

ORIGINAL

Decision No. 87330

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)

Les Lo Baugh, Jr., Attorney at Law,  
for applicants.  
Deputy Attorney General Richard D.  
Martland, Attorney at Law, for  
State of California Department of  
Water Resources, respondent.

OPINION ON REHEARING

On April 9, 1974 the Commission issued Decision No. 82699 whereby it ordered that applicants Southern California Gas Company (SoCal) and Pacific Lighting Service Company (PLS) reimburse the Department of Water Resources (DWR) for the costs of relocating the applicants' natural gas pipelines which were previously located on lands that became inundated by virtue of DWR's operation of its Pyramid Dam Project.<sup>1/</sup> On April 20, 1974 the applicants filed a petition for rehearing and reconsideration of Decision No. 82699. By Decision No. 83067, dated June 25, 1974, the Commission stayed the effective date of Decision No. 82699 pending the disposition of the applicants' petition for rehearing.

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<sup>1/</sup> The Pyramid Dam and Pyramid Lake, Pyramid Power Complex, Castaic Dam and Castaic Lake and Castaic Power Plant are facilities of the West Branch Division (Kern and Los Angeles counties) of the California Aqueduct. DWR has applied for a license from the Federal Power Commission (FPC) to operate the Pyramid Dam Project (Project No. 2426) as a federal water power project.

The applicants raised the following three issues in their petition:

1. The federal permits upon which the Commission relied in Decision No. 82699 require relocation of the applicants' pipeline at their own cost only if the federally withdrawn lands upon which the pipelines were located were used for a federal power project. Since there is as yet no federal license for this project, the permits are not yet applicable.

2. The California Legislature, by enacting Section 11590 of the Water Code, has required DWR to relocate the pipelines notwithstanding the federal permits.

3. Even if the Commission's reliance on the federal permits is correct, the applicants need only pay the costs of removing the pipelines from federal lands. Since the applicants relocated 5,227 feet of pipeline from private lands, further hearings must be held to determine what portion of the cost of relocation must be borne by DWR.

In Decision No. 86050 dated June 29, 1976, the Commission reaffirmed its statements in Decision No. 82699 to the effect that it has jurisdiction pursuant to Section 11592 of the Water Code to determine the controversy between the applicants and DWR and stated inter alia:

"Though the Commission has jurisdiction to determine the subject controversy, the major question raised by applicants' petition for rehearing of Decision No. 82699 is whether the Commission correctly decided that applicants are presently obligated to pay the costs of removing their pipelines from both private and federally withdrawn lands.

\* \* \*

"...as of this date the FPC has not issued a final decision in this matter. Therefore, DWR cannot claim that it is a licensee. The record also lacks

any evidence that DWR is a permittee of the FPC. Before the Commission will require applicants to reimburse DWR for that portion of the costs of relocating applicants' pipeline from the subject federal lands, it must be shown that DWR is either a FPC permittee or licensee."

The Commission considered the applicants' petition for rehearing and the contentions of the applicants and DWR and made the following order:

"IT IS ORDERED that:

- "1. Rehearing of Decision No. 82699 is hereby granted to the extent that applicants were therein ordered to reimburse DWR for the entire cost of relocating or removing its pipelines as a result of the operation of the Pyramid Dam and Reservoir.
- "2. Rehearing is granted for the following limited purpose: To determine the amount for which DWR is liable for the costs of relocating those portions of applicants' pipelines located on private lands notwithstanding the above-described federal permits.
- "3. Rehearing is to be held before such Commissioner or Examiner and at such time and place as may hereafter be designated.
- "4. The stay of Decision No. 82699 granted by the Commission in Decision No. 83067 is continued until further order of the Commission.
- "5. At such time as DWR becomes a FPC permittee or licensee with respect to Project No. 2426 it shall give written notice of such fact to the Commission. Upon receipt of said notice the Commission shall take appropriate action in conformance with the language of this decision.
- "6. Any findings of fact and conclusions of law in Decision No. 82699 that are inconsistent with this decision are inapplicable."

