Decision No. 26804

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

SMOOT-HOLMAN COMPANY,
a corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA EDISON
COMPANY LTD., a Corporation,

Defendant.

Case No. 3752.

T. A. Hunter, for Complainant.

Roy V. Reppy and B. F. Woodard, for Defendant.

CARR, Commissioner:

OPINION

Complainant seeks to recover certain claimed overcharges due to the refusal of the defendant to permit it to take electricity under Schedules P-21 and L-15.

The case was heard on February 15th, at which time it was submitted.

The case turns upon the construction proper to be placed on defendant's Schedule P-21, Schedule L-15 being a schedule supplementary to this. The amount of over-charge due, if complainant's contention as to the meaning of the schedule is correct, is stipulated to be $1,696.46.

Schedule P-21, an optional schedule, was originally issued on February 2, 1931, effective on May 1, 1931. Special Condition (b) of the schedule as originally issued reads as follows:

> "(b). The above rate and minimum charge shall be based on horse-power of measured maximum demand, which in no case shall be less than 40% of the connected motor load, but not less than 500 horse-power in Zone A, and not less than 1,000 horse-power in balance of territory."

Various successive refilings of this schedule were made, the only change effected by these refilings worthy of commet being made by the refiling on July 19,1932, effective August 23, 1932, in which, under the heading "Territory," there was inserted the following:

> "(2). For connected loads of not less than 500 H.P., Zone A, consisting of the following Southern California Edison Company, Ltd., geographical districts*******"

Special Condition (b) was also continued in the words heretofore set out.

Complainant's contention is that although his connected load admittedly was but 383 (plus) horsepower, he had offered to pay the guaranteed minimum for a connected load of 500 horsepower, and that his demand was actually greater than many installations of 500 horsepower and over, and that therefore the schedule should be so construed that he could secure the advantage of the rates therein specified in Schedule P-21.

The language contained in Special Condition (b), which appeared in the original filing and all refilings of this schedule, seems definitely to limit the application of the Schedule in Zone A, in which complainant's plant is located, to consumers having not less than 500 horsepower of connected load. The added provision to the same effect, contained in the refiling of July 19, 1932, would seem to be purely cumulative.

Other power schedules of the defendant specifically permit a consumer to guarantee minimum charges for a greater connected load than he has, and obtain the rate applicable to such greater connected load. (1)

The conclusion is inescapable that the defendant has, ex industria, limited its optional Schedule P-21 to consumers in Zone A having an installation of 500 horsepower or more. This conclusion is determinative of the case. (2)

I recommend the following form of order:

ORDER

Public hearing having been had in the above entitled proceeding and the matter submitted,

IT IS HEREBY ORDERED that the complaint be and the same is hereby dismissed.

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1. Thus, Schedule P-1, covering General Power, in effect from November 15, 1923, until November 6, 1931, carries as Condition (d) the following:

> "Any consumer may obtain the rates for a larger installation by guaranteeing the rates and minimum charge applicable to the minimum installation."

The identical condition has been carried in the refilings of Schedule P-1. Schedule P-20, effective on May 1, 1931, carried such a provision. The same is true of Schedule P-22, effective May 1, 1932, Schedule P-12, effective September 4, 1927, Schedule P-11, effective May 1, 1929, and Schedule P-26, effective May 6, 1932, together with their various refilings.

2. There was some evidence suggestive that the defendant had compromised a claim with another consumer on the basis of the construction here urged by the complainant. It is impossible from the evidence presented to determine whether through the medium of a compromise of a disputed bill an under charge was thus effected. If it was, steps should be taken for its collection. It does appear that concurrently with the issuance of Schedule P-21 all district managers by circular letter were instructed that the schedule could not be applied to installations of less than 500 horsepower by guaranteeing a larger installation.

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 17th day of February, 1934.

C.L. Seavey

Leon Whitsell

W.J. Carr

M.B. Harris

Wallace Ware

Commissioners.