



agreements define the terms and conditions under which the company will lease and sell to the city its electrical distributing system in the city; also the terms and conditions under which the city will lease and sell certain of its electrical distributing lines outside of the boundaries of the city to the company.

Applicants allege that for a long period they have been operating electrical distributing systems in direct competition, with the resultant duplication of lines and equipment. The testimony shows that the city serves about 10,000 meters and the company about 5,000. The annual sales of the city are reported at 7,900,000 kilo watt hours and those of the company at 5,000,000 kilo watt hours. Of the total commercial, light and power business exclusive of street lighting and city pumping, the city has 56.2 per cent and the company 43.8 per cent. In the outside territory, where the city and the company are in competition, the city has 67.06 per cent of the business and the company 32.94 per cent.

C. W. Koerner, general manager of the municipal lighting and power department of the city, testified that the rates of the city and the company in the city were the same, that no increase in the rates would result from the consummation of this application and there was a possibility of the rate being reduced after the city had acquired the company's properties. By getting rid of competition

and duplication in plant and service, the city, according to C. W. Koiner, can operate the company's properties at a net profit of \$30,000 to \$40,000 per annum. The company, the testimony shows, earns at this time from four to five per cent on the investment in the city, while under the lease agreement the city will pay the company an eight per cent return on the value hereafter referred to.

I believe that it is advisable to review briefly the agreements, but do not think it necessary to set forth in detail all of the terms and conditions. The lease agreement, with the option to purchase, is to continue in effect until May 23, 1920. If on January 1, 1920, the government of the United States shall be in a state of war with any other nation or nations and the lease has not been terminated, either party at its option may extend the lease for a period of not more than four months beyond the close of the war. In the event that at the bond election held for the purpose of authorizing the city to issue bonds to purchase the company's properties the voters should authorize the issue of bonds but litigation should prevent the city from selling the bonds, the city at its option may extend the term of the agreement for three months beyond the close of such litigation, provided that any litigation in which the city may be interested shall be diligently pressed to the earliest possible decision.

The city agrees to pay to the company an eight per cent return during the life of the lease

agreement upon an agreed property value of \$515,425.97 as of December 31, 1917, and an eight per cent return on the cost of all extensions, additions and betterments installed subsequent to said date. The city further agrees to accumulate a depreciation fund during the terms of the lease at the rate of 3.36 per cent per annum upon a property value of \$446,775.34 plus cost of extensions and betterments subsequent to December 31, 1917. The city further agrees to purchase properties of the company at a cost of \$497,609.70 as the same existed on December 31, 1917 plus the cost of extensions and betterments subsequent to said date. The \$515,425.97, on which the company agrees to pay an eight per cent return, is based upon A. R. Kelley's appraisal of the Edison Company properties. In figuring the amount on which an annual depreciation is to be charged, the so-called "overhead charges" have been eliminated, while in calculating the purchase price, there have been eliminated certain property such as meters and transformers, which the city is willing to lease but not to purchase.

The city agrees to maintain at its own expense its steam plant in a condition ready for operation. The plant may be operated by the city when the service of the company is interrupted or upon order of the company should the company's service require such operation. The cost of operation in either case will be borne by the company.

The city agrees to lease to the company -

"All of its lines and distributing system located outside of its territory and boundaries as they exist on the date of the agreement, except the portion lying in and along the Dobbins right of way of Los Angeles City limits and north thereof east to Grand Avenue to and including the Raymond Hotel."

Also all extensions and betterments installed subsequent to the date of the agreement.

The company shall pay for the properties an annual rental equal to eight per cent on a gross value of \$27,928.81 plus an eight per cent rental on the cost of all service connections since March 1, 1918; to accumulate a depreciation reserve fund at the rate of 3.36 per cent on an agreed value of \$24,285.92 plus the cost of additions and betterments. In the event that the city buys the company's property, the company is given an option to purchase the city's properties exclusive of the Raymond Hotel line at \$35,174.38 plus the cost of additions and betterments installed subsequent to March 1, 1918. During the life of the lease agreement, the properties of the company and city may be operated jointly by the company and city respectively, but in such manner as to permit a severance of the two systems at any time during the term of the lease. Until the city buys the company's plant, there can be no real consolidation of the two systems. The two systems may, however, be joined at certain points during the lease period. During this period, the properties of the two companies are to be maintained in a status quo. The agreement provides in

substance that new extensions shall be distributed between the city and company, so as to maintain as nearly as possible the present relation between the city and the company's plants and properties.

