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ORIGINAL

Decision No. 82699

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY and PACIFIC LIGHTING SERVICE COMPANY for an order,

(a) determining and deciding pursuant to the jurisdiction conferred by Section 11592 of the California Water Code the character and location of new facilities required to be provided by the Department of Water Resources pursuant to Article 3, Chapter 6, Part 3, Division 6 of the California Water Code;

(b) directing and requiring the Department of Water Resources to provide and substitute such facilities of Applicants to be taken or destroyed by said Department; or, in the alternative, to reimburse the Applicants for necessary costs incurred in the relocation of their facilities;

(c) determining and deciding all controversies between Applicants and the Department of Water Resources concerning the requirements imposed by Article 3, Chapter 6, Part 3, Division 6 of the California Water Code; and

(d) granting other appropriate and joint relief.

Application No. 53549

(Filed August 25, 1972)

Loren Miller, Jr. and Robert Salter, Attorneys at Law, for applicants.
Evelle J. Younger, Attorney General, Iver E. Skjeie, Assistant Attorney General, and Richard D. Martland, Deputy Attorney General, by Richard D. Martland, for State of California Department of Water Resources, respondent.
Elmer Sjostrom, Attorney at Law, for the Commission staff.

O P I N I O N

The application was filed as the result of a petition before the Federal Power Commission (FPC) for the licensing of the Department of Water Resources (DWR) Project No. 2426 (Pyramid Dam and Reservoir) which will occupy lands belonging to the United States and is part of a hydroelectric generating facility. The construction of the dam will necessitate the relocation from one area to another area on such lands (Exhibit A of Exhibit 1) of two natural gas pipelines owned and operated by applicants[1/] which were originally located on the federal lands pursuant to permits issued by the United States.

The necessity for the relocation, the length of lines, the route over which the lines will be relocated, and the cost of relocation are not in dispute. In dispute is the question of who should pay for the relocation, DWR or applicants.

1/ This relocation has already been accomplished pursuant to a written agreement between the parties, which agreement preserved all parties' rights (Exhibit 1).

The permits pursuant to which the pipelines were originally located on federal land[2/] provide in part:

> "...the Southern California Gas Company hereby stipulates that the use of the right of way will not be allowed to interfere in any way with the use of the power site lands for power purposes and that the Southern California Gas Company, its successors and assigns, waive all rights to compensation for damages that may be caused to its property on power site lands by future power development and the Southern California Gas Company agrees to take the grant of such right of way subject to conditions laid down by the Power Commission."

An FPC examiner found, after a hearing, that applicants were responsible for the cost of relocating their pipelines. They seek, by the herein application, to place this responsibility on DWR under California Water Code Section 11590.

The application was filed on August 25, 1972. On October 24, 1972, the Attorney General of California filed a document entitled "Special Return of Respondent Department of Water Resources of the State of California to Application No. 53549 By Way of Motion to Dismiss for Lack of Jurisdiction", together with points and authorities in support thereof. On January 19, 1973 applicants filed a memorandum of points and authorities in response to the motion to dismiss, and on January 22, 1973, the motion was argued and submitted.

The motion to dismiss was based on claimed lack of jurisdiction by this Commission. In response, the applicants quoted sections of the California Water Code which provide that the DWR shall not take or destroy public utility property in connection with the construction of the California Aqueduct unless it has

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2/ Exhibit I to Exhibit 1 (stipulation of facts).

provided substitute facilities (Section 11590); that the cost is a part of the project cost (Section 11591); and that if the DWR and the utility cannot agree as to the character or location of the new facilities, the issue shall be decided by this Commission (Section 11592). Applicants alleged that the DWR has undertaken the construction of the California Aqueduct which construction will include the filling of the Pyramid Dam resulting in the submersion and destruction of certain of applicants' properties and that DWR denied that it has any obligation to relocate or furnish substitute facilities. The applicants further alleged that the DWR applied for a license from the FPC and the FPC examiner ruled that the DWR has no obligation to relocate or substitute facilities for applicants.

