

ORIGINAL

Decision No. 19640

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ARIZONA EDISON COMPANY, a
corporation,

Complainant,

vs.

Case No. 2367

THE SOUTHERN SIERRAS POWER
COMPANY, a corporation,

Defendant.

Ellinwood and Ross, by Martin Le Boutillier
and Leonard B. Slosson, for Complainant.

Henry W. Coil and Newman Jones, for Defendant.

BY THE COMMISSION:

O P I N I O N

The complainant, Arizona Edison Company, is engaged in the business of selling and distributing electric current in and about the City of Yuma, State of Arizona. The defendant, Southern Sierras Power Company, generates and sells electric current in the State of California. Defendant supplies complainant with current at a point in California at the west side of the Colorado River where the transmission lines of the defendant end and those of the complainant begin.

A public hearing was held before Examiner Cannon at which time the matter was submitted and is now ready for decision.

On March 15, 1917, the Yuma Light, Gas and Water Company, the predecessor of the complainant, and the Coachella Valley Ice and Electric Company, the predecessor of the defendant, entered into a contract for the sale and delivery of electric current at said point near the boundary between the two states, which contract provided for the rates to be charged for such service, and was to continue in effect between the parties thereto and their successors in interest for a period of fifteen years. Hereafter we will refer to the complainant and defendant herein as though they were the original contracting parties.

In September, 1920, this Commission by its Order No. 8119, in the exercise of its power to regulate the rates of utilities in this state, fixed the rates at which the defendant company should thereafter sell its electric current, including such general power service as that rendered to the complainant company for resale in the State of Arizona, and has subsequently on several occasions modified such order fixing defendant's rates. The complainant now alleges that since such order of this Commission was made, the defendant has charged complainant and the complainant has paid defendant for electric current at the rates fixed by this Commission, which rates were higher than those provided for in the contract of March 15, 1917, and that the orders of this Commission fixing such rates were and now are illegal, void and of no effect, for the reason that they impose a direct burden upon interstate commerce. Complainant

prays that this Commission issue its order authorizing defendant to charge complainant the rates provided for in the contract of March 15, 1917, and no other rates, and also that defendant be ordered to make reparation of all sums collected from complainant in excess of the rates provided for in such private contract.

Both parties take the position in this proceeding that the Commission exceeded its jurisdiction in regulating the rates to be charged for electric current generated by the defendant in California and sold by it at or near the state line to the complainant for distribution in Arizona. Each cites the recent case of the United States Supreme Court in Public Utilities Commission of Rhode Island and Narragansett Electric Lighting Company vs. Attleboro Steam and Electric Company (273 U. S. 83; 71 Law Ed. 309; 47 Sup. Ct. 294) as controlling the Commission in this proceeding. The decision in that case was to the effect that the transmission of electric energy from one state to another is interstate commerce, although transferred from vendor to purchaser at the state boundary, and further that a state cannot regulate the rate charged by a local electric corporation for current sold to a foreign corporation for use in another state and delivered at the state boundary, although the rates to the local consumers may be affected by the inadequacy of the contract rate under which it is being delivered to the foreign corporation.

The complainant's whole case is premised on the assumption that by the force of the Attleboro decision the previous orders of this Commission in regulating the rates in question are illegal and void. Though the facts surrounding the interstate

transmission and sale of power by the complainant to defendant may be similar to those in the Attleboro case we are not prepared to say that the two cases are parallel and we are therefore not justified in concluding that the rates fixed by this Commission covering the sale of electric current by the defendant to the complainant are void and of no force and effect.

Should it be admitted that by the force of the Attleboro decision this Commission must now acknowledge that the rates fixed in its Order No. 8119 and amendments thereto were illegal such admission would not aid the complainant herein. This Commission is asked to issue its order declaring the rates previously fixed by it to be illegal and void because this Commission had no power to fix such rates and at the same time it is asked to order certain other rates to be reinstated. There is no allegation that the present rates are unjust, unreasonable or discriminatory, nor is there any allegation that the rates mentioned in the private contract of March 15, 1917 are just and reasonable. It does not matter that the other rates were rates agreed upon in a private contract between the parties. To declare such rates effective would be just as much a regulation of the rates of defendant, and just as much an imposition of a burden on interstate commerce as would have been the fixing of rates in our earlier order.

Complainant in its briefs filed does not satisfactorily explain such inconsistency. The prayer is that the Commission order the defendant to charge certain rates and no other, whereas its brief states that it asks the Commission merely to remove a burden or direct interference which it itself has placed on interstate commerce. If we accept the contention of

complainant that the previous orders fixing such interstate rates were void and have no force and effect there is now no burden or interference to be removed and any order of this Commission to that effect would be a more idle act. Though there may exist a private contract between complainant and defendant providing for the rates to be charged for the sale of electric current this Commission has no more power to interpret or pass upon the validity of such contract than it has, in its regulatory capacity, to fix the rates. If its jurisdiction fails in one case it fails also in the other. The power of this body to determine rights under private contract is incident only to its general power to regulate.

Our opinion thus far has answered complainant's petition that an order be made determining the proper rate at which defendant should in the future bill the complainant for electric current. Complainant, however, also seeks an order requiring defendant to make reparation to the extent that the rates charged for current already used have exceeded those provided for in the private contract. The contention is that the granting of such reparation will not constitute a direct burden or interference with interstate commerce. The reasoning is not quite clear. It is true that there may be a distinction between the power to regulate and the power to grant reparation, but the dedication of authority to this Commission to grant reparation in cases where an unreasonable, excessive or discriminatory rate has been charged requires that such order be made only after investigation by this body and determination of that fact. Obviously, we cannot in the face of the previous orders of this Commission determining that the rates now charged are just and reasonable and under the pleadings and evidence before us in the

instant case now hold such rates to be unreasonable and excessive. Indeed, the complaint does not allege this to be the case.

Accordingly there is no necessity of discussing the other issues raised by the pleadings involving the interpretation of the private contracts between the parties and the amounts claimed to have been overpaid.

ORDER

Complaint having been filed herein as above entitled, hearing having been had, briefs having been filed, and the matter duly submitted and now being ready for decision, and it appearing that the complaint should be dismissed;

IT IS HEREBY ORDERED that the above entitled complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 20th day of April, 1928.

Leon Whitell
Wm. J. ...
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Commissioners.

I concur in the foregoing order. If the transaction here falls within the doctrine laid down in the Attleboro case cited in the opinion, as I think it does, then the action of the Commission subsequent to the date of the contract was without effect as a burden on interstate commerce. As to adjudicating its action to have been invalid, it is not my understanding that the Railroad Commission is vested with jurisdiction to enter declaratory judgments in such a case. On the other hand, if the transaction is not within the doctrine of the Attleboro case, neither the issues presented nor the evidence furnish any justification for modifying rates established by the Commission, and the claim for reparation is met by the plain language of Section 71(a) of the Public Utilities Act.



Commissioner.