

ORIGINAL

Decision No. 79031

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WARREN D. CUMMINS, Complainant,)

vs.)

PACIFIC GAS AND ELECTRIC COMPANY,)
a corporation, Defendant.)

Case No. 9023
(Filed February 16, 1970)

Warren D. Cummins, for himself, complainant.
Jack F. Fallin, Jr., Attorney at Law, for
Pacific Gas and Electric Company, defendant.

O P I N I O N

Complainant, Warren D. Cummins, seeks an order from the Commission that the defendant, Pacific Gas and Electric Company (PG&E), be required to restore public utility electric service to his parcel of land located on the east side of the Eel River approximately 4 miles south of Scotia. Complainant contends that as a prior connected electric customer of PG&E, he is entitled to restoration of his electric service regardless of the costs or revenues involved.

In response PG&E maintains that the unusual facts surrounding the interruption and its attempt to restore service justify its refusal. PG&E requests that the Commission find that it does not have an obligation to serve complainant, or in the alternative, that if it does have such a duty it be relieved of it upon paying to complainant the cost of purchase and installation of a gasoline powered generator in order to prevent undue burden on its ratepayers.

The matter was heard in a public hearing before Examiner Foley on February 2, 1971, in Eureka and submitted.

Mr. Cummins had electric service from approximately 1948 to December, 1964, when a severe flood destroyed PG&E's transmission line located on his property. He stated that his parcel of land had

consisted of 23 acres located on a bend of the Eel River, but he admitted that at the present time the size of his parcel has been decreased by past floods and river action. A PG&E witness estimated that the present size of his parcel is approximately 6 acres. The land is bordered by the river on approximately 3 sides and by timber land owned by the Pacific Lumber Company on the other side. Mr. Cummins' land has only a small amount of trees on it, and essentially it consists of the land which lies between the tree line and the river bank on the bend of the river. Most of this land is apparently rock and gravel.

When the complainant originally purchased the land, it included a house and a sheep-shearing shed. These two structures were destroyed in a flood during 1955. After this flood, a three-room cabin was placed on the land. It was destroyed in the 1964 flood. Prior to 1964 the plaintiff lived on the property "at various times for various purposes" (Tr. 39). After the flood in 1964, Mr. Cummins did not build a permanent structure on his land. However, he did construct a shelter by utilizing an open-topped hopper which had floated down the river and came to rest on his property as a result of the flood action. He constructed a roof for it, and it is still there. Although Mr. Cummins owns a residence in Fortuna, at which he receives domestic gas and electric service from the defendant, he states that from shortly after the 1964 flood until 1968 he has lived on the land most of the time. Furthermore, he testified that since June of 1968 he has camped regularly on the property.

According to Mr. Cummins, he used the land prior to the 1964 flood for the purpose of raising a few head of cattle, sheep, and two or three hogs. The land was fenced to some degree at this time. Electricity was used to operate a three horsepower water pump which provided the water to grow some clover for pasture purposes, and for sheep shearing as needed. The pump is presently in Eureka for repair and storage, and there has been no livestock on

the land since 1964. The complainant stated that upon restoration of electric service to serve the pump he plans to again fence the land and engage in farming or the raising of a few livestock, although he admits that the river and flood action have reduced the amount of pasturage "quite a great deal" (Tr. 59).

In 1964, PG&E's main 12,000 volt transmission line crossed the Eel River from the west bank to the east bank onto the land owned by the Pacific Lumber Company adjacent to the complainant's land. The line then passed through Mr. Cummins' land and recrossed the river to the west side. Mr. Cummins was served by a simple drop line from this main transmission line. There was a customer's service pole with a transformer and meter also located on his land. The 1964 flood destroyed PG&E's main transmission line through Mr. Cummins' property as well as the two river crossings near his land and other crossings in the same general area. During this flood, Mr. Cummins' land was under approximately 20-25 feet of water for about two weeks.

PG&E's Fortuna district manager testified that after the flood the Eel River area on both sides of Mr. Cummins' property was in a state of total destruction. Its main electric line was completely down, and various river crossings of the line were destroyed. With regard to the two crossings near Mr. Cummins' land, the witness testified that access on both sides of the river was impossible, and that there was no way to cross the river near the complainant's land. After evaluating the situation, the district manager and other personnel determined that the best method of reestablishing service through the area was to relocate the main line on higher ground on the west side of the river. Permission was obtained from the Pacific Lumber Company, the owner of this higher ground across the river from Mr. Cummins' land, and construction of a new line was commenced on January 10, 1965. This line was completed 10 days later, and electric service was restored to the general area surrounding Mr. Cummins' property.

