

ORIGINAL

Decision No. 42869

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the public utility operations of CLYDE W. HENRY, doing business as Klamath Water, Light and Power Company

Case No. 4992

Investigation on the Commission's own motion to determine whether public convenience and necessity require that CALIFORNIA OREGON POWER COMPANY be authorized and directed to furnish electrical service to the inhabitants of the town of Klamath and vicinity.

Case No. 4993

C. A. Degnan for Clyde W. Henry; and Brobeck, Phleger and Harrison by George D. Rives for The California Oregon Power Company, respondents; Hauerken and St. Clair by George H. Hauerken for L. W. Rosford, intervener; William J. Mee for Klamath Chamber of Commerce; Eldon N. Dye for California Farm Bureau Federation; and Richard H. Brown and F. C. Riley for Simpson Logging Company, interested parties; J. T. Phelps for Electric Division, Hydraulic Division and Department of Finance and Accounts, Public Utilities Commission of the State of California

O P I N I O N

Case No. 4992 is an investigation instituted on the Commission's own motion, following the filing of numerous informal complaints, into the operations of Clyde W. Henry, doing business as Klamath Water, Light and Power Company, in furnishing public utility electric and water services to the inhabitants of the town of Klamath (Del Norte County) and vicinity. The purposes of the investigation are:

1. To inquire into the adequacy of the electrical and water services rendered by respondent, the adequacy of the equipment and facilities used in furnishing such services, and the propriety and sufficiency of his accounting records, practices, rules and regulations observed in furnishing such services, or any of them;

2. To determine whether respondent has complied, or has made reasonable efforts to comply, with the requirements of the Commission's Decisions Nos. 39798 and 40504;
3. To determine whether respondent has used the proceeds of a promissory note authorized by the Commission's Decision No. 41279 for the purposes required by said decision; and
4. To determine whether the certificate of public convenience and necessity now held by respondent, authorizing the furnishing of electricity and water to the inhabitants of the town of Klamath and vicinity, should be revoked for failure to comply with Decisions Nos. 39798, 40504 or 41279, or for failure to render adequate electric or water service, or for any other lawful reason.

Case No. 4993 is an investigation, likewise instituted on the Commission's own motion, to determine whether public convenience and necessity require that The California Oregon Power Company, a corporation, hereinafter called California Oregon, be directed to extend its facilities in order to furnish electricity to the inhabitants of the town of Klamath and vicinity. Both California Oregon and Clyde W. Henry were made respondents to this proceeding.

A petition for leave to intervene was filed by L. W. Hosford in both proceedings. The petition sets forth various allegations concerning a transaction involving a loan of \$36,000 made to respondent Henry and seeks certain affirmative relief. By order, dated February 8, 1949, Hosford was authorized to intervene and become a party to the proceedings. The order provided that such authority "is not to be construed as granting any of the relief prayed for other than the mere right to intervene."

A public hearing was held before Commissioner Potter and Examiner Bradshaw at Klamath on a consolidated record. Testimony was presented by members of the Commission's staff, a number of businessmen and residents of the town of Klamath, respondent Henry, and three

representatives of respondent The California Oregon Power Company. A brief was filed by respondent Henry, to which the Klamath Chamber of Commerce replied. Both proceedings will be disposed of in a single opinion and order.

CASE NO. 4992, CLYDE W.-HENRY (KLAMATH WATER, LIGHT AND POWER COMPANY)

The town of Klamath is located approximately 22 miles south of Crescent City. It has a population of about 500. The towns of Requa and Klamath Glen are also within the service area of respondent's electric system. The total population served is approximately 1,000.

The electric generating plant of respondent consists of several small diesel power generators located in a plant in Klamath and in an auxiliary plant approximately six miles north of town. Primary lines, nominally at 2,400 volts, extend northerly from Klamath about seven miles and easterly approximately four miles to Klamath Glen. The total number of electric consumers is about 400.

The water system of respondent consists of about 6,500 feet of pipe varying from 3/4 inch to two inches in diameter and is supplied from two wells. One well, located southwest of town, is 14 inches in diameter and 50 feet deep and is equipped with a turbine pump capable of delivering approximately 80 gallons of water per minute into the two-inch main at the well site under pressures ranging from 40 to 60 pounds. The other well, located northeast of town, is eight inches in diameter and 43 feet deep and is capable of delivering about 20 gallons of water per minute at pressures from 40 to 60 pounds. No water storage is provided. There are 88 service connections serving 234 customer-units all located in or near the town of Klamath.

Authority to operate the properties now known as Klamath Water, Light and Power Company was granted originally by Decision No. 21024 dated April 26, 1929 (32 CRC 887). In that decision the

Commission granted, to Rose Wilson, (1) a certificate that public convenience and necessity required and would require the construction, operation, and maintenance of electrical properties and water properties in Sections 3, 4, 10, 14 and 15 in township 13 north, range 1 east, Humboldt Meridian, and (2) the authority to exercise the rights and privileges granted by Ordinance No. 116 of the Board of Supervisors of Del Norte County for the construction, maintenance and operation of electric and water facilities in the public roads and places within those sections of Del Norte County.

