



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-122171

April 5, 1955

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Dear Mr. Secretary:

Reference is made to letter of November 18, 1954, file (E-1), from the Solicitor, Bureau of Public Roads, Department of Commerce, to the Director, Claims Division, requesting decision whether the cost of adjusting and relocating certain telephone and distribution pole lines of the Southern California Edison Company can be paid from funds made available for carrying out the provisions of section 23 of the Federal Highway Act, as amended, 23 U.S.C. 23, 23(a).

While the instant matter will be considered as though submitted by you, your attention is invited to circular letter B-62476 dated December 13, 1946, 26 Comp. Gen. 993, concerning requests for advanced decisions by others than the heads of departments.

It appears that the pole lines were erected on lands of the United States by the Southern California Edison Company as part of water-power Project No. 67 under license issued to that company on March 3, 1921, by the Federal Power Commission. It is stated in the submission that construction of the California State Highway No. 48-E under the Federal Highway Act made it necessary to require the company to relocate and adjust telephone and distribution lines at an estimated cost of \$890 and that the company has requested a commitment to pay for the expense involved. Doubt as to company's entitlement to payment appears to be based on our decisions holding that, in the absence of specific authority, appropriated funds are not available for removing and resetting privately maintained utility poles, wires, etc., located upon public lands or reservations of the United States where such costs are properly payable by the owner of the public utilities under its franchise. 10 Comp. Gen. 331; 20 id. 379. It is pointed out in the submission that section 24 of the Federal Power Act (16 U.S.C. 818) provides that "any lands of the United States included in any proposed project under the provisions of this part 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 the Congress."

It appears that the highway right-of-way across the involved land was granted by Federal Power Commission Determination DA-836, issued September 11, 1953, pursuant to request of July 24, 1953, by the Forest Service on behalf of the Bureau of Public Roads. The Commission's approval was made subject to the condition that the proposed highway and bridge at Rancheria Creek Crossing should be constructed so as not to conflict with the power-development plan of the company. It appears from a recital in the Determination that the Commission understood that

such condition was based on an understanding reached between the licensee and the applicant that the proposed highway would be constructed so as not to conflict with the power development and to accommodate the proposed penstock construction. However, the Solicitor states that insofar as the Bureau has been able to determine the above understanding has reference to letter of March 16, 1953, from the right-of-way engineer of the Company to the Bureau which is confined solely to the future development near the Ward Tunnel Outlet and the pier foundations of Road Bridge.

By letter of February 25, 1955, the Federal Power Commission in response to our letter of January 19, 1955, concerning the matter, quoted the pertinent provisions of the license for Project 67, as follows:

"6. The licensee shall place and maintain suitable structures to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone, and other signal wires or power transmission wires, not owned by the licensee. The licensee shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

* * *

"13. The licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, land, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto constructed under the license. Arrangements to meet such liability, either by compensation therefor, reconstruction thereof, or otherwise, shall be made with the appropriate Department or agency of the United States.

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"17. The licensee shall allow officers of the United States free and unrestricted access in, through and across the power project included in this license in the performance of their official duties, and shall allow the Forest Service, without charge, to construct or permit to be constructed in, through and across the said power project, railroads, chutes, roads, trails, conduits and other means of transportation not inconsistent with the enjoyment of said power project by the licensee for the purposes herein set forth." (Emphasis supplied.)

As to the circumstances under which the Determination DA-836 was issued, it is stated that the staff study made in connection with the Forest Service request of July 24, 1953 indicated, from the information available at that time, that the proposed highway would not conflict with any existing power facilities and that the Commission was so advised before it made its determination. Also, it is stated that the Commission's determination was based on this understanding as shown by the first full paragraph on page 2 of the Determination to the effect that since the proposed highway is to be constructed so as not to conflict with the present or future power development the lands could be used under the conditions therein specified. The Commission expressed the view that the licensee is not obligated to pay for relocation of those facilities which are a part of the project under license designated as Project No. 67. In reaching such conclusion, it is emphasized that the license does not include any provision requiring the licensee to relocate at its own expense any project work to avoid conflict with Federal or State highways or roads. Further, the view is expressed that the license gives the licensee the right to undisturbed occupancy of the lands covered by the license for the initial license term, namely, fifty years. Also, it is stated that upon expiration of the license term, it is contemplated that the licensee will be given authority to continue operating the project or that it will be paid for the project properties as authorized by section 15 of the Federal Power Act.

In our decision of December 1, 1932, A-44362, involving a somewhat similar situation we refused to authorize payment for relocation of power pole lines of a licensee of the Federal Power Commission for road improvement purposes. It was stated in the cited decision that, even though the appropriations for road construction were otherwise available for such relocation, it would seem necessary to limit the use of the appropriations to the relocation of such poles as the Commission, upon consideration of all the facts, interests and benefits, should formally decide could not be required to be relocated at the expense of the licensee under the statutes, regulations and the terms of the license. As indicated above, in the present case the Commission, after consideration of all of the factors involved, has concluded that the licensee is not obligated to pay for relocation of the lines under Commission license in conflict with Highway 48-E and we concur in that conclusion.

The current appropriation, Public Law 471 approved July 21, 1954, 68 Stat. 428, Forest Highways, Bureau of Public Roads, provides "For expenses, not otherwise provided for, necessary for carrying out the provisions of section 23 of the Federal Highway Act of November 9, 1921, as amended (23 U.S.C. 23, 23a)." While the appropriation does not specifically provide for relocating pole lines on public lands of the United States it is readily apparent that, in this instance, such relocation is a necessary expense incident to the construction of Highway No. 48-E. It is well settled that, with certain exceptions not here material, an appropriation made available to accomplish a

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particular purpose by implication confers authority to incur expenses which are necessary and incident to that purpose. 29 Comp. Gen. 419 and decisions there cited. In view of the Commission's opinion that the licensee is not obligated to repay for the relocation of the poles in this instance, the decisions cited above holding that appropriated funds are not available for such expenses based upon the paramount right of the United States have no application to the present case.

The question in the concluding paragraph of the Solicitor's letter is therefore answered in the affirmative.

Sincerely yours,

JOSEPH CAMPBELL 

Comptroller General
of the United States

The Honorable
The Secretary of Commerce