

Decision No. 36623

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of
 CALIFORNIA ELECTRIC POWER COMPANY,
 a corporation, for an Order Limiting
 or Defining Petitioner's Service
 Area pursuant to the provisions of
 Chapter 552, Statutes of 1943 of the
 State of California.

Application No. 25755

ORIGINAL

Henry W. Coil, for Applicant California Electric
 Power Company.

Harry W. Horton, Attorney, Evan T. Hughes, President,
 Board of Directors, and Lester S. Peady, Consulting
 Engineer, for the Imperial Irrigation District.

C. G. Halliday, District Attorney of Imperial County,
 for the Board of Supervisors of Imperial County.
 El Centro, California.

Arvin B. Shaw, Jr., for Coachella Valley County
 Water District; Joseph H. Snyder, Chief Engineer
 of Coachella Valley County Water District.

L. M. Klauber, for San Diego Gas and Electric Company.

SACHSE, COMMISSIONER:

OPINION

In this application the California Electric Power Company petitions
 the Railroad Commission of the State of California for an order limiting or
 defining petitioner's electric utility service area pursuant to the provisions
 of Chapter 552, Statutes of 1943 of the State of California.

This application has been filed in conjunction with Application 25761,
 of petitioner, and on this date Decision No. 36622 has been issued,
 authorizing, among other things, the sale of certain electric properties of
 California Electric Power Company in the Imperial and Coachella Valleys to the
 Imperial Irrigation District. A public hearing was held in the Railroad
 Commission's courtroom in Los Angeles on September 2, 1943, at which time and
 place evidence was taken and the matter submitted for decision.

Decision No. 36622, referred to shows that the duplication in electric service supplied by both the Company and the District in Imperial County, together with the District's intention to extend its electric system into portions of Riverside County in competition with Company, is the primary reason for the sale by the Company of its electric properties in these areas.

In order that both the Company and the District might be relieved of further expense and losses, and the public correspondingly benefited from the elimination of wasteful duplication in effort and facilities, each party has agreed to refrain for a period of at least twenty-five years from encroaching on the service area of the other party. Such intention and agreement is embodied in Article 15, covering the District's restrictions, and in Article 16 covering the Company's restrictions. Said Articles are incorporated in the sale and purchase agreement attached to the pending application as Exhibit A.⁽¹⁾ While the agreement of sale and purchase between District and the Company necessarily includes both Articles 15 and 16, the prayer of petitioner, who is under our jurisdiction, is limited to the specific request for an order designating the areas within which the Company shall not sell or distribute electric power or energy, all in accordance with Article 16 and as provided in Chapter 552, Statutes of 1943 of the State of California. It is provided in said Chapter 552 that any order issued by this Commission limiting the area to be served by a public utility shall not become effective until the California Districts Securities Commission also shall have issued an order limiting the area to be served by the Irrigation District. The procedure to be followed by the Irrigation District is set forth in another statute passed concurrently, namely, Chapter 553 of the Statutes of 1943. Counsel for the District stated at the hearing that it had petitioned said California Districts Securities Commission for an order to sanction the limitation of service area as provided in Article 15 of the agreement of sale and purchase. Counsel further stated that the necessary order had been made and that a copy would be furnished this Commission.

(1) This identical agreement is likewise a part of Application No. 25761, and was there, too, designated as Exhibit A.

It appears to me that the State's position as indicated by the above referred to statute respecting the limitation of service area as between utilities and irrigation districts engaged in sale of electricity is in the public interest and will result in more economical service, inasmuch as the waste and duplication always present under ruinous competition will largely be eliminated. This is more fully discussed in this Commission's Decision No. 36622 in the application for the sale of the electric properties. It is clear, however, that the authority sought by petitioner is limited to its service area and that we have no jurisdiction over the operations of the District.

In view of these facts and referring also to the order issued today in the transfer of the electric properties, it is my opinion and recommendation that the necessary order be made limiting the service area of petitioner as prayed for.

