

Decision No. 35040

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of CALIFORNIA ELECTRIC POWER COMPANY, a corporation, for certificate of Public Convenience and Necessity to exercise rights under Franchises in the Cities of Corona, Elsinore, Hemet, Perris, and San Jacinto, all in the County of Riverside, State of California.

Application No. 24499

Application of CALIFORNIA ELECTRIC POWER COMPANY, a corporation, for a certificate of Public Convenience and Necessity to exercise rights under Franchise in the City of San Bernardino.

Application No. 24500

Application of CALIFORNIA ELECTRIC POWER COMPANY, a corporation, for a certificate of Public Convenience and Necessity to exercise rights under Franchise in the City of Rialto.

Application No. 24501

C. N. Perkins, for Applicant.

Raymond P. Hodge, for City of Rialto.

CRAEMER, COMMISSIONER:

O P I N I O N

These three applications of California Electric Power Company may appropriately be consolidated for decision. The seven franchises which applicant now seeks authority to exercise were grants given to predecessor utilities by various cities in San Bernardino and Riverside counties during the years 1911 to 1914 but which seemingly were not then presented to the Commission for such formal action thereon as may have been required by the provisions of subparagraph (b) of Section 50 of the Public

Utilities Act. That Act, including subdivision (b) of Section 50, as it now stands, became effective on March 23, 1912. It expressly required that each utility which thereafter received a local franchise should secure from the Commission a certificate permitting its exercise, but provided that those utilities which were then proceeding with construction work under authority of pre-existing franchises might continue, without a certificate, with construction work under such rules and regulations as the Commission might prescribe. Applicant now asks the Commission to make such order as appears to be necessary in respect to each of these early franchises so that all doubt may be removed as to the possible invalidity of the rights under which electric service is being rendered within the respective cities. The franchises referred to may be briefly described in the order of the dates granted.

The City of San Bernardino, by Ordinance No. 462 adopted September 5, 1911, granted a 50-year electric franchise to Fred B. Mechling, and this was assigned during the same year to The Southern Sierras Power Company. In 1936 the Commission authorized the last named corporation to transfer its property and franchise to Nevada-California Electric Corporation. The name of the latter has since been changed to California Electric Power Company, the applicant herein. Applicant alleges, and the Commission's own records so indicate, that electric distribution facilities were installed in San Bernardino before March 23, 1912. Hence, under the provisions of the Act, it was not legally necessary for applicant's predecessor to obtain from the Commission either a certificate to exercise the above-mentioned franchise or to obtain an order prescribing the conditions under which construction work thereunder might be carried forward.

The City of Perris, Riverside County, by Ordinance No. 8 adopted September 15, 1911, granted a 50-year electric franchise to the same Mr. Mechling. There was the same chain of succession as above mentioned in connection with the San Bernardino franchise. Applicant alleges that the physical construction of the electric facilities was completed before the effective date of the Act, so it would appear that, in this instance also, no specific Commission authorization was required.

The City of Corona, Riverside County, by Ordinance No. 241 adopted March 26, 1912, granted a 50-year electric franchise to one F. A. Worthley, and this was thereupon assigned to The Southern Sierras Power Company. Although electric service was begun in this city as early as 1903, it was necessary for the grantee of this franchise to obtain authority of the Commission to exercise the same, inasmuch as the grant was made three days after the Public Utilities Act became effective.

The City of San Jacinto, Riverside County, by Ordinance No. 102 adopted April 2, 1912, granted a 50-year electric franchise to Fred B. Mechling, which franchise was assigned during that year to The Southern Sierras Power Company and to which the applicant has succeeded. Electric service was begun in the San Jacinto area about 1897. However, the requisite authority to exercise that franchise was not obtained.

The City of Hemet, Riverside County, by Ordinance No. 53 adopted April 3, 1912, granted a 50-year electric franchise to Fred B. Mechling. This was transferred immediately to The Southern Sierras Power Company. Although electric service was actually rendered several years before, authority to exercise such franchise should have been obtained.

The City of Elsinore, Riverside County, by Ordinance No. 108 adopted February 17, 1913, granted a 50-year electric

franchise to The Southern Sierras Power Company. Electric service had been rendered by this company or its predecessors since about the year 1906. This franchise too should not have been exercised without express authorization given by this Commission.

The City of Rialto, San Bernardino County, by Ordinance No. 41 adopted April 14, 1914, granted a 50-year electric franchise to Rialto Light, Power and Water Company, a corporation which began electric service in that community about 1907 and continued until its acquisition in 1918 by The Southern Sierras Power Company. It does not appear that the requisite authorization of this Commission was obtained for the exercise of said franchise.

Applicant's predecessor companies were before the Commission on several occasions when the existence of these early franchise grants was revealed and their assignment from one corporation to another was permitted. Applicant feels, nevertheless, that it should now seek a specific order in respect to each in order that it may avoid the charge of technical noncompliance with the express provisions of the statute. Obviously, such request should be granted. Inasmuch as a certificate was not required on March 23, 1912, for the exercise of those franchises theretofore obtained, the order here made will apply only to those subsequently dated.