The manager further testified that the complainant first visited him in PG&E's Fortuna office in June, 1965. Upon requesting restoration of electric service, Mr. Cummins was asked if he intended to reoccupy the land and build on it. PG&E's witness stated that Mr. Cummins replied in the negative. On this basis, the manager took the position that the use of the land was incidental and not for essential living purposes, and, therefore, restoration of service would not be made.

This witness presented data respecting the past usage of electricity by Mr. Cummins. Prior to May, 1959, the transformer at Mr. Cummins' property was idle for an unknown period of time. On May 15, 1959 service was connected, but usage by Mr. Cummins was low during the period 1959-1964. From May, 1959 through December, 1959 Mr. Cummins was billed for 59 kilowatt hours. During 1960, his bill totaled \$14.84; for 1962, it totaled \$24.61; and for 1963, it totaled \$25.14.

PG&E also presented a senior estimating engineer, who presented testimony regarding the feasibility and costs of restoring service to Mr. Cummins' land. This witness stated that at least three different routes for a service line from the west side of the river to the complainant's land were considered. The first route is estimated to cost \$4,300, and it would have run from the main line on the west side of the river to the complainant's land in the most direct route. (See Exh. No. 2.) This route involved crossing a highway vista point, and the Division of Highways of the Department of Public Works refused PG&E's request for an encroachment permit to do this. A second route was suggested to the Division of Highways somewhat farther north of the first route. (Exh. No. 2, Route Number Two.) This second route was also rejected on the ground that the part of it which crosses the river destroyed the view from the vista point. A third route was then considered. It included that part of route number two which would cross the freeway, but then involved a longer circuitous, and presumably less observable approach to the

complainant's land. On the east side of the river it would run through land owned by the Pacific Lumber Company, the neighbor of Mr. Cummins, for a distance of 500-600 feet. The Division of Highways accepted this approach, but the Pacific Lumber Company did not. It refused to grant a 20-25 foot-wide right-of-way to PG&E for this purpose. (See Exh. No. 5.) PG&E's estimate of the cost for this third route is \$6,000. The cost might even be greater, the witness stated, because it was not clear how much merchantable timber would have to be removed and paid for by PG&E.

Finally, the witness testified that PG&E considered two routes of access on the same side of the river as the complainant's land. One was along the county road which approaches the complainant's land from the north. This road joins the state highway (U.S. 101) at the South Scotia Bridge about 2.4 miles from the access road to Mr. Cummins' land. The estimate for constructing a service connection line along this road is \$24,000. The estimate for the additional 4,000 feet of service line along the access road, which passes through land owned by Pacific Lumber Co., is \$9,000, or a total of \$33,000 for a connection from the north.

The second route on the east side of the river would involve a service line along the county road from Mr. Cummins' access road to PG&E's nearest service connection to the south. The distance is estimated to be 5.5 miles. The estimate for constructing this line is \$55,000 plus the \$9,000 for 4,000 feet of line along Mr. Cummins' access road.

PG&E's witness was questioned with regard to the possibility of extending a service line which presently runs from its main line to what is called the Fitzpatrick property. The Fitzpatrick property lies on the west bank of the Eel River, opposite Mr. Cummins' property. There is presently a service from PG&E's main line to the Fitzpatrick property for the purpose of providing electric service for a pump. This line is not connected at the present time, however, to any structure or residence of any type on the Fitzpatrick property.

The complainant requested that this line be continued across the river to his land, a distance of approximately 2,000 feet. (Exh. No. 2.)

PG&E's estimating engineer testified, however, that such a river crossing would be very expensive to build because it would require steel towers to be constructed on concrete pads which would be under water a good part of the winter season. The other routes of access studied by PG&E involved only the use of wooden poles. PG&E's witness estimated that the steel towers and concrete pads would increase the cost to three to four times the \$6,000 estimate for the proposal which is satisfactory to the Division of Highways. (Tr. 125.) No detailed cost estimate for the Fitzpatrick route was introduced by PG&E, nor did it provide an estimate of the number of steel towers required.

Based on these facts, PG&E argues that it no longer has an obligation to serve Mr. Cummins, or that if it does, it is reasonable for it to be excused from serving him by providing him with a generator. The Company points to the unprecedented and extremely destructive flood of 1964 which completely destroyed PG&E's main line which ran through Mr. Cummins' property. As a result of this flood, it was reasonable and necessary, PG&E asserts, to relocate the main line to higher ground on the west side of the river. PG&E further claims that the flood so destroyed the structures and value of complainant's land that essentially it has little or no value. In support of this contention it points to the county assessor's estimate of \$450 as the full cash value of Mr. Cummins' land for tax assessment purposes. Furthermore, the Company states that since Mr. Cummins has a residence a short distance away in Fortuna, and since it was unable to get a definite commitment from Mr. Cummins that he would rebuild the structures on the land, it was unreasonable and not in the public interest to incur the costs involved to reestablish service when it is considered that he is the

only customer on that side of the river, and that based on past experience that expected annual revenue from serving him is \$25.00.

We cannot agree with PG&E's position that it does not have an obligation to serve the complainant. He was a connected customer within defendant's service area before the flood. His location and the problem of restoration of service to him should have been considered when PG&E decided to relocate its main line.

This Commission has long held that a public utility is expected to combine less remunerative services with the profitable ones; and that it cannot refuse to comply with a request for service because it is less profitable or unprofitable when the party or parties making the request are bona fide residents in the utility's service area. (Ewalt v. Midland Counties Public Service Corp. (1918), 15 C.R.C. 355; Southwestern Home Tel. Co. (1924), 24 C.R.C. 479.) More recently we have held that a water company has a duty to repair its facilities, if damaged, as necessary to render adequate service when the complainant is located in the utility's dedicated service area. [Engel v. C. Henry (Friendly Acres Water Co.) (1962), 59 Cal. P.U.C. 457.] Similarly, we ordered resumption of railroad passenger service between Willits and Eureka through the Eel River Canyon after it was interrupted as a result of the same flood involved in this case, despite the fact that the costs of repair work would be greater and the passenger service had suffered a loss of \$40,100 before taxes for the year 1964. [App. Northwestern Pacific R.R. (1966), 65 Cal. P.U.C. 376; see also Sweetheart Lake, Inc. v. Carolina Power & Light Co. (1937), 17 P.U.R. (N.S.) 524.]

PG&E cites State ex.rel. Caster v. Southwestern Bell Tel. Co. (1918), 1970 Pac. 26, in support of its position. This case is not applicable in that although the utility had dismantled its line to the complainant after it was destroyed by a storm, the utility had restored service by another, albeit more expensive, route. Under these circumstances, the utility was not required to rebuild the original line as requested by the complainant. The telephone company

had fulfilled its public utility obligation by reestablishing service over the longer route.

Assuming an obligation to serve Mr. Cummins, PG&E maintains that it should be excused from meeting this duty because it has pursued all reasonable courses of action for restoring service, but such restoration at reasonable cost has been prevented by the denial of the necessary encroachment rights and is now "impossible". In advancing this position, PG&E emphasizes that an unforeseen act of nature caused the problem, that the service is not for domestic use, and that the complainant's land is gradually disappearing into the river.

Admittedly the facts are unusual, and since the complaint was filed PG&E has endeavored to find a relatively inexpensive avenue of approach for a service line to solve the problem. The fact that the service will undoubtedly be unprofitable is not decisive, however, since a public utility can seek rate relief to reduce the effects of unprofitable operations when they adversely affect its overall rate of return.

Undoubtedly there are situations in which the expenditure of funds to restore service to one customer for non-domestic purposes would be found to be prohibitive.^{1/} The record in this case, however, is not sufficient to support such a holding. On this record, the Commission concludes that PG&E has not justified its claim of "impossibility" for restoring service to the complainant. Nor has it shown that the burden on its other ratepayers would be so great as to be held an unreasonable burden on PG&E's other ratepayers. Service can be restored by the route along the county road from the South Scotia Bridge.

^{1/} In App. of East Bay Water Co. (1919), 17 C.R.C. 502, the Commission held that a water utility is not required to maintain expensive standby facilities for possible use by one large consumer when such additional use would seriously deplete the supply of other consumers.

Moreover, it appears that the Fitzpatrick route may be practical at even less expense. According to PG&E's own exhibit, the distance from the Fitzpatrick pump to the complainant's former pump site is about 2,000 feet. This is the shortest distance between the complainant's pump site and a line of PG&E. Apparently there would not be any right-of-way problems for this route because the main transmission line crossed the river at this point before it was relocated. (Tr. 79-80.)

The Fitzpatrick pump is approximately 600-700 feet from the riverbank, and it is located in a backwater area where, according to PG&E's district manager, even during the 1964 flood PG&E's poles were not destroyed. (Tr. 150.) PG&E's estimating engineer did not explain how many steel towers would be necessary for a river crossing at this point in light of the fact that part of the route lies in a backwater area. His rough estimate is only that such a service connection could be constructed for \$18,000 to \$24,000. This estimate is less than the \$33,000 cost estimated for the route along the county road from the South Scotia Bridge. We conclude that PG&E should present a detailed cost estimate for the Fitzpatrick route before it is so casually rejected.^{2/} We will so provide in the order herein.

