

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Colony Holding Corporation, )  
 Complainant, )  
 vs. )  
 Coalings Water and Electric )  
 Company, a corporation; Midland )  
 Counties Public Service Corpora- )  
 tion; and San Joaquin Light and )  
 Power Corporation, )  
 Defendants. )

ORIGINAL

Case No. 643.

Decision No. 2037

Frank James, for Complainant.

W. A. Sutherland, for Defendant.

THELEN, Commissioner.

O P I N I O N

The essence of the complaint herein is that Midland Counties Public Service Corporation has refused and still refuses to extend its lines and serve electric energy to complainant unless complainant first signs a three year contract at the established rates of Midland Counties Public Service Corporation.

The Public Service Corporation admits in effect that the signing of a contract for a period of three years has been made a condition precedent to the supplying of the service desired by complainant, but alleges that such action on its part corresponds with its regular practice and contends that there should be no deviation from the practice in this case.

The facts are substantially as follows. On or about November 18, 1912, one J. M. Henry entered into a contract with Coalings Water and Electric Company under the terms of which contract the Coalings Company was granted rights of way across certain property owned by Henry in San Luis Obispo County and known as the Atascadero Rancho. This contract provides that the

Coalinga Company shall pay to Henry the sum of \$125.00 each year during the time said lines are maintained on said property commencing December 1, 1912, or in lieu thereof shall pay the sum of \$2000.00 in full settlement of the company's obligation to make said annual payments. The contract further provides that the Coalinga Company shall, as soon as its transmission lines are in operation, build at its own expense two service lines to points on said Rancho to be designated by Henry for the purpose of supplying electric energy and that the Coalinga Company shall, upon demand, construct at its own expense additional service lines upon said property, provided that in each case the total gross revenue for energy delivered by the company shall within three years equal the cost of the line. Provision is made in the contract for metering all energy at the delivery point and it is agreed that the rates to be charged by the Coalinga company shall be the lowest rates for like service supplied by this company at any point in San Luis Obispo County. The contract is made binding upon the heirs, executors, administrators, successors and assigns of the parties thereto.

Subsequent to the date of this contract and prior to the filing of the complaint in this proceeding, the name of the supplying utility was changed from Coalinga Water and Electric Company to Midland Counties Public Service Corporation, and Colony Holding Corporation was organized for the purpose of purchasing, subdividing, improving and selling the property now known as the J. H. Henry Ranch and heretofore referred to as the Atascadero Rancho.

In furtherance of the object of its organization, complainant has, at considerable expense, erected a brick making plant on the ranch and has applied to the Public Service Corporation for electric service for a 100 horsepower motor to operate said plant.

The Public Service Corporation, hereinafter referred to as the defendant, has indicated its willingness to supply the service desired by complainant, but only upon condition that complainant enters into a three years' contract, which require-

ment was modified at the hearing to a contract for one year at the existing rates for said service. Complainant objects to entering into any contract whatsoever which cannot be terminated by it upon thirty days' notice and frankly states that its objection to a term contract is based upon the belief that defendant's present rates are considerably in excess of what the cost would be to complainant to generate and distribute the electric energy which it will require.

The present rates of defendant applicable to the 100-horsepower motor above referred to are as follows:

Table I.

Rates for Installations of More than 50 Horsepower.

6¢ per kilowatt hour for a metered consumption equivalent to the first 45 hours, or fraction thereof, per month's use of the maximum demand.

1½¢ per kilowatt hour for all excess energy used during the month.

Monthly minimum guarantee of \$1.00 per installed horsepower.

Under the terms of the contract submitted by defendant, the consumer's use of the service is restricted to the hours shown in Table II with a penalty of \$50.00 per hour or fraction thereof for use at any other time.

Table II.