During the life of the agreement, the city agrees to purchase from the company all energy used in the leased system and the city's existing system, and agrees to receive no energy from other sources as long as the company's supply is sufficient. The rates for energy purchased set forth in the agreements and for the load factor at which the city operates will amount to approximately 8.75 mills per kilo watt hour. After setting forth the rates to be charged, the lease agreement provides --

"Both parties do hereby consent to the establishment by the Railroad Commission of the State of California of the foregoing schedules of rates for the service herein contemplated and both parties hereby agree not to apply directly or indirectly to the Railroad Commission for any change therein or modification thereof during the term hereof, it being the express agreement of the parties hereto that said rate shall continue in force without change or modification at all times during the term hereof."

"In the event that said schedule of rates shall be raised at any time during the term hereof by competent authority, the city may at its option terminate this contract. In the event that said schedule of rates shall be lowered at any time during the term hereof by competent authority, the company may at its option terminate this contract."

The agreement of sale provides in part --

"Both parties do hereby consent to the establishment by the Railroad Commission of the State of California of the foregoing schedule of rates for the service herein contemplated and both parties hereby agree not to apply directly or

indirectly to the Railroad Commission for any change therein or modification thereof prior to May 3, 1928, it being the express agreement of the parties hereto that said rates shall continue in force without change or modification at all times during said term prior to May 3, 1928."

While this may not be a deliberate attempt to limit the jurisdiction of the Railroad Commission, for all practical purposes such will be the effect if the Commission approves this agreement. The Commission is here asked to ratify and approve rates agreed between the two parties, and after such approval, if hereafter because of changed conditions <sup>it</sup> finds the rates unreasonably high or low, it cannot modify them without permitting one or the other party to terminate the agreement. If the parties to this agreement should conclude that the foregoing provisions were not inserted in the lease agreement or into the sale agreement for the purpose of limiting the jurisdiction of the Railroad Commission, then I know of no reason why the provisions may not be eliminated from the agreements. I am unable to recommend to the Commission an agreement which on its face attempts to place a limitation upon, or at least make it difficult to exercise, the jurisdiction of the Commission in fixing rates of a public utility.

There is one other provisions of the lease agreement, which in my opinion, should be eliminated for the reason that it also may be interpreted as placing a limitation upon the power of the Commission. In paragraph 18 of the lease agreement, the company agrees not to sell or furnish electrical energy to any individual, firm or corporation at a point outside of the city for the purpose of transmission by such individual,

firm or corporation to a point within the city as it now or may hereafter exist, it being the intent that all electricity actually used within the limits of the city shall be furnished to the consumer by the city. The city, on the other hand, agrees not to supply electrical current to any consumer outside of the limits of the city as such limits may exist from time to time during the period of the lease agreement, excepting to pumping plants and other works owned in part or in whole under lease by the city, or to public schools which schools are being served with electrical current by the city on January 1, 1918 within the Pasadena School District, and excepting service to consumers on that part of the city's system lying outside of its territorial boundaries which it is not intended to lease to the company.

In this agreement the company asks the Commission to approve a contract under the terms of which it agrees not to sell or furnish electrical energy to any individual, firm or corporation at a point outside of the city for the purpose of transmitting the same to an individual, firm or corporation to a point within the city limits. While the Commission cannot oust itself of jurisdiction by approving this contract, nevertheless the Commission by approving it might hereafter be seriously embarrassed in the exercise of its jurisdiction.

This matter has been held in abeyance because at the time of the hearing and up to the signing of the armistice the Federal Government had a fixed policy of urging and insisting upon all concerned that wherever possible petroleum oil be conserved by the use of water produced electricity. It appeared from the evidence



that if this agreement was consummated the City of Pasadena would immediately cease using a large amount of hydro-electric energy theretofore served to it by the City of Los Angeles and there was no provision made for the absorption of this hydro-electric power by other consumers; hence it might easily be that oil would be consumed in generating electricity by Edison Company for the use of the City of Pasadena and at the same time an equal amount of hydro-electric energy available from the City of Los Angeles would not be in use.

