Decision No. 26145

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Suspension by the Commission on its own motion of Schedule S-P-12, San Joaquin Light and Power Corporation.	))))	Case No. 3610.

C. P. Cutten and Chaffee Hall, for San Joaquin Light and Power Corporation, respondent.

J. J. Deuel, for California Farm Bureau Federation, protestant.

CARR, COMMISSIONER:

O P I N I O N

On June 12, 1933, San Joaquin Light and Power Corporation filed its Schedule S-P-12 effective on July 1 by which it offered reduced rates to some of its larger agricultural power consumers. On June 19 the schedule was suspended by order of the Commission and on June 29 a public hearing was had and the matter was submitted.

The rates proposed in the suspended schedule and the rates provided in Schedule S-P-3, the general schedule governing agricultural power service, are outlined, so far as material, in a footnote[1]

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1. Schedule S-P-3 extends rates as follows:

Size of Installation	Annual Demand Charge Per Hp.	Energy Charge in Addition to the Demand Charge Rate per Kwh. for Consumptions per Hp. per Year of First 1000 Kwh.	Next 1000 Kwh.	Next 3000 Kwh.	All Over 5000 Kwh.
1 - 4 Hp.	$6.50	1.5¢	.8¢	.7¢	.6¢
5 -14	5.50	1.3	.8	.7	.6
15 - 49	5.00	1.25	.8	.7	.6
50 - 99	4.50	1.2	.8	.7	.6
100 and Over	4.00	1.15	.8	.7	.6

As required by order of the Commission in Re San Joaquin Light and Power Corporation, 37 C.R.C. 530, a 12½ per cent discount is applied to "charges for that portion of the current monthly consumption of energy in excess of accumulation to date of 1000 Kwh. per horse power during the agricultural year." Special condition (c) provides that "the demand charge will be based on the largest load that may be connected at any one time."

The suspended Schedule S-P-12 extends the following rate:

Annual Demand Charge:

(1) For connected loads of 500 Hp. to 750 Hp:
$14.00 per Horsepower per year but not more than $9,000.

(2) For connected loads of over 750 Hp:
$12.00 per horsepower per year.

Energy Charge:

4.5 mills per kilowatt hour.

By footnote (a) the schedule is "limited to groups of pumping plants used in the irrigation of lands that are contiguous, under one ownership or lease and under one operating management."

Condition (b), unlike the corresponding condition in Schedule S-P-3, provides that the "connected load ** shall be the maximum rated capacity of those motors simultaneously operated or connected to the company's system during the agricultural year **." Under condition (c) the consumer is required to "predetermine as nearly as possible the maximum connected load that may be simultaneously operated" and should this predetermination be increased during the year under condition (e) the "demand charge shall be adjusted accordingly."

In recent years the competitive struggle for traffic between various agencies of transportation has grown increasingly intense. Railroads, trucking companies and water carriers have offered special rates to hold or to regain traffic; and the jurisdiction of the Commission has, with growing frequency, been invoked to determine whether this or that special rate so offered constituted an unlawful discrimination. This jurisdiction generally has been exercised in cases where a proposed rate had been suspended following informal protests and the agency offering the rate called upon to justify it.

The present case is the first one in which there has been a formal suspension of a power rate and is symptomatic of the gradually developing competitive forces affecting an industry which long has enjoyed an unthreatened monopoly in its field.

That the present rate was offered to meet a threatened competition is without dispute in the record. Mr. J. S. Moulton, Assistant to the respondent's President, and who had more to do with the development of the form of the suspended schedule "than anyone else in the company" testified that the rate was tendered "to meet a competitive condition." Mr. J. J. Deuel, appearing as a witness for the protestant testified:

> "There is pending before this Commission an application which proposes to serve, if granted, 79 of these consumers with natural gas and this schedule is filed, without any question, and I believe not contradicted by the company, for the express purpose of conserving to the company that particular business. If the schedule is so worded as to serve all of those people it cannot be objectionable, but being worded as it is, certainly not more than 7, and I think not more than 5 of the 79, could qualify and if those, any 3 of those 5, did qualify, they would make the operation as proposed under the application for franchise now pending before the Commission, impossible."

Later, in response to a question, Mr. Deuel identified the application as that of Gas Fuel Service Company and the rate proposed by it for natural gas to be at 17 cents a thousand

cubic feet and further pointed out that "even if the Commission should not grant the Gas Fuel Service Company's application for a certificate," that Coast Counties Gas and Electric Company has offered to serve a portion of this territory and "it was an offer by them that caused the San Joaquin Light and Power Corporation to make its special offer to Mr. Hotchkiss."