Nor is it clear on this record that the one route which the Division of Highways does approve cannot be adjusted in some way to avoid, either wholly or substantially, the 500 to 600 foot right-of-way on the land of the Pacific Lumber Co. If a route with a shorter right-of-way is possible perhaps the lumber company would reconsider

^{2/} It may be that if the steel towers for this river crossing would harm the view from the Division of Highways' vista point, it might reconsider its position with regard to the two routes for which it has refused encroachment permits. PG&E should investigate and discuss this situation with the Division of Highways.

its position on this question. If this can be done, reconnection via this route may be the least expensive of all possibilities.^{3/}

In summary, the Commission concludes that PG&E should make further efforts in the light of this decision to fulfill its public utility obligation to restore service to the complainant. We will grant PG&E's request that it need not commence any actual construction of a service connection until the complainant has had his pump repaired, emplaced and ready for service with whatever other equipment is normally required to be supplied by the customer under PG&E's applicable tariff.

Findings of Fact

1. Complainant was formerly provided public utility electric service by PG&E at his property located on the east side of Eel River approximately three miles south of the South Scotia Bridge in Humboldt County.

2. This electric service was interrupted as a result of the destruction of PG&E's main transmission line, which passed through the plaintiff's property, during a severe flood in 1964.

3. PG&E relocated the main transmission line to higher ground on the west side of the Eel River in January, 1965. Upon request by the complainant for restoration of electric service to his land, PG&E refused to reestablish such service.

4. There are at least three routes by which service can be restored to the complainant: (1) the route via the county road from the South Scotia Bridge; (2) the Fitzpatrick route, upon which PG&E did not present any detailed cost estimate; and (3) some adjustment of the third route submitted to and approved by the Division of

^{3/} There also seems to be a possibility that PG&E could utilize the old main transmission line right-of-way on the east side of river to reach plaintiff's land. (Tr. 79.) PG&E's witness did not explain why it could not reach plaintiff's land by utilizing the old transmission line's right-of-way from the former river crossing at the south end of Stafford. (Tr. 79-80.)

Highways so as to substantially reduce or eliminate entirely the need for a right-of-way on the land of the Pacific Lumber Co. The estimates of expense involved in restoring service via one of these routes range from \$6,000 to \$33,000. An expenditure within this range for this purpose is reasonable, and does not constitute an unreasonable burden on defendant's ratepayers.

5. The complainant does not have his pump located on his property and in serviceable condition ready to operate at this time.

Conclusions of Law

1. PG&E has a public utility obligation to restore electric service to the complainant upon request for such reconnection.

2. PG&E should be required to install at no cost to complainant the line and service connection necessary to restore electric power to complainant's property as previously provided to the plaintiff.

O R D E R

IT IS ORDERED that:

1. If complainant, Warren D. Cummins, shall file a written request with defendant, Pacific Gas and Electric Company, for restoration of electric power service to his property located on the east side of the Eel River approximately three miles south of the South Scotia Bridge, and provided that complainant has had his pump repaired and relocated on his property, defendant shall restore such service within 120 days after the filing of said request. Restoration of such service shall be by the least expensive route that defendant can arrange. The service so provided after reconnection shall be in accordance with defendant's effective tariff schedules, including the rates and rules therein, now on file with this Commission.

2. If and when the written request referred to in paragraph 1 of this order is filed with the defendant,

a. Within ten days thereafter, defendant shall inform the Commission in writing the date of the request.

b. Within sixty days thereafter, defendant shall inform the Commission in writing as to which route it intends to use in order to reestablish service, including:

- (1) A detailed cost estimate for the Fitzpatrick route, as discussed in the decision above;
- (2) A report on what efforts have been made regarding possible adjustment of the route acceptable to the Division of Highways in order to accomplish reconnection; and
- (3) A detailed cost estimate of the defendant's plan for reconnection.


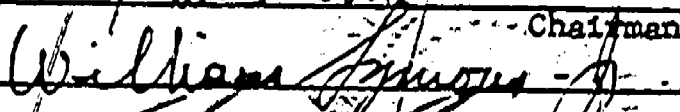
c. Within ten days after the requested service has been provided, defendant shall inform the Commission in writing the date on which such service was completed.

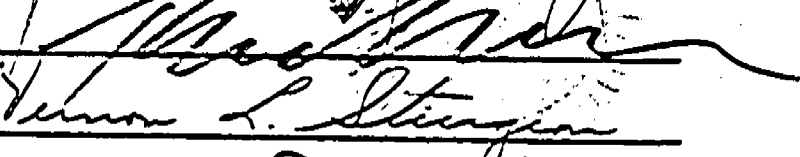
d. Copies of the above reports to the Commission shall be mailed to the plaintiff.


The Secretary of the Commission is directed to cause a certified copy of this decision to be served upon defendant Pacific Gas and Electric Company and to mail a copy thereof to the complainant herein.

The effective date of this order shall be twenty days after service on defendant.

Dated at San Francisco, California, this 10th day of AUGUST, 1971.


 _____ Chairman





 _____ Commissioners