

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 2260

Tulare County Power Company

Complainant,

vs

Case No. 781

San Joaquin Light & Power Corporation

Defendant,

Charles E. Bush, for Complainant.
Snort & Sutherland, for Defendant.

DEVLIN, Commissioner.

OPINION

On February 16, 1915, the Tulare County Power Company of Lindsay filed with this Commission its complaint against the San Joaquin Light and Power Corporation, which complaint alleges in effect as follows:

That complainant is a public utility engaged in the business of generating and distributing electrical energy in Tulare County, California; that complainant heretofore in March 1912, entered into a contract with the defendant wherein defendant agreed to deliver 1,000 horse power, and thereafter service

was rendered in accordance with the terms of this contract. Complainant further alleges that during the summer of 1913 defendant failed to deliver energy to it in accordance with said contract, and that subsequently, when sued for the collection of certain amount due under the contract, it filed a cross-complaint setting forth the damages claimed to have been incurred by reason of the failure of said power supply. That thereafter defendant resumed the service of energy and continued to supply complainant until the 26th day of October, 1914, when it served notice on complainant that it would discontinue the delivery of electric energy under its contract without cancelling same, and that said supply was thereafter summarily discontinued by defendant; that simultaneously defendant brought suit to collect the amount claimed to be due for energy supplied during August, September and October 1914; that since the discontinuance of this supply complainant has been able to carry the entire load with its steam plant of 1,500 kilowatts capacity, but that this load is rapidly increasing and after the first of March, 1915, will exceed the capacity of complainant's steam plant; that complainant has been unable to consummate a contract with any other company to furnish electrical energy during the current year. Complaint further states that in case it is unable to obtain additional supply of electric energy, it will be unable to serve a large number of its consumers who are dependent on its service for their water supply, and in event of such failure, the consumers' crops will be greatly damaged and probably destroyed; that complainant has made demand on defendant to recommence the delivery of electrical energy to it under the contract previously

referred to and offers to pay monthly in advance for energy to be supplied and that defendant refused to comply with this demand unless all money claimed to be due by defendant should first be paid.

Complainant alleges further that the terms of said contract are unreasonable and burdensome and that other power companies and defendant herein are supplying electrical energy in blocks of 1,000 horse power or more, at a rate considerably less than that provided in the aforesaid contract.

In its prayer complainant asks that defendant be ordered to recommence the delivery of energy sufficient in amount to enable complainant to carry the load in conjunction with its steam plant, also that the Commission investigate the contract and fix a reasonable rate for this service.

Defendant corporation in its answer filed on March 1st, 1915, denies all material allegations of the complaint and in addition avers that the matters involved in the complaint are not within the jurisdiction of this Commission.

A hearing was held in this proceeding in San Francisco on March 12th, 1915. Defendant in its answer did not deny, and at the hearing admitted, that it had served complainant in accordance with the contract as set forth in the complaint, and that it had discontinued its service for non-payment of power bills. Counsel for defendant challenged the jurisdiction of the Commission over this matter and urged that the Commission has no power to grant any relief whatever.

In my opinion the Commission has jurisdiction over the subject matter of this complaint.

It appears from the evidence that there has been a dispute between the parties involved herein as regards the amount of money due under the contract on account of damages claimed to have been sustained by complainant, which matters are now in litigation. Considerable testimony was given by witnesses for complainant in an effort to show the magnitude of such damage. These are matters for determination by a civil court and this Commission is not interested therein except to the following extent: That if the damage claimed could be established so as to result in a judgment in favor of complainant herein for a sum sufficient to completely offset the bill owed defendant for energy, complainant would be in the position of a new applicant for service. It appears, however, that even if complainant could prove all of the damage claimed that there would still be a balance due. Complainant is therefore applying for renewal of service with bills for previous service unpaid.

The points specifically to be determined in this matter are: First, does the need for the auxiliary power supply exist; second, is defendant's plant the only reasonably available means of supplying this need; lastly, is the public necessity of sufficient importance to warrant granting the relief prayed for.

I shall address myself first to the relation of complainant's steam plant capacity to the peak load on its system and the demand to be created on an auxiliary supply.

