that no actual field construction has been commenced on the segment of defendant's 500 kv transmission line of the Diablo Canyon-to-Gates-substation route from a point approximately one mile south of State Highway 1; denies that its route was selected in order to avoid lands owned by the United States of America; alleges that said route crosses land owned by the United States of America, particularly in the first few miles out of the Diablo Canyon site and in the Los Padres National Forest, and that the location of the crossing of United States of America property has been approved by the appropriate federal agencies; and denies that the route was selected without any significant consultation with any expert or public agency or any other group whose interest was to be affected.

The defendant alleges that in formulating the route of said transmission lines full consideration was given to aesthetics, conservation, scenic recreation and primitive areas, bird sanctuary, and areas of unique flora and fauna, as well as numerous other factors, all of which were discussed in detail at the

hearings on defendant's Application No. 49051; and further alleges that the United States Department of Agriculture, Forestry Service, was consulted concerning the location of the subject transmission lines across the Los Padres National Forest, and special use permits obtained for said crossings, and further alleges that at said hearings alternate routes proposed by landowners in San Luis Obispo County were considered; and that in defendant's Application No. 50025 and in Public Utilities Commission Decision No. 75471 consideration was given to the feasibility of undergrounding transmission lines emanating from the Diablo Canyon Power Plant.

Defendant further alleges that although the Public Utilities Commission has a staff of technical personnel capable of investigating and determining the transmission line location which is compatible with the greatest public good and least private injury, and has participated in such decision, it would be a burden upon the Commission and the people of the State of California to unnecessarily investigate and review a transmission line route which has already been the subject of Commission hearings, and upon which the Commission has made its findings and decision, and, further, to review transmission line routes which have been the subject of litigation in the Superior Court of the State of California, and specifically where such litigation has been between complainant herein and defendant, and the Court has rendered its decision finding that the route presently being acquired by defendant and approved by the Commission is the route which is most compatible with the greatest public good and the least private injury, merely because complainant and her counsel are dissatisfied with the Court's finding and decision upon the issue which complainant elected to raise in said Court.

The defendant admits and alleges that it commenced discussions with and contacted property owners concerning the

subject transmission lines in November 1966; alleges that complainant was initially contacted by defendant relative to said transmission lines no later than January 10, 1967; that defendant obtained complainant's consent to survey her property through her then attorneys, and obtained the written consent to enter upon said property from complainant's tenant on March 24, 1967; that two copies of maps showing the route of defendant's Diablo-Gates 500 kv tower line which crosses the lands of the BIAGGINI TRUST were supplied complainant's co-trustee, MEDA PARACHINI, by mail on April 11, 1967; that on defendant's Application No. 49051, which concerned in part the subject transmission lines, the Commission, on February 1, 1967, ordered that notices of the hearing on said Application be published in a form prepared by the Commission at least 7 to 10 days prior to the date of the hearing in newspapers of general circulation in San Luis Obispo County, San Francisco and Los Angeles; that at the commencement of said hearing defendant herein presented evidence of such publication; that extensive hearings were conducted on said application in San Luis Obispo County on February 16, 17 and 28; March 1, 2, 29, 30 and 31; April 12, 13, 14 and 26; May 11, 12, 24, 25 and 26, 1967; that said hearings were the subject of extensive coverage by all news media in the San Luis Obispo County area, including television, radio and newspapers, and was the subject of current conversation amongst residents of San Luis Obispo County; and several landowners and attorneys for landowners whose land was crossed by the subject transmission lines examined and cross-examined witnesses, testified and presented evidence, exhibits and statements concerning the location of the subject transmission lines and proposed alternatives.

As affirmative defenses the defendant alleges that the Superior Court of the State of California in and for the County of

San Luis Obispo (Action No. 35739) rendered a decision against complainant (the Biaggini Trust) and for the defendant on the issues involved herein; that said decision constitutes res judicata against the complainant and for the defendant herein; that in complainant's (therein the defendant's) answer (Action No. 35739) as an affirmative defense complainant herein alleged:

"The requested taking by the public will not be the most compatible with the greatest public good and least private injury for the reasons that:

- (a) The plaintiff has utilized private property instead of property owned by the United States Bureau of Land Management;
- (b) The plaintiff has not utilized the most direct route from Hollister Peak, between San Luis Obispo and Morro Bay, California, to a point north of the subject property;
- (c) The route selected by plaintiff is the most suitable to it, but the most destructive and disruptive of the natural beauty and environment of the area, when other areas are more feasible, useable and less disruptive of the beauty and environment."

that on June 8, 1970, the proceeding came on regularly for trial; that the issue of the compatibility of the location of the transmission lines with the greatest public good and least private injury was tried by the Court; that on June 9, 1970, the Court rendered its decision for defendant herein and against complainant herein; and that said decision constituted res judicata against both complainant and defendant herein.

The defendant further alleges that the Superior Court had jurisdiction to rule that the transmission line is compatible with the greatest public good and least private injury in the eminent domain proceeding; that defendant herein filed its application for certification of the first 500 kv transmission line from its Diablo Canyon Power Plant to the Gates substation on December 23, 1966, and published notice of hearing thereon pursuant to the Order of the Commission; that extensive hearings

were held concerning said application, and the Commission approved and certified said transmission line; and that defendant herein has now acquired large portions of the easements and rights of way necessary for said transmission line, several of which have been acquired from landowners represented by the firm of Ogle & Gallo, attorneys for the complainant herein, and in which the location of said transmission line was either not questioned or was agreed to prior to payment.