The Commission's jurisdiction in respect to franchises granted prior to that date is limited to the enforcement of rules and regulations governing the construction of extensions. Inasmuch as the utility will be expected to abide by existing extension rules, no further order or authorization in respect to prior franchises is necessary.

It might be observed further that in both the City of San Bernardino and the City of Corona the Southern California Edison Company likewise possesses franchise rights. The latter company serves a large portion of San Bernardino but has only four customers within the City of Corona. Actual competition between the two utilities does not exist, however, as a working agreement has existed between them for a number of years with the Commission's full approval. Any certificate now given to exercise these early franchises may not, as the applicant stipulates, be taken to permit uncontrolled competition in the area served by the other utility.

The applicant has presented evidence showing the original cost of each of the franchises here involved and has stipulated that no claim of value will be made in excess of such cost.

O R D E R

Hearings having been had upon the above entitled applications of California Electric Power Company, and it being found as a fact that public convenience and necessity so require; therefore,

IT IS ORDERED that a certificate be and hereby is granted to California Electric Power Company to exercise each of the electric franchises referred to in the respective applications, to wit:

1. The franchise granted by the City of Corona to F. A. Worthley by Ordinance No. 241 adopted March 26, 1912.
2. The franchise granted by the City of San Jacinto to Fred B. Mechling by Ordinance No. 102 adopted April 2, 1912.

3. The franchise granted by the City of Hemet to Fred B. Mechling by Ordinance No. 53 adopted April 3, 1912.

4. The franchise granted by the City of Elsinore to The Southern Sierras Power Company by Ordinance No. 108 adopted February 17, 1913.

5. The franchise granted by the City of Rialto to Rialto Light, Power and Water Company by Ordinance No. 41 adopted April 14, 1914.

It is a condition of this order that no claim of value for any such franchise or for the authorization herein given in excess of the actual cost thereof shall ever be made by California Electric Power Company, or its successors or assigns, before this Commission or before any court or other public body..

The effective date of this order shall be the twentieth day after the date hereof.

Dated, San Francisco, California, this 17th day of February, 1942.

Justus F. Caseman
Ray L. Riley
J. G. Baker

DISSENT IN DECISION NO. 35040 , IN APPLICATIONS NOS. 24499,

24500 AND 24501.

We dissent in so far as the majority decision concerns grants of certificates for the exercise of franchises in the City of Corona (Ordinance No. 241, adopted March 26, 1912), City of San Jacinto (Ordinance No. 102, adopted April 2, 1912), City of Hemet (Ordinance No. 53, adopted April 3, 1912), City of Elsinore (Ordinance No. 108, adopted February 17, 1913) and City of Rialto (Ordinance No. 41, adopted April 14, 1914), and on grounds specified in our dissent in decision No. 43723 in application No. 23634 (Southern California Edison Company Ltd., for a certificate of public convenience and necessity for electric service in Riverside County, California).

The five franchises referred to above are, all of them, fifty-year franchises and purport to grant operating, service and other rights clearly outside the cities' police power and exclusively vested in this Commission.

The franchises were granted by the respective cities in 1912, 1913 and 1914, twenty-eight, twenty-nine and thirty years ago, and applicant comes now, at this late date, asking for an order and declaration from this Commission under Section 50 (b) of the Public Utilities Act "that public convenience and necessity require the exercise by applicant of the rights granted to it" by these franchises. In our opinion, the Commission should not at this time approve or certify, directly or by implication, any franchise provisions unlawful or contrary to the public interest.

Applicant refers to prior proceedings when transfer of property from predecessor companies was at issue and particularly to application No. 20349 and C.R.C. decisions No. 28616, et seq. In the present application No. 24501 applicant says: "Heretofore applicant has assumed that the several orders hereinbefore referred to authorizing the transfers of said franchise to it and its predecessor were tantamount to certificates of public convenience and necessity, but in order to dispel any doubt in the matter, the present application for such certificate is made." The record in application No. 20349 lends no support to such an assumption. On the contrary, it appears that there was opposition to the transfer of franchises within Imperial County

and that the Commission gave particular attention to the significance of the transfer of franchises from the predecessor company to applicant. In decision No. 28616 (C.R.C. 39, 614) the Commission says:



"The order herein does not create or establish any franchise rights. It only authorizes the transfer of such franchise rights as The Southern Sierras Power Company may have. If it does not own or possess any such rights it cannot transfer any. Moreover, the order herein does not operate as an abatement of any claims that Imperial County or any one else may have against The Southern Sierras Power Company."

In the majority decision (page 4) appears this statement:

"Inasmuch as a certificate was not required on March 23, 1912, for the exercise of those franchises theretofore obtained, the order here made will apply only to those subsequently dated.

"The Commission's jurisdiction in respect to franchises granted prior to that date is limited to the enforcement of rules and regulations governing the construction of extensions."

We suggested that the broad language in the second quoted sentence be eliminated or clarified. Since that was not done, we wish to make it clear that in our opinion the Commission's jurisdiction is not so limited and extends to all new construction, to operation and service and to rates and charges, notwithstanding any contrary franchise provisions. The law is clear, we think, that the provisions of the Public Utilities Act, after its effective date, superseded and are paramount to any conditions and provisions of local franchises, save only those clearly within the police power of the political subdivisions of the state.



Commissioners.