Complainant's load consists almost exclusively of motors driving pumps for the irrigation of such crops as oranges, lemons, olives and alfalfa, and with a knowledge of the connected load, the demand to be created on the system can be definitely predetermined.

Mr. Holley, engineer for the complainant, estimated that approximately 1,000 horse power would be required during the coming irrigation season in addition to the complainant's steam generating plant. This Commission's engineering department has made a check of this estimate, based on the connected load and system peak for 1914, as shown in complainant's annual report. This indicated an over-all diversity factor of 1.41. Complainant's present connected load is 4,763 horse power, hence we should expect a system peak during 1915 of approximately 5,370 horse power. The rated capacity of complainant's generating plant is 2,000 horse power, but the operating records show that it has carried loads up to 2,300 horse power, for considerable periods of time, without injury. Using this as a basis, we find that complainant will require somewhat in excess of 1,000 horse power in addition to its present generating capacity.

Considering next the effect of possible shortage of this amount of power: It was admitted by defendant that complainant's consumers were wholly dependent upon a supply of electric energy for the operation of their plants, and that any failure of this supply during the irrigation season would mean material injury, and probably destruction to their crops. Complainant's engineer testified that the system peak might be reduced some 400 or 500 horse power by prearranged rotation of consumers demands, but that this would probably result in some injury to crops on account of insufficient irrigation, and would still leave some 1,000 horse power of motors without supply.

Counsel for defendant suggested that inasmuch as some 75% of complainant's distribution system is duplicated by that of the Mt. Whitney Company, a portion of the Tulare Company's consumers, sufficient to relieve it of excess load might be transferred to the Mt. Whitney Company. This plan appears simple at first sight, but presents certain difficulties which render it impracticable. The Mt. Whitney distribution is 2 phase and that of the Tulare Company, 3 phase. A change over as suggested would involve alterations in consumers' transformers, motor and switchboard, the cost of which would be approximately \$50.00 for the average plant, all of which would necessarily be borne by the consumer. The Commission is interested in obtaining service at a reasonable cost, and this, if a temporary arrangement, would place an undue burden upon the consumer. Another factor which would prevent the adoption of such an arrangement is the limited generating capacity of the Mt. Whitney Company. In 1914, this company was compelled to generate 1,504,800 K.W.Hrs. with its steam plant as compared with 992,100 K.W.Hrs. for defendant's system, and this year owing to the increased load, the output will probably be considerably in excess of this figure. The fuel cost (which is some 60% of the total cost of operation) of the Mt. Whitney steam plant, located at Visalia, is nearly twice as great as that obtaining at defendant's Bakersfield plant.

Considering next the adequacy of defendant's system to supply the load required by complainant: It was the testimony of Mr. Walthall, Assistant General Manager of defendant, that his company would be able to carry this load during the current year

but that it would necessitate longer operation of the Bakersfield steam plant during the low water period. The operating records of defendant on file with the Commission bear out Mr. Walthall's statement. In 1913 defendant was forced to call on the Southern California Edison Company for an emergency supply of energy and, to operate its steam plant to capacity for several months. During the peak period it was obliged to discontinue supplying the Tulare County Company, as recited in the complaint.

This year defendant's operating conditions are materially improved as compared with those of 1913. An additional generator of 7,800 K.W. capacity has been added to the Bakersfield steam plant, the 6,000 K.W. Tule River hydro-electric plant has been installed and a reservoir of some 46,000 acre feet has been completed in the San Joaquin water shed. The water conditions are rather better than in 1913 and the load has not increased very materially.

Consideration of these factors indicates that defendant will have sufficient capacity and is in a far better condition to handle this load than the Mt. Whitney Company. Having disposed of the question of the adequacy of the available supply and the amount of demand to be created by complainant, I shall next discuss the equities involved in granting the relief requested by complainant.