The parties concerned were urged by the Commission to provide some means for the use of the hydro-electric energy thus released but no feasible plan was presented; hence the Commission did not feel warranted in authorizing the execution of this contract.

Now, however, the situation has changed. Since the signing of the armistice the Federal Government has practically annulled its activities with relation to oil conservation and we must judge of this proposal as governed by conditions prevailing in normal times. Therefore the test must be whether this contract if executed would result in bettering the condition of Edison Company, the City of Pasadena and the public as represented by consumers.

The contract here presented successfully meets this test. The facts above set forth clearly indicate that both the City of Pasadena and Edison Company will be put in a very much more favorable financial situation than they now are and this should

ultimately result in a benefit to consumers. On the other hand there does not appear to be any counterbalancing detriment to be suffered by anybody as a result of this agreement unless it be the City of Los Angeles which may be under the necessity of finding a market for the power released. However this may be, it would not be just to refuse approval of a contract beneficial to the parties most directly concerned upon the sole ground that as an incidental result an outside party might be somewhat embarrassed.

With the exceptions heretofore noted I recommend that the contract be approved and that the parties thereto be authorized to carry out the terms thereof.

Herewith a form of Order:

O R D E R

Application having been made by Southern California Edison Company and City of Pasadena for an order authorizing the execution of an agreement for the lease and sale of certain electrical distributing systems and a public hearing having been had and it appearing to the Commission that this application should be granted under the conditions set out in this order;

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that Southern California Edison Company and City of Pasadena are hereby authorized to execute an agreement for the lease and sale of certain electrical distributing systems, a copy of which contract has been filed in this proceeding and is attached to the application herein and reference to which said copy of contract is hereby made for particulars.

Southern California Edison Company and City of Pasadena are hereby further authorized to carry out the terms and conditions of said contract by the lease and sale of the properties therein specifically described.

Provided, however, that this order shall not become effective and said contract shall not be executed until there has been eliminated therefrom the following provisions:

"Both parties do hereby consent to the establishment by the Railroad Commission of the State of California of the foregoing schedule of rates for the service herein contemplated and both parties hereby agree not to apply directly or indirectly to the Railroad Commission for any change therein or modification thereof during the term hereof, it being the express agreement of the parties hereto that said rate shall continue in force without change or modification at all times during the term hereof."

"In the event that said schedule of rates shall be raised at any time during the term hereof by competent authority, the city may at its option terminate this contract. In the event that said schedule of rates shall be lowered at any time during the term hereof by competent authority, the company may at its option terminate this contract."

"Both parties do hereby consent to the establishment by the Railroad Commission of the State of California of the foregoing schedule of rates for the service herein contemplated and both parties hereby agree not to apply directly or indirectly to the Railroad Commission for any change therein or modification thereof prior to May 3, 1928, it being the express agreement of the parties hereto that said rates shall continue in force without change or modification at all times during said term prior to May 3, 1928."

"The company further agrees not to sell or furnish electrical energy to any individual, firm or corporation at a point outside the City for the purpose of transmission by such individual, firm or corporation to a point within the city as it is now or may hereafter exist, it being the intent hereof that all electricity actually used within the limits of the city shall be furnished to the consumer thereof by the city."

"During the period of this contract the city shall not supply electrical current to any consumers outside of the limits of the city as such limits may exist from time to time during the period of this contract, excepting to pumping plants or other works owned in part or in whole or under lease by the city, or to public schools, which schools are being served with electrical current by the city on the 1st of January, 1918, within the Pasadena School District, and excepting service to consumers on that part of the city's system lying outside its territorial boundaries which is not leased herein to the company."

And a copy of said contract with the provisions above mentioned eliminated shall have been filed with this Commission and a supplemental order made approving same.

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 23<sup>rd</sup> day of December, 1918.

Edwin O. Edgerton  
A. S. Stoveland  
Wm. Gordon  
Frank R. White  
Commissioners