In denying the motion to dismiss (Decision No. 81107 in this application), we said that: "Except for the added fact that an examiner for the FPC had made an intial ruling that the DWR has no obligation to pay any of the costs of relocating applicants' facilities, this application is controlled by the decisions of this Commission under Application No. 48869, the application of the Oroville-Wyandotte Irrigation District, and particularly Decision No. 72200, wherein it is stated that the position of the DWR was that 'if the parties hereto are in conflict, then exclusive jurisdiction lies in the Federal Courts because each of the parties are (sic) Federal Power Commission licensees and only the Federal Courts can determine the duties and liabilities of such licensees under the provisions of the Federal Power Act.'"

In Decision No. 72200, we said: "We disagree. There are without question areas of responsibility which lie exclusively within federal jurisdiction. The problem posed by the application here is one that, as we see it, falls squarely within Section 11592 of the California Water Code and in which we do have jurisdiction."

The foregoing quote is apposite.

In its argument for dismissal herein, the DWR cited and relied on the initial decision of the FPC examiner, supra. In that decision the examiner relied on three United States Supreme Court decisions for the proposition that "the law is well settled that in a case of such conflict it is the Federal Power Act and not the state statute which is controlling." (See First Iowa Hydro-Electric Cooperative v Federal Power Commission (1946) 328 US 152, 90 L ed 1143; City of Tacoma v Taxpayers of Tacoma (1958) 357 US 320, 2 L ed 2d 85; City of Seattle v Beezer (1964) 376 US 224, 11 L ed 2d 656; reversing Beezer v City of Seattle (1963) 62 Wash 2d 569.)

We said we found no conflict between the state statute and the Federal Power Act, and that, therefore the decisions cited by the DWR are not in point.

On March 6, 1973 the Commission issued Decision No. 81107 denying the motion to dismiss.

On July 10, 1973 a hearing on the merits of this application was held before Examiner Rogers in Los Angeles. At that hearing the parties submitted a written stipulation of facts (Exhibit 1) and were given time to file opening and closing briefs. The closing briefs were filed on October 1, 1973, at which time the application was submitted. The stipulated facts are:

1. The DWR is constructing dams, reservoirs, and power plants on private and federal lands in Los Angeles County which are collectively known as the West Branch Division of the California Aqueduct. These facilities are part of the "State Water Facilities" defined in Water Code Section 12934(d).

2. Applicants are public utilities within the meaning of Water Code Section 11590 and operated and maintained two natural gas pipelines 26 inches and 22 inches in diameter, which had to be relocated to permit construction and operation of Pyramid Dam and Reservoir features of the West Branch Division of the California Aqueduct. Applicants' gas pipelines constitute a "line or plant" within the meaning of Water Code Section 11590.

3. A portion (13,831 feet) of applicants' gas pipelines is located on lands belonging to the United States and a portion (5,227 feet) on private lands (Exhibit A).[3/]

4. Those portions of applicants' gas pipelines located on lands belonging to the United States are located pursuant to permits issued by the United States (Exhibits B to K).

5. Pursuant to an agreement between the parties, the gas pipelines have been relocated along the route shown in green on Exhibit A, without prejudice to the rights of either party to contest its liability for the cost of such relocation and the forum in which such liability shall be determined.

6. On or about July 24, 1972 applicants commenced construction of their new pipelines and on or about October 31, 1972 they completed and began the operation thereof.

7. The cost of the relocation was $560,534.75 and, pursuant to agreement (Exhibit L), the DWR paid to applicants $560,534.75 for the relocation.

8. The payment of $560,534.75 by the DWR was without prejudice to its rights and obligations under this application.

9. Prior to the filing of this application, the DWR caused to be filed an application before the Federal Power Commission of the United States (FPC) seeking a determination that the Pyramid Dam project was a federal power project.

3/ All exhibits are attached to the stipulation, Exhibit 1.

10. The hearing before the federal hearing examiner included, as an issue, whether the permits by which applicants and others located their pipelines on lands belonging to the United States required applicants to relocate such lines at their own expense.