I herewith submit the following form of Order:

O R D E R

A public hearing having been held in the above numbered proceeding, the matter having been submitted for decision and the Commission being fully advised in the premises;

It being found that the order sought by the California Electric Power Company is for the best interests of the State of California and is not incompatible with any public interest that the petition should be granted; therefore

IT IS HEREBY ORDERED that:

(a) For and during the period of twenty-five years from and after the date of the Agreement of Sale and Purchase (such date to be the date upon which said Agreement is executed and delivered) whereby California Electric Power Company, herein called Company, sells and conveys, and Imperial Irrigation District, herein called District, purchases, among other things, the electric utility system properties and rights of Company in Imperial County, State of California and in that portion of Riverside

County, State of California, described as District Coachella Service Area, as hereinafter defined, all as authorized by order of this Railroad Commission in Decision No. 36622 Company shall not, except as in this Order provided, directly or indirectly, sell or distribute electric power or energy in any or all of the following described areas, or sell or distribute electric power or energy in any other area for transmission into, or use, resale or consumption within any or all of the following described areas, to-wit:

(i) the County of Imperial, State of California:

(ii) the portion of Riverside County, State of California, described as District Coachella Service Area and contained within the following Sections, Townships and Ranges, all references being to the San Bernardino Base and Meridian, to-wit:

All of Township 2 South, Ranges 6, 7, 8, 9, 10 and 11 East;
All of Township 3 South, Ranges 6, 7, 8, 9, 10 and 11 East;
All of Sections 1, 2, 11, 12, 13, 14, 23, 24 and 25 of Township 4 South, Range 5 East;
All of Township 4 South, Ranges 6, 7, 8, 9, 10, 11 and 12 East;
All of Sections 1, 2, 3, 4, 10, 11, 12, 35, and 36 and that part of Section 25 lying south and east of the ridge line of hills known as Point Happy, of Township 5 South, Range 6 East;
All of Township 5 South, Ranges 7, 8, 9, 10, 11, 12 and 13 East;
All of Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, of Township 6 South, Range 6 East;
All of Township 6 South, Ranges 7, 8, 9, 10, 11, 12, 13 and 14 East;
All of Sections 1, 12, 13, 24, 25 and 36 of Township 7 South, Range 6 East;
All of Township 7 South, Ranges 7, 8, 9, 10, 11, 12, 13, 14 and 15 East;
All of Sections 1, 12, 13, 24, 25 and 36 of Township 8 South, Range 6 East;
All of Township 8 South, Ranges 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 East.

(b) Nothing in paragraph (a) of this Order shall apply to any of the following to-wit:

- (i) any disposal or delivery, by sale, distribution, exchange, interchange, or otherwise, of electric power or energy to any electric power plant or transmission system, or both, having a total generating or transmission capacity of not less than 10,000 kilowatts which is owned or operated by the United States of America or any agency or department thereof;
- (ii) any disposal or delivery, by sale, distribution, exchange, interchange, or otherwise, of electric power or energy to any electric utility, publicly or privately owned, which

has a total generating or system capacity of not less than 10,000 kilowatts, and which has during the year next preceding the date the contract therefor is made by Company, been engaged in the sale or distribution of electric power or energy, and has sold or distributed outside of the areas described in paragraph (a) of this Order not less than seventy-five per cent (75%) of the total electric power and energy sold or distributed by such utility during said year;

- (iii) any disposal or delivery, by sale, distribution, exchange, interchange, or otherwise of electric power or energy to District, its successors and assigns;
- (iv) any disposal or delivery, by sale, distribution, exchange, interchange, or otherwise, of electric power or energy to Metropolitan Water District of Southern California;
- (v) the construction, maintenance and operation of any transmission line or lines and appurtenances in any areas described in paragraph (a) of this Order if such transmission lines or line are not used for the sale or distribution of electric power or energy contrary to the provisions of this Order;
- (vi) any disposal or delivery, by sale, distribution, exchange, interchange, or otherwise by Company or its subsidiaries solely for export into and use, resale or consumption in Baja California of electric power or energy received from District.

(c) Nothing in Article 16 or elsewhere in said Agreement of Sale and Purchase or in any order made by any commission in accordance with or approving said Agreement of Sale and Purchase or authorizing and effectuating the provisions of said Article 16 shall be construed or deemed to prevent the making of any future agreement between Company and District for the purpose of altering any part or provision of said Article 16, provided that such agreement shall not be valid unless or until the same is lawfully approved as to Company and District, respectively, by the Railroad Commission of the State of California and California District Securities Commission, or such other authorized bodies as may at the time have jurisdiction in the premises, by orders made pursuant to petitions of Company and District, respectively, in accordance with the provisions of applicable law.

(d) Said proposed Agreement of Sale and Purchase attached to the application herein and marked "Exhibit A," and the conditions set forth in Article 16 thereof in connection with the limitation or definition of the area or areas within which the Company shall not have the right or

authority to sell or distribute electric power or energy, directly or indirectly, are each and all hereby approved and authorized.

The foregoing Opinion and Order are hereby approved and filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22nd day of September, 1943.

Francis A. Havens
1/4 Data

Richard Kachse
Frank W. Owen
Commissioners

signed late. 20 →