Daily Operating Period at Rates Shown in Table I.

|          |                         |           |                         |
|----------|-------------------------|-----------|-------------------------|
| January  | 12:01 A.M. to 4:40 P.M. | July      | 12:01 A.M. to 2:05 P.M. |
| February | 12:01 A.M. to 5:25 P.M. | August    | 12:01 A.M. to 6:40 P.M. |
| March    | 12:01 A.M. to 5:50 P.M. | September | 12:01 A.M. to 5:50 P.M. |
| April    | 12:01 A.M. to 6:25 P.M. | October   | 12:01 A.M. to 5:00 P.M. |
| May      | 12:01 A.M. to 6:50 P.M. | November  | 12:01 A.M. to 4:30 P.M. |
| June     | 12:01 A.M. to 7:05 P.M. | December  | 12:01 A.M. to 4:20 P.M. |

There appears to be no question as to the cost to defendant of the required extension to serve complainant, which cost has been referred to as \$850.00, and defendant maintains that a contract is necessary to assure defendant that this investment will be returned to it during a period which, in accordance with the

right of way contract heretofore referred to, shall not exceed three years. Complainant, on the other hand, has agreed to advance the cost of the service line to defendant if defendant will agree to pay interest thereon at the rate of 6 per cent per annum, and states that it is willing in any other way to guarantee defendant against the loss of the said investment except in such manner as would require complainant to take service for any definite period of time.

In view of all the facts as presented, it appears to me that both the complainant and the defendant in this case have failed to recognize the actual point at issue. Both parties are evidently acting in good faith; the defendant by insisting on a profitable investment which it believes can only be assured by continuous service for a definite period of time, and the complainant by frankly stating its position and offering to reimburse the company for the cost of the service line. In this case the service must, in view of complainant's own statements, be considered as only temporary and to supply this temporary service defendant must construct and maintain a certain service line exclusively for complainant's use and located entirely upon complainant's premises. While there can be no doubt that, under normal service conditions, this investment would be fully justified by the revenue to be received and should be made entirely at defendant's own cost, the temporary nature of the service required demands that the matter be considered carefully and that defendant and its consumers be protected against the loss which would obviously result from a discontinuance of service before its full cost had been repaid. It is also clear that by merely reimbursing defendant for the cost of the service line, complainant has not paid for the full cost of service and that after the capital investment has been retired there still remains the cost of the energy delivered to be provided for.

Without passing upon the reasonableness of defendant's present rates, regarding which the Commission has at this time no information, it may be assumed for the purpose of this case that the minimum rate of 1-1/2 cents per kilowatt hour represents the cost of energy to be delivered to complainant and that the excess of 4-1/2 cents per kilowatt hour over this minimum rate provided for in the first block of the schedule applicable to this service together with the excess due to the minimum charge of \$1.00 per month per horsepower of maximum demand should apply on the cost of the service line to serve complainant.

In view of all the facts I find that complainant is entitled to receive service from defendant and that defendant should at once proceed to construct the necessary service line and furnish such service to complainant's brick plant under either of the following conditions:

First (a) - That complainant shall advance to defendant the estimated cost of the service line, which cost has been referred to as \$850.00, upon which sum defendant shall pay complainant interest at the rate of six per cent (6%) per annum.

(b) - That the sum so advanced by complainant shall be refunded by defendant at the end of three years from the date when service connection is first made with complainant's brick plant; provided that all sums due defendant for service supplied to complainant's brick plant have been paid; and provided further that service has not been discontinued during said three year period at complainant's request.

(c) - That in the event complainant requests defendant to discontinue service before the expiration of said three year period then defendant shall pay to complainant in lieu of the entire sum advanced by it to cover the cost of the extension a sum equal to the difference between the total of all sums theretofore paid, plus all sums then owing and unpaid by complainant to defendant for electric service supplied by defendant to complainant's brick plant and what complainant's total payments would have been

at a uniform rate of  $1\frac{1}{2}$  cents per kilowatt hour; provided that the maximum sum so refunded shall not exceed the amount of the original advance payment made by complainant.

(d) - That complainant shall give written notice to defendant of its desire to discontinue service at least thirty days prior to the date when such service is to be discontinued.