11. An initial decision[4/] has been issued by the hearing examiner of the FPC adverse to applicants on the question of the cost of the relocation. The initial decision was issued on January 14, 1972 and has not been adopted by the FPC at this date.

The applicants rely on the provisions of Sections 11590 through 11592 of the Water Code of California,[5/] which read as follows:

> "Sec. 11590. The department has no power to take or destroy the whole or any part of the line or plant of any common carrier railroad, other public utility, or state agency, or the appurtenances thereof, either in the construction of any dam, canal, or other works, or by including the same within the area of any reservoir, unless and until the department has provided and substituted for the facilities to be taken or destroyed new facilities of like character and at least equal in usefulness with suitable adjustment for any increase or decrease in the cost of operating and maintenance thereof, or unless and until the taking or destruction has been permitted by agreement executed between the department and the common carrier, public utility, or state agency.
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> "Sec. 11591. The expense of the department in complying with the requirements of this article is part of the cost of constructing the project.

4/ The initial decision is Exhibit 1 to the "Special Return of Respondent Department of Water Resources of the State of California to Application No. 53549 by Way of Motion to Dismiss for Lack of Jurisdiction".

5/ These statutes were effective on January 13, 1934, and have not changed in any manner significant to this case up to the present day.

> "Sec. 11592. In the event the department and any common carrier railroad, other public utility, or state agency fail to agree as to the character or location of new facilities to be provided as required in this article, the character and location of the new facilities and any other controversy concerning requirements imposed by this chapter shall be submitted to and determined and decided by the Public Utilities Commission of the State."

Jurisdiction

We have held and we reaffirm that under the sections quoted we have jurisdiction to determine the rights involved (Oroville-Wyandotte Irrigation District, Decision No. 72200, Application No. 48869 (1967) 67 PUC 38, and Oroville-Wyandotte Irrigation District, Decision No. 74542, Application No. 48869 (1968) 68 PUC 616). In the latter decision we said:

> "This Commission has jurisdiction to resolve the present controversy under Sections 11590-11592 of the Water Code. The peculiar circumstances of this case are a prototype of the situation which the sections were designed to solve. It is difficult to conceive how any Commission action could interfere with the jurisdiction of the Federal Power Commission. The latter agency is not concerned with local disputes other than to insure that sponsored projects are efficiently constructed to perform their stated functions. It has been suggested that Section 803(b) of Title 16 of the United States Code Annotated will render this Commission's order a nullity. Said section merely provides that except in emergency, no alteration should be made in the plans of a licensed project without prior Federal Power Commission approval. The legal authorities which construe this section indicate that the best plan for the project under consideration should be adopted by the Federal Power Commission. The best plan is further characterized as the one which most efficiently provides for the local public need. There will be no jurisdictional conflict with either the Federal Power Commission or the Federal Court."

The Initial Decision of the Federal Power Commission Hearing Examiner

The DWR relies strongly on the FPC examiner's decision. This document, which was filed by the FPC examiner on January 14, 1972, and has not been accepted by the FPC, holds that neither Pacific Lighting Service Company (PLS Co) nor Southern California Gas Company (SoCal) is entitled to compensation for the costs of relocating its pipeline through the dam and reservoir area. As the applicants state in their brief, and we agree: "The initial decision relied on by the DWR is not a final decision of the Federal Power Commission and cannot be relied on to strip this Commission of the jurisdiction granted by the Water Code." (See Herrin Transportation Company, Inc. v United States, 186 F Supp 777-789, Aff'd (1961) 366 US 419, 6 L ed 2d 387.)

Terms of the Original Pipeline Construction

Attached to the Stipulation of Facts (Exhibit 1) are various exhibits.

1. The 22-inch Pipeline. Exhibit B is a letter dated September 9, 1955 from the FPC to the Bureau of Land Management (BLM). It refers to the application of SoCal for a permit to construct its pipeline (the 22-inch line) on federal lands and notes that such lands have previously been withdrawn for various power purposes. As a condition to its approval of the permit, the FPC stated (Exhibit B, page 3):

> "Approval is further subject to the condition that all improvements and structures constructed by the applicant found to be in conflict with power development on the subject lands will be removed or relocated at no cost or liability to the United States, its permittees or licensees."