A hearing was held in Los Angeles on December 8, 1976 before Examiner James D. Tante for the limited purpose of determining the amount for which DWR is liable for the costs of relocating those portions of the applicants' pipelines from private lands only as a result of DWR's operation of its Pyramid Dam Project and the matter was submitted upon the filing of concurrent briefs before January 14 and reply briefs before January 28, 1977. At the request of the parties the time for filing briefs was extended 14 days, to January 28, and February 11, 1977.

No testimony was presented. Exhibit 1, a stipulation, was received in evidence, which provides:

"Pursuant to Commission Decision 86050 ordering a further hearing to be held with regard to Application No. 53549, applicants and the Department of Water Resources stipulate to the following facts:

"1. The actual cost of relocating the two pipelines of applicants described in Exhibit 1 in this proceeding<sup>2/</sup> is \$428,095.03.

"2. The cost of relocating those portions of said pipelines located on private lands at the locations set forth on Exhibit 1, is \$117,412.78, broken down as follows:

"a) 3700 feet on private land in section 34:	<u>\$83,363.07</u>
"b) 1527 feet on private land in section 21:	<u>\$34,049.71"</u>

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<sup>2/</sup> "Exhibit 1 in this proceeding" refers to an exhibit received in the original hearing and not this rehearing

A further stipulation of the parties received by the Commission February 24, 1977 provides:

"Pursuant to Commission Decisions Nos. 82699 and 86050, the Department of Water Resources (hereafter DWR) and applicants stipulate as follows:

"1. In compliance with the order contained in Decision No. 82699 and paragraph 5 of the order contained in Decision No. 86050, applicants agree that at such time as DWR becomes an FPC permittee or licensee with respect to Federal Power Commission Project No. 2426, applicants shall refund to DWR \$310,682.25 previously paid applicants by DWR for the relocation of applicants' pipelines from federal lands within the boundaries of Federal Power Commission project No. 2426. Applicants shall also pay DWR interest on said sum at the rate of five percent per annum from the date said sum was previously paid by DWR to applicants.

"2. In compliance with paragraph 2 of the order contained in Decision No. 86050, DWR agrees that applicants may retain \$117,412.78 previously paid applicants by DWR for the cost of relocating applicants' pipelines from private lands within the boundaries of Federal Power Commission Project 2426.

"3. DWR and applicants agree that this stipulation resolves the issues raised by Application No. 53549 and that no further action is required by the California Public Utilities Commission."

The stipulation entered into between the parties and received in evidence as Exhibit 1 should be and is approved. The stipulation entered into between the parties and received by the Commission February 24, 1977 should be and is approved.

The Commission finds that notwithstanding any federal permits, DWR is liable in the amount of \$117,412.78 for the costs of relocating those portions of the pipelines of SoCal and PLS located on private lands within the boundaries of Federal Power Commission Project No. 2426 and concludes that pursuant to such finding and the stipulations of the parties, the following order should be made.

O R D E R

IT IS ORDERED that:

1. At such time as the State of California Department of Water Resources (DWR) becomes a Federal Power Commission permittee or licensee with respect to Federal Power Commission Project No. 2426, Southern California Gas Company (SoCal) and Pacific Lightning Service Company (PLS) shall refund to DWR \$310,682.25 previously paid SoCal and PLS by DWR for the relocation of the pipelines of SoCal and PLS from federal lands within the boundaries of Federal Power Commission Project No. 2426. SoCal and PLS shall also pay DWR interest on said sum of \$310,682.25 at the rate of five percent per annum from the date the said sum was paid by DWR to SoCal and/or PLS.

2. In compliance with paragraph 2 of the order in Decision No. 86050 SoCal and PLS shall retain \$117,412.78 previously paid SoCal and PLS by DWR for the cost of relocating the pipelines of SoCal and PLS from private lands within the boundaries of Federal Power Commission Project No. 2426.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of MAY, 1977.

Robert Batminal  
President  
William J. Quinn  
Thomas L. Stinson  
Richard D. Howell  
Commissioners