

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 1628

F. E. SEAMAN, CHESTER DOWELL  
and DR. L. BRUCE,

Complainants,

vs.

MT. WHITNEY POWER AND ELECTRIC  
COMPANY,

Defendant.

Case No. 586.

ORIGINAL

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BY THE COMMISSION.

O P I N I O N.

On April 18, 1914, the complainants herein filed their complaint alleging, in part, that they are residents of Lindsay; that they have a well and a pumping plant which is operated by means of an electric motor and furnishes water for irrigation and domestic purposes; that they also use electric energy to illuminate two residences and two barns; that Mt. Whitney Power and Electric Company has supplied the necessary electric energy for the last five years; that complainants, in March, 1909, entered into a contract with defendant for the supply of electric energy, this contract to become effective on April 1, 1909 and to continue in effect until April 1, 1914; that on the expiration of the contract, complainants offered to pay the regular contract rate, which is \$50.00 per horse power per year, payable monthly, but that defendant refused to accede to this suggestion and stated that unless a contract was signed up for five years, the power would be discontinued on April 1, 1914; that on April 1, 1914, the complainants not having signed a contract, the defendant disconnected them; that complainants have now paid, under protest, the non-contract rate of \$90.00 per horse power per year, payable monthly, for one month in advance, and that ever since April 10, 1914, they have been receiving electric energy under this arrangement. Complainants state that they do not think it fair that they

should be asked to sign a five-year contract, or in lieu thereof, to pay <sup>the</sup> non-contract rate, which they allege is almost double the rate previously paid under the contract. The complainants ask this Commission to determine if they must sign a five-year contract or whether they must secure electric energy under the non-contract rate, in which event, complainants ask this Commission to establish a just and reasonable non-contract rate.

Thereafter, defendant filed its offer to satisfy the complaint of the complainants herein, and of others similarly situated. Defendant offers to satisfy the complaint by inserting in the contract of the complainants and of all others who may be willing to have the insertion made, in lieu of the following language:

"Any use of said electric current by the purchaser subsequent to the term herein provided for, and without some other and further written agreement between the company and the purchaser providing therefor, shall be deemed to be a use from month to month only, and shall be paid for at the regular monthly rates then charged by the company for service of that kind" --

a paragraph as follows:

"Upon the expiration of the term herein provided for, there shall be deemed to be a renewal of the term of this contract from year to year for the same price and on the same terms and conditions as in this contract now stated, provided, however, that said purchaser may cease to take current hereunder at the end of any such yearly renewal by notifying said company in writing at least thirty days before the expiration of any such yearly renewal to discontinue service of current under such contract at the end of such yearly renewal, and provided further, that upon current being discontinued hereunder at the instance of the purchaser, as herein provided, such purchaser shall thereafter be required to again obtain service of current by said company in accordance with the schedule of rates and contracts of said Mt. Whitney Power and Electric Company then on file with the Railroad Commission of the State of California."

The principal change to be effected is that on the expiration of a five-year contract, unless the consumer gives thirty-days' notice to the contrary, his contract will be renewed from year to year at the contract rate, so that the consumer is no longer obligated to sign a second five-year contract in order to avail himself of the rate specified in defendant's five-year contracts.

Complainants thereafter filed their acceptance of this satisfaction, with the proviso that the money which they have paid

under protest under the non-contract rate subsequent to the expiration of their five-year contract may be credited under the contract rate now to be paid, and that they be not required to consider as part of the first year the ten days between April 1, 1914 and April 10, 1914, during which time they received no current.

A copy of the conditional satisfaction was thereupon forwarded to defendant, with the suggestion that whatever action is taken in this case should apply equally to all of defendant's other consumers whose contracts might have expired during this year or might hereafter expire. Defendant has now replied that it is entirely willing to agree to the conditions specified in the conditional acceptance of the offer to satisfy and to have the action taken herein to apply to all of its contract customers alike.

The complaint herein will accordingly be dismissed, with the following understanding:

1. In lieu of the provision in the contracts of Mt. Whitney Power and Electric Company now reading as follows:

"Any use of said electric current by the purchaser subsequent to the term herein provided for, and without some other and further written agreement between the company and the purchaser providing therefor, shall be deemed to be a use from month to month only, and shall be paid for at the regular monthly rates then charged by the company for service of that kind."

Mt. Whitney Power and Electric Company may insert in the contract of complainants herein and of all other customers who now hold contracts and who are willing to consent to the change therein, and in its forms of contract now on file with this Commission, so as to apply to all future contract holders, the following language:

"Upon the expiration of the term herein provided for, there shall be deemed to be a renewal of the term of this contract from year to year for the same price and on the same terms and conditions, as in this contract now stated, provided, however, that said purchaser may cease to take current hereunder at the end of any such yearly renewal by notifying said company in writing at least thirty days before the expiration of any such yearly renewal to discontinue service of current under such contract at the end of such yearly renewal, and provided further that upon current being discontinued hereunder at the instance of the purchaser, as herein provided, such purchaser shall thereafter be required to again obtain service of current by said company in accordance with the schedule of rates and contracts of said Mt. Whitney Power and Electric Company then on file with the Railroad Commission of the State of California."

2. Such sums of money as the complainants herein or any other of defendant's customers, under contract, may have paid during the year 1914, upon the expiration of their contracts, as the non-contract rate, may be credited to such consumers as a part of the contract rate to which they will become entitled when the substituted paragraph hereinbefore referred to is inserted in their contracts.

3. Complainants herein shall not be compelled to make any payment for the period between April 1 and April 10, 1914. This result may be attained by the parties either by agreeing that the first year shall terminate on April 10, 1915 or by agreeing to have it terminate on April 1, 1915, with a rebate for the period of ten days.

O R D E R.

A complaint having been filed in the above entitled proceeding, and defendant having filed its written offer to satisfy the complaint, and the complainants having accepted said offer to satisfy, with certain conditions, and defendant having agreed to said conditions,

IT IS HEREBY ORDERED that, on the understanding set forth in the opinion which precedes this order, the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 29<sup>th</sup> day of June, 1914.

John W. Archuleta  
H. D. Lovelace  
Dr. Gordon  
Max. Thelen  
Edwin O. Edgerton  
Commissioners.