That this condition was known to and accepted by SoCal when it received its right of way is made abundantly clear by the correspondence and agreements submitted in the stipulation.

Exhibit C is a stipulation[6] between the United States Forest Service and SoCal. It reflects that the proposed pipeline will pass through the Angeles National Forest. As a condition to its approval, the Forest Service, through the stipulation, provided:

> "NOW, THEREFORE, in consideration of the granting of the right-of-way applied for, the Applicant does hereby stipulate and agree, and does bind itself, its successors and assigns as follows, to wit:
>
> "8. This easement is issued subject to all rights for electric transmission lines or other power purposes as may be determined by the Federal Power Commission and it is understood that the Applicant shall fully protect such rights in a manner satisfactory to the holder thereof and to the Federal Power Commission."

Exhibit D is a decision[7] of the Bureau of Land Management and reflects the last step in the authorization procedure. It provides in part (second page, first full paragraph):

> "Pursuant to Sec. 28 of the Act of February 25, 1920, supra, and the regulations thereunder approved June 24, 1952, as amended December 11, 1953, the right-of-way, as shown on the map filed January 27, 1955, with the application, is hereby approved, subject to all valid existing rights; also to the terms and conditions set forth in the regulations (43 CFR 244.9); the stipulation signed April 27, 1955, as affecting the National Forest; but reserving rights-of-way for ditches and canals constructed by authority of the United States; and further, subject to the provisions and reservations of Sec. 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075), as to the lands included in the power site classifications."

6/ Dated April 27, 1955.

7/ Dated September 30, 1955.

2. The 26-inch Pipeline. The 26-inch gas pipeline of PLS Co is covered by Exhibits E through K. Exhibit E is a letter[8] from the FPC to the Secretary of the Interior advising him under what conditions the FPC will permit the gas pipeline of SoCal (the predecessor of PLS Co) to be located on federal lands. The letter cites the following action of the FPC:

> "Now, therefore the Commission determines:
>
> "That the value of the power-site lands affected by said proposed gas pipe line will not be injured or destroyed for the purposes of power development by use for right of way for said pipe line and consents to its location, subject to the reservation as specified in section 24 of the Federal water power act and to a stipulation to be executed by said Southern California Gas Company that the use of the right of way will not be allowed to interfere in any way with the use of the power-site land for power purposes and that the company, its successors or assigns, waive all right to compensation for damages that may be caused to its property on power-site lands by future power development.
>
> "And that the Secretary of the Interior be so notified."

Exhibit H[9] reflects that the Register of the United States Department of Interior was directed by the Commissioner of the Department of Interior to secure from SoCal the stipulation requested by the FPC. The Register was required to secure a stipulation that SoCal "... waive all rights to compensation..."

Exhibit I reflects the stipulation[10] submitted to the Department of the Interior by SoCal and provides:

> "In regard to the above subject matter, the Southern California Gas Company hereby stipulates that the use of the right of way will not be allowed to interfere in any way with the use of the power site lands for power purposes and that the Southern California Gas Company, its successors and assigns,

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8/ Dated December 22, 1932.

9/ Dated May 17, 1932.

10/ Dated June 16, 1932.

> waive all rights to compensation for damages that may be caused to its property on power site lands by future power development and the Southern California Gas Company agrees to take the grant of such right of way subject to conditions laid down by the Power Commission,"

Exhibit G[11/] reflects the stipulation pursuant to which SoCal secured approval from the United States Forest Service to construct the 26-inch pipeline. The stipulation provides:

> "NOW, THEREFORE, in consideration of the granting of the right of way applied for, the Applicant does hereby stipulate and agree, and does bind itself, its successors and assigns as follows, to wit:
>
> "11. This easement is issued subject to all rights for electric transmission lines or other power purposes as may be determined by the Federal Power Commission; and it is understood that the Applicant shall fully protect such rights in a manner satisfactory to the holder thereof and to the Federal Power Commission. At the request of the Secretary of Agriculture, the Applicant, its successors or assigns, shall, within a period not to exceed six months thereafter, abandon, without compensation, and remove all its property used or useful in the operation of the said right of way, situated on National Forest lands within an area that may be flooded by a reservoir created by the construction of a dam located on Piru Creek approximately in Section 3, T. 6 N., R 18 W., S. B. M., and known as the Los Alamos reservoir."