The maintenance of service is imperative in this case owing to the seriousness of discontinuance. The public necessity exists, as is admitted by both companies, and the Commission must look for the best, quickest and most reasonable means of obtaining service. While, under some circumstances we would refuse to

require a utility to resort to civil action to collect its ordinary bills, by depriving it of the coercive effect of discontinuance, because such action would increase the cost of service, the amount involved herein is of such magnitude as to warrant suit for its collection and the cost of such litigation should be a small percentage of the amount due. The matter is in fact, already before the court. There can be no question as to the urgency of the need for service in this case, and it is the need of consumers who are not responsible for the non-payment of complainant's account.

Under the circumstances of this case I am of the opinion that inasmuch as complainant is unable, without assistance to supply the energy required by its consumers, the Commission should require such measures to be taken as will protect these consumers from injury to their crops, providing such action does not work undue hardship on the company furnishing such additional energy. It appears that by ordering defendant to resume service we will not prejudice its claims or rights in the collection of past bills, however, if such order is made it is but fair to defendant that this Commission should provide security for future payment and protect defendant from any possible recurrence of previous delinquency on the part of the complainant. I believe that this can be accomplished if complainant give bond or other security sufficient to insure payment of one years power bill, same to be approved by the Judge of the Superior Court of Tulare County.

Defendant contended at the hearing that payment should be secured for four or five years. This would seem unduly burdensome to complainant and unnecessary for defendant's protection,

inasmuch as at the expiration of the guarantee for the ensuing year complainant will be in its present situation, that is, it will require auxiliary power for the year to come.

Another phase of this matter which was mentioned in the complaint, is the reasonableness of the contract rate - \$40.00 per horse power year. The Commission was petitioned to fix a reasonable rate. This was subordinate to the main issue - power service - and was not referred to by either party at the hearing. The Commission is now conducting a comprehensive investigation of the cost of service over the entire system of the San Joaquin Light and Power Corporation, which, when completed, will render the determination of the reasonableness of this rate comparatively simple. Complainant also asked the Commission to reduce the basis of the minimum from 1,245 horse power to 1,000 horse power claiming that the higher demand was accidental and its continuance burdensome and unreasonable. This matter, the method of determining demand, is also involved in the cost of service, and I recommend that no action be taken on either of these points pending the completion of the analysis in Cases No. 618, No. 655 and No. 732 above mentioned, and that service be renewed according to the terms of the contract as it now stands. Investigation of these matters can be conducted concurrently with the other investigation and if it is found that either the rate or the provisions of the contract are unreasonable, relief can be afforded by supplemental order. Defendant appeared to be somewhat in doubt as to its ability to supply the higher demand - 1,245 horse power - and inasmuch as a reduction is desired by complainant, I believe that it should be left to the option of defendant whether it shall supply 1,245 horse power or 1,000 horse power.

I submit herewith the following form of order:

ORDER

The Tulare County Power Company having filed with this Commission its complaint against the San Joaquin Light and Power Corporation, alleging that said defendant had refused to supply it with electric energy under a contract previously entered into and requesting this Commission to order a renewal of this service, and a public hearing having been held thereon and being fully apprised in the premises, the Commission finds as a fact, that the generating system of the Tulare County Power Company is inadequate to supply its present consumers, that it will be necessary that the Tulare County Power Company obtain additional supply of energy in order to serve said consumers, that the system of the San Joaquin Light and Power Corporation offers the most available and only practicable means of obtaining this additional supply. Based on the foregoing findings of fact, and the other findings set forth in the opinion preceding this order

IT IS HEREBY ORDERED that the Tulare County Power Company procure and give sufficient bond or other equivalent security, the same to be approved by the Judge of the Superior Court of Tulare County, to cover the payment of power for one year, either 1,243 horse power or 1,000 horse power as defendant at its option hereafter shall elect, that upon tender of said bond or other security defendant shall within 24 hours recommence delivery of energy to complainant as provided in their contract, and it is further ordered that the effective date of this order shall be March 29th, 1915.

It is to be specifically understood that the rate to be paid by complainant for service as herein provided shall be \$40.00 per horse power per year unless otherwise fixed by this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of March, 1915.

Max Thelen
H. S. Knudsen
Edwin O. Edgerton
Frank R. DeShon

COMMISSIONERS