The respondent, while frankly admitting the motivating cause of its tender of the rate under suspension, maintained that its "cost of service indicates that those consumers that would be benefited are those which are most profitable to the company and that, on the cost standpoint" the company was "justified in making a reduction ** rather than to lose the business."

Two questions are presented:

First: Will the suspended rate in the absence of competitive conditions work an undue and unlawful discrimination between consumers?

Second: If so, do competitive conditions justify the rate which otherwise would be unlawful?

The first question must be answered in the affirmative and the second in the negative. This requires the permanent suspension of the schedule as tendered.

1. The burden of proof is on the company to justify the suspended rate. While the evidence tends to show that the business of the larger agricultural power consumers having as a rule a better load factor than the smaller consumers is more profitable to the company than that of the smaller users and that there is

justification for some lowering of the rate of these larger users, the company's proposal involving as it does a new type of charge and substituting simultaneous use for the connected load requirement of the general schedule, has too many potentialities of discrimination to justify its sanction here.(2) It is hard to see why the few large users for whose benefit this schedule was tendered may have their maximum demand calculated upon the simultaneous use of 5 or 6 or 7 individual 100-horsepower installations out of a total of perhaps 10 such installations, while other consumers having 3 100-horsepower installations, each serving the same acreage and the same character of crops as the separate installations of the former, should be required to pay upon the full 300-horsepower installed capacity.

It is not satisfactorily established that the demand cost of serving several 100-horsepower installations under a single ownership or control is sufficiently less per installation than where there are several such installations under separate ownership to justify the granting of concessions in rates as here attempted to installations under a single control .(3)

Again, a comparison of the charges under this schedule with the schedules for agricultural power service long maintained by the other major power utilities, indicates a preference for the larger users disproportionate to that found justified or necessary by the other major utilities serving agricultural sections.

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2. In Re San Joaquin Light and Power Corporation, 37 C.R.C. 530, the Commission recognized that this company should lower somewhat its charges for larger use per horsepower and directed certain discounts noted in Schedule S-P-3. If the company is of the opinion that its larger users are not being properly treated, it would seem appropriate to provide for discounts for usage in excess of certain limits rather than to tender a new form of schedule so pregnant with the possibility of working undue discrimination as between its consumers.

3. Mr. Moulton, in response to a question as to the relative cost, testified, "The over-all cost of service would be greater, yes; not substantially though."

2. In Re Modesto Irrigation District, Supra, the Commission considered at some length the right of a utility to meet the rates of a competitor and, in line with its prior decisions as well as the decisions of other Commissions and pertinent holdings of the courts, recognized and declared this right. However, the meeting in full of the rates of a competitor in a given territory [4] differs substantially from publishing a rate known to be available only to a few large users in such territory thereby destroying or forestalling competition in respect to such large users and to all others. In the latter case the sound reasons of public policy underlying the rule recognized and declared in the Modesto case are entirely wanting. Meeting competition is one thing; destroying it is another. The record as here developed indicates the suspended rate was tendered for the latter purpose and does not fall within the rule of the Modesto case and of the cases there cited.

Counsel for respondent in arguing that the company "has a right to protect its business" correctly attached to this right the proviso that "it does not unduly discriminate." What has already been said as to the discriminatory character of the rate tendered is applicable to its effect in the territory where competition is threatened. There is nothing in the record to indicate that the discrimination effected by the tendered rate between those coming under its provisions and other consumers on the utilities' systems will not exist as between the intended beneficiaries of the rate and other consumers in the competitive area.

By the conclusions here expressed the Commission does not intend to shut the door to this company meeting in a reasonable

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4. The protestant recognized that if the schedule were framed to cover all the consumers in the area in which competition was threatened it would "not be objectionable."

and non-discriminatory way the actual conditions with which from time to time it may be confronted. It is enough to say that for reasons referred to the respondent has failed to justify the particular rate under suspension and hence its cancellation must be ordered.

I recommend the following form of order.

O R D E R

Public hearing having been had in the above entitled matter,

IT IS HEREBY ORDERED that respondent, San Joaquin Light and Power Corporation, be and it is hereby ordered to cancel Schedule S-P-12 on or before the effective date of this order.

IT IS HEREBY FURTHER ORDERED that the effective date of Schedule S-P-12 be and it is hereby further suspended until the effective date of this order.

IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be twenty (20) days from the date hereof.

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

Dated at San Francisco, California, this 10th day of July, 1933.

C. L. Seavey

Leon O. Whitsell

M. J. Carr

M. B. Harris

Commissioners.