11/ Dated February 11, 1932.

Exhibits J and K reflect the final steps in the approval procedure. Exhibit J[12/] provides in part:

> "However, the Federal Power Commission has advised this office that it has determined that the value of the lands affected will not be injured or destroyed for the purpose of power development by use for the right of way for the pipe line and that the Commission consents to the location of the pipe line subject to section 24 of the Federal Water Power Act and to a stipulation that the use of the right of way will not be allowed to interfere in any way with the use of the powersite lands for power purposes and that the company, its successors or assigns waives all right to compensation for damages that may be caused to is (sic) property om (sic) power site lands by future power development. The Company has filed stipulations executed June 13, agreeing to accept the grant subject to the conditions laid down by the Power Commission, the stipulations including in addition provisions in accordance with departmental instructions of February 21, 1931 relative to operating as a common carrier and to conveying oil or gas produced in conformity with State or Federal laws."

The Federal Permits

The DWR argues that when Congress enacted the Federal Power Act (FPA) in 1924 (16 U.S.C. 791(a) et seq.), it evidenced through Section 24 of the Act (16 U.S.C. 818) its clear intent that federal land suitable for power development purposes should be preserved, and that it is clear from Section 24 that, upon the filing of an application for a power license, the federal lands covered by such application are automatically withdrawn from entry under the public land laws until expressly restored by the FPC.

12/ Dated August 30, 1932.

Section 24 begins:

> "Any lands of the United States included in any proposed project under the provisions...of this title shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress..."

DWR says that since the enactment of the FPA, many lands have automatically been withdrawn, and remained withdrawn, by virtue of the above language; that the lands involved herein are typical; and that Exhibit A (map on Exhibit 1) shows that a substantial portion of the federal lands to be occupied by Pyramid Dam and Reservoir were withdrawn as early as 1925.

The DWR further argues that, with regard to withdrawn but undeveloped federal lands, the FPC has long permitted interim use of such lands under conditions which preserve their potential for power development; that one of the earliest and chief concerns of the FPC regarding these authorized interim uses was that the builders of power projects not have to incur major relocation cost as a result of such interim uses; and that for example, in its Annual Report for 1929, the FPC stated (at pages 8-9):

> "Those which give the greatest concern are the prospective transportation facilities which conflict with potential reservoir sites. The majority of these cases occur in the arid regions of the Western States, where conservation of flood waters is vital to future progress and development. On most streams the feasible storage sites existing are insufficient for complete control of the water resources, and therefore, it is highly desirable that there (sic) value for such purposes should not be seriously impaired.

Experience has demonstrated that the cost of water-storage development may easily be doubled by the obligation of relocating transportation facilities existing in the reservoir site. In some cases the outlay required for such work is so great as to render development wholly impracticable. Many of the most favorable water-storage sites are already burdened to such extent with railroad lines constructed years ago that their present economic usefulness has been largely destroyed.

"Reservoir sites must be developed where they are found, whereas in the case of roads and railroads considerable latitude of location may be exercised with usually only minor effect on the cost or convenience of the improvement. At the same time it must be recognized that utilization for water storage may not always represent the highest use, since transportation facilities likewise serve the public interest. Cases arise where the added cost of construction through adoption of a route which avoids interference with a potential storage site would exceed the net value of the public interest in the reservoir. Generally such conditions will exist only when the probable use for water development is remote.

"Clearly under the circumstances it is necessary to analyze each specific problem separately to find the best solution, but the commission is endeavoring to develop a broad general policy which will permit temporary occupancy and use of the power reservations on terms which are fair to the permittee and at the same time safeguard the eventual use for water development from unreasonable burdens."

DWR says that the conditions placed in federal permits reflect the FPC's continuing efforts to preserve power sites, while at the same time authorizing interim use of such sites; that the conditions contained in applicants' permits are not unique; and that the FPC's annual reports for the years ending June 30, 1933 and 1934 show that similar conditions have been included in interim use permits.13/

DWR states that if the applicants had not accepted the conditions in the permits, they would not have been permitted to occupy federal land, and the instant dispute would not exist; that now, on federal lands, they urge the conditions are meaningless because Section 11590 purports to relieve them of the conditions; that Congress and the FPC, not the states nor commissions, determine the rights and obligations of those who occupy federal lands or navigable waters to construct power projects; and that this principle has been recognized and applied by the United States Supreme Court. (See City of Tacoma v Taxpayers of Tacoma (1958) 357 US 320 78 Sup Ct 1209, 2 L ed 2d 1345; First Iowa Hydro-Electric Cooperative v Federal Power Commission (1946) 328 US 152, 90 L ed 1143.)

The DWR states the FPC issued the interim use permits to applicants on the assumption that the interim use to be made of the federal lands by them would be secondary and would not interfere in any respect with the ultimate development of such lands for power purposes; that if applicants prevail in their contention that Section 11590 unilaterally relieves them of the conditions in their permits, such result would defeat the very

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13/ See permits issued to Arizona Mountain State Telephone and Telegraph Company, p. 100, 1933 Annual Report; California-Western Pacific Railroad Company, p. 109, 1933 Annual Report; and California Division of Highways, p. 66, 1934 Annual Report.

objective which the FPC sought to achieve by including such conditions in applicants' permits; that this would mean that the FPC could impose no conditions on the interim use of federal lands which would not be subject to unilateral change by state legislatures; and that such a situation would constitute a fundamental interference with the powers of the FPC.

The applicants state that in each of the cases relied upon by the DWR, the state laws effectively blocked federal projects through the prohibitions under state laws; that such is not the case here; that the Water Code provisions do not prevent the federal license applicant from any action toward the completion of the proposed project; that rather they require the DWR to relocate lines, of either a public entity or public utility, that had or would be taken pursuant to the California Aqueduct project; that in the Washington case, the state law was being used to effectively halt the project; that in the Iowa case, the law required a condition precedent, i.e., a state license, before a project could be licensed by the FPC; that this created a posture whereby the state could veto a federally sponsored project by denying a license; and that here there is neither a possible conflict with federal law nor could the Water Code provisions be used to block the project in that the Water Code merely fixes the responsibility for the relocation of property taken pursuant to the proposed project; and that the United States Court of Appeals for the Ninth Circuit, in the State of California, acting by and through the Department of Water Resources v Oroville-Wyandotte Irrigation District, 409 F 2d 532 noted at 536:

> "The Department urges that First Iowa Hydro-Electric Cooperative vs. FPC 328 U.S. 152, 66 S. Ct. 906, 90 L. Ed. 1143 applies. In that case the FPC refused to issue a license until the applicant obtained approval from the state. The Court held that this gave

> the state a veto power over federal projects and destroyed the effectiveness of the Federal Power Act. In the present case, however, the California Public Utilities Commission does not have a veto power over the Department's Oroville Dam project. It is merely charged with the duty of determining the liability for damage done by one California agency to the property of another. (Emphasis added.)

The applicants state that it is sufficient to note that here this Commission has no veto power over the Pyramid Dam Project; that it is merely charged with the duty to determine the liability for damage done by the DWR to the property of the applicants pursuant to Sections 11590 and 11592 of the Water Code of the State of California; and that this Commission has heard and rejected the identical arguments of DWR on several prior occasions and should reject them in this instance. (Oroville-Wyandotte Irrigation District (1968) 68 CPUC 616; County of Butte (1964) 62 PUC 537; and Feather River Railway (1963) 61 CPUC 728.)

Discussion

We do not quarrel with applicant's characterization of the Commission's holding in Oroville-Wyandotte nor with their characterization of the nature of the arguments made by DWR as respects Sections 11590 and 11592 of the Water Code. We believe that decision

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to be sound based upon the facts peculiar to it. This matter, however, brings into play an important factual situation that was not present in Oroville-Wyandotte which we believe distinguishes it from that proceeding and calls for a different result.