Second (a) - That complainant shall, by proper guarantee or in such other manner as may be satisfactory to defendant, insure defendant against loss in the sum of \$850.00 for a period of three years from the date when service connection is first made with complainant's said brick plant.

(b) - That, in the event complainant requests defendant to discontinue service before the expiration of said three year period, then complainant shall pay to defendant, in addition to all sums theretofore paid and then owing and unpaid on account of electric service furnished by defendant, a further sum equal to \$850.00 less the difference between actual total amount paid for service, as above stated, and what complainant's total payment for service would have been at a uniform rate of  $1\frac{1}{2}$  cents per kilowatt hour; provided that the maximum additional sum so paid by complainant shall not exceed \$850.00.

(c) - That the complainant shall give written notice to defendant of its desire to discontinue service at least thirty days prior to the time when such service is to be discontinued.

It will be unnecessary at this time to consider the proposed restriction upon complainant's hourly use of the service to be supplied by defendant for the reason that no such restriction is provided for in the rates, rules and regulations of defendant now on file with this Commission. Under the circumstances, no restriction whatsoever can be enforced by the defendant at the present time under the existing rates.

I submit herewith the following form of order.

O R D E R

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision, the Commission hereby finds as a fact that Colony Holding Corporation is entitled to receive electric service from Midland Counties Public Service Corporation, and Midland Counties Public Service Corporation should extend its lines and furnish electric service to Colony Holding Corporation upon the terms and conditions set forth in this order and that said terms are just and reasonable under the circumstances of this case.

Basing its conclusions upon the foregoing findings of fact and on the other findings which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that Midland Counties Public Service Corporation be and the same is hereby directed to extend its lines and supply electric energy to Colony Holding Corporation within thirty days from the date when said Colony Holding Corporation advances or guarantees payment of the sum of \$850.00, as herein provided, and agrees in writing to receive and pay for said service and to reimburse said Midland Counties Public Service Corporation for the cost of the service line to Colony Holding Corporation's brick plant under either of the following conditions, to-wit:

First (a) - That complainant shall advance to defendant the estimated cost of the service line, which cost has been referred to as \$850.00, upon which sum defendant shall pay complainant interest at the rate of six per cent (6%) per annum.

(b) - That the sum so advanced by complainant shall be refunded by defendant at the end of three years from the date when service connection is first made with complainant's brick plant; provided that all sums due defendant for service supplied to complainant's brick plant have been paid; and provided further that

service has not been discontinued during said three year period at complainant's request.

✓ (c) - That, in the event complaint requests defendant to discontinue service before the expiration of said three year period, then defendant shall pay to complainant in lieu of the entire sum advanced by it to cover the cost of the extension a sum equal to the difference between the total of all sums theretofore paid, plus all sums then owing and unpaid by complainant to defendant for electric service supplied by defendant to complainant's brick plant and what complainant's total payments would have been at a uniform rate of  $1\frac{1}{2}$  cents per kilowatt hour; provided that the maximum sum so refunded shall not exceed the amount of the original advance payment made by complainant.

(d) - That complainant shall give written notice to defendant of its desire to discontinue service at least thirty days prior to the date when such service is to be discontinued.

Second - (a) That complainant shall, by proper guarantee or in such other manner as may be satisfactory to defendant, insure defendant against loss in the sum of \$850.00 for a period of three years from the date when service connection is first made with complainant's said brick plant.

(b) - That, in the event complainant requests defendant to discontinue service before the expiration of said three year period, then complainant shall pay to defendant, in addition to all sums theretofore paid and then owing and unpaid on account of electric service furnished by defendant, a further sum equal to \$850.00 less the difference between actual total amount paid for service, as above stated, and what complainant's total payment for service would have been at a uniform rate of  $1\frac{1}{2}$  cents per kilowatt hour; provided that the maximum additional sum so paid by complainant shall not exceed \$850.00.

(c) - That complainant shall give written notice to defendant of its desire to discontinue service at least thirty days