Defendant further alleges that for defendant herein to have said transmission line constructed and operational by June 1, 1972, the date upon which Generating Unit No. 1 at the Diablo Canyon power plant is to become operational, defendant must commence necessary clearing for the construction of said transmission line by May 1, 1971, commence installation of foundations for structures for said transmission line by June 1, 1971, commence construction of the transmission towers by August 1, 1971, and commence stringing of conductors by November 1, 1971; and that it will be impossible for defendant to meet such construction and operations dates should this Commission at this time commence extensive hearings to reconsider certification already given, and a transmission line route already approved by the Superior Court for San Luis Obispo County, California.

The defendant states that not only did it obtain use permits, or the equivalent, for said transmission lines from the appropriate county administrative or governmental bodies, and consult with interested groups (including the Sierra Club and Audubon Society), and governmental agencies concerning the route of said transmission lines (including obtaining Special Use Permits from the United States Department of Agriculture, Forestry Service), and make modifications in the route of said lines pursuant to suggestions made by such bodies and groups, but, in

addition, the route of the first 500 kv transmission line from the Diablo Canyon Power Plant to Gates substation was approved and certified by the Commission in Decision No. 73278, after published Notice of said hearing pursuant to Order of the Commission, and the Route was subsequently approved by the Superior Court of the State of California in and for the County of San Luis Obispo in two separate proceedings before two different Judges; that, in addition, the route of the second parallel and adjacent 500 kv transmission line has been approved in the Superior Court of the State of California on two separate occasions before two different Judges; one of said cases being between the parties in this proceeding and constituting res judicata as to complainant and defendant herein; that appropriate certification and approval of said second parallel and adjacent transmission line will be sought from this Commission pursuant to Commission General Order No. 131 at the appropriate time; and that, at such time, notice can and will be served upon complainant and her attorneys as interested parties pursuant to Section 6 of the General Order No. 131.

The defendant requests that the complaint be dismissed.

A hearing on the defendant's motion to dismiss the complaint was held before Examiner Rogers in San Francisco on July 16, 1970. No evidence was presented but arguments by the defendant in support of the motion and by the complainant in opposition thereto were heard and the motion was submitted.

History

On December 23, 1966, the defendant herein filed its Application No. 49051 for authority to construct, install, own, operate, maintain and use a nuclear fueled power plant in Diablo Canyon, San Luis Obispo County, California, together with transmission lines and related facilities. Notice of hearing thereon was served on all possibly concerned governmental agencies

and private groups as well as individuals who indicated an interest therein. In addition, notice was published in newspapers of general circulation in San Luis Obispo, San Francisco and Santa Barbara Counties. Thereafter, commencing on February 16, 1967, and terminating on May 26, 1967, 20 days of public hearing were held, 17 of which were in San Luis Obispo. On November 7, 1967, the Commission issued Decision No. 73278 on the application which authorized, inter alia, the transmission lines generally as described.

The Commission by Decision No. 75471 in Application No. 50028 ordered applicant as follows:

"Within one month after the effective date hereof applicant shall advise all affected parties of the exact route of the transmission line for Units Nos. 1 and 2, and shall file a statement with the Commission that all parties have been advised."

By letter of May 13, 1969, applicant advised the Commission:

"All owners of properties which will be crossed by our Diablo-Gates Westerly and Diablo-Midway 500 KV lines have been contacted either in person or by mail. In each instance they were given copies of our line maps delineating the precise location of the lines."

No petition for reopening was filed by complainants, and, as recited hereinabove, the route in question, insofar as it affects complainants' property, was the subject of an eminent domain proceeding.

Decision No. 75471 also ordered applicant as follows, in part:

"In designing its plant, switchyards, and attendant facilities, applicant shall give full consideration to aesthetic values and conservation of the natural resources of the area."

The complaint herein alleges in substance that these

considerations have been disregarded insofar as the transmission route is concerned. Defendant denies these contentions. There has been no hearing by this Commission on the merits of these allegations.

The subject of undergrounding the transmission lines was raised in the hearings in Application No. 50028. The difference in cost was so extreme (\$9,407,000 as compared to an estimate of \$400,000,000 to \$500,000,000 for an 84 mile, 500 kv line) that the Commission by authorizing the construction of the overhead transmission line concluded that undergrounding was not economically feasible.

Complainants should have an opportunity to prove their contention that, contrary to the order in Decision No. 75471 set forth above, the defendant herein has disregarded aesthetic and environmental considerations in the planning of the transmission line route in question, bearing in mind that construction of any transmission line necessarily disturbs the terrain, flora and ecology of any area to some extent.

Based upon the foregoing, we find and conclude that the motion to dismiss should be denied, and that complainants should have an opportunity to show that defendant herein has unreasonably or unnecessarily disregarded aesthetic, environmental or ecological considerations in the planning of the transmission line from Diablo Canyon to Gates, contrary to the order in Decision No. 75471.

IT IS HEREBY ORDERED that defendant's motion to dismiss

is denied, and that the complaint be set for hearing limited to the issues stated in the preceding paragraph.

Dated at San Francisco, California, this 15th day of DECEMBER, 1970.

J. M. Darrin
Chairman

Augustan

William Lyons, Jr.

Steve [unclear]

Vernon L. Sturgeon
Commissioners