In our opinion, the sole responsibility for the expense of moving their transmission lines should be on the applicants. At all times during the negotiations leading to the granting of the authority to locate the lines, the responsible governmental bodies advised the applicants that they might be required to relocate the lines and in each instance the applicants indicated that they were aware of that fact and agreed to accept the responsibility. It is difficult to imagine more precise language informing applicants of their responsibility to remove the lines without compensation than is contained in the correspondence (Exhibit B, page 3, and Exhibit G, page 3, of Exhibit 1).

To us, the language of the various documents is clear and convincing. The applicants received permission to place their transmission lines on certain lands on condition that when the land was needed for power site purposes, the applicants at their own expense would relocate the lines.

Applicant PLS Co has succeeded to ownership of the right-of-way granted for the purposes of building the 26-inch pipeline. That right-of-way, created in 1932, is subject to the above-discussed conditions. The provisions of the California Water Code, which applicant argues we should apply in such a way as to abolish these conditions, were not effective until January 13, 1934. In our opinion we cannot apply these state statutes retrospectively so as to deprive the Federal Government of retained, vested property rights.

Applicant SoCal similarly agreed to relocate its 22-inch pipeline at no cost to the United States or its licensees. The company made this decision in 1955 when it was well aware of the existing Water Code provisions. There is nothing in the Water Code which precludes the applicants from the ability to waive rights which might otherwise apply by reason of the provisions of said Code. That is precisely what happened here. We see no conflict between each of these determinations and the language of the Water Code. Before the lines were placed in the ground, the applicants agreed that they would remove them when the reservoir was constructed.

Findings of Fact

1. Applicants are private public utility gas corporations. Each has a transmission line which formerly traversed federal lands in Los Angeles County. These lines were placed in their former location many years ago pursuant to permits from the Federal Government specifying that when the lands where the lines were located were needed for future power development the applicants would remove the lines at their own expense.

2. The land traversed by the lines was needed by the DWR, which occupies the land as a licensee of the Federal Government, to construct Pyramid Dam and Reservoir. The dam is to be part of hydroelectric generating facilities. The lines were moved at a cost of $560,534.75. This expense was paid by the DWR with the proviso that if the Commission found that the applicants should bear the expense, the money would be refunded.

3. PLS Co succeeded to ownership of a right-of-way created in 1932 and subject to conditions requiring relocation at the right-of-way owner's expense.

4. SoCal voluntarily waived the right to reimbursement for removal and relocation of its facilities by reason of the agreements entered into by it with the Federal Government for the latter's own benefit as well as the benefit of its licensees.

5. The applicants should pay the entire cost of relocating the lines.

Conclusions of Law

1. Applicants are public utility gas corporations. Their transmission lines in the area now occupied by the Pyramid Dam and Reservoir were a line or plant within the meaning of Section 11590 of the Water Code. The portions of the lines in the area were taken or destroyed within the meaning of Section 11590.

2. The taken or destroyed portions of the lines were located pursuant to permits from the United States which provided that the lines would be removed at no cost to the Federal Government or its licensees or successors.

3. The applicants are responsible for the cost of relocating the lines.

4. The money paid to the applicants should be refunded pursuant to the agreement, Exhibit L on Exhibit 1.

5. This decision does not overrule the Commission's holding in Oroville-Wyandotte Irrigation District (1968) 68 CPUC 616. The two matters are distinguishable on their facts.

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O R D E R

IT IS ORDERED that the Southern California Gas Company and Pacific Lighting Service Company shall reimburse the Department of Water Resources for the cost of relocating or removing the facilities referred to in the agreement attached to Exhibit 1 as Exhibit L in the sum of $560,534.75 in accordance with the terms of said agreement.

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

Dated at San Francisco, California, this 9th day of APRIL, 1974.

President

Commissioners

I dissent
Vernon L. Sturgeon

I dissent
J. P. Vukasin Jr., Commissioner.