Authority to transfer the system to Ernest McCullough and Eleanor McCullough was granted by Decision No. 31167 dated August 8, 1938 in Application Nos. 22130 and 22131. Subsequently by Decision No. 34122 dated April 29, 1941 in Application No. 24122 the McCulloughs were authorized to transfer their rights, title interest and equities in and to the properties to respondent. The evidence shows that portions of respondent's electric system extend to areas not covered by the certificate and franchise granted by Decision No. 21024 and by Del Norte County Ordinance No. 116, respectively.

Adequacy of Electric Service, Equipment and Facilities

Engineers on the staff of the Commission's Electric Division presented testimony and a report covering their investigations and conclusions on this subject.

A field investigation of the electric system and service was conducted by one of the witnesses and an assistant during 15 days in January, 1949. That investigation included, among other things, the recording of voltage at numerous locations, observation of system frequency during the period, tests of electric meter accuracy, observations of the condition of plant and equipment, and observations of operating practices. The 48-page report presented in evidence contains reproductions of 59 voltage charts, a table showing the results of 52

frequency measurements over time intervals of various lengths during the period from January 6 to January 20, 1949, eight reproductions of photographs of the generating plant equipment and 16 reproductions of photographs of electric line and meter equipment. The engineer testified that the voltage as recorded on the charts was not within the range between 113 volts and 125 volts during 50% of the time and that the times when the voltage was adequate was usually at off-peak hours. The engineer's report shows the system frequency to have been below 60 cycles per second during 48 of the 52 test intervals. Interruptions to service nullified the frequency test in two of the remaining intervals and the frequency exceeded 60 cycles per second during two other intervals. During seven of the intervals, the frequency was less than 55 cycles per second, being as low as 51.8 cycles during one test interval.

After examining respondent's equipment the engineer concluded that the generating equipment did not contain operable reserves sufficient to furnish continuous and adequate service. He stated that the maximum power load on the system during the investigation was 455 kilovolt-amperes, while the capability of the equipment ready to operate and handle the load was 500 kilovolt-amperes. In his opinion the margin of 45 kilovolt-amperes was not adequate to provide for equipment interruption without loss of frequency, lowering of voltage, or decreasing the load. He testified that many of the poles in the distribution system were substandard as to height and size, and that some were so rotted as to be unsafe. Based upon a general observation, he estimated that at least 20% of the poles should be replaced to conform to good construction practice. Most of the wire constituting the primary lines of the system was found to be too small to maintain voltage within reasonable limits when carrying peak loads at 2,300

volts. The engineer stated that induction voltage regulators were not provided on the primary feeders to compensate for excessive voltage drop. He reported 41 instances in which the line construction at 12 locations did not conform to this Commission's Rules for Overhead Electric Line Construction prescribed by General Order No. 95. The engineer's testimony revealed inadequate methods in operation and maintenance practices, in metering practices, and in the preparation and maintenance of records. He concluded that the electric service furnished by respondent was inadequate and insufficient at the time of the investigation, and that the practices and equipment of respondent are such that adequate and reasonable utility service could not and would not be furnished thereby.

Nine customers testified to complaints concerning electric service furnished by respondent. Those complaints included dim and flickering electric lights; instances when electric lights, toasters, fryers or calculating machines would not operate; power failures; impaired efficiency of cooking stoves; failure or decreased efficiency of motors or other electric appliances; inability to use photographic equipment because of flickering of electric lights; the burning out of motors; difficulties in the operation of radios and phonographs; and less satisfactory service when the lumber mills were operating than when they were not in operation. The impaired operation of appliances described by the witnesses invariably was attributed to an inadequate supply of electricity. An electrical contractor from Crescent City testified that he had been called to Klamath on numerous occasions to repair electrical appliances. In many cases he claimed motors were burned out because of low voltage conditions. He described light intensity tests made on December 10, 1948 in two schools. He stated that the lighting equipment therein, although inadequate, would be more effective if supplied at rated voltage.

Respondent testified that when he took over the Klamath properties in 1941, the electric generating plant consisted of one 50-kw and one 25-kw diesel-electric generators, and that since his acquisition of the system, generating equipment aggregating more than 2,000 hp and about 15 miles of power lines had been added to the system. He acknowledged, however, that not all of the added generating equipment was operative, some having been replaced, and that the capacity of the plant at the time of the hearings was about 400 to 500 kw. He stated that he had approximately 420 electric customers compared with about 90 in 1941, and that the number of customers had more than tripled during the last two-year period. He acknowledged that the criticisms made by the various witnesses with respect to inadequacy of service were justified and that the service has not been adequate. His explanation was that funds were not available to provide the proper equipment. He stated further that he had provided equipment of as large a capacity as possible, perhaps to the extent of being over generous in supplying needed electricity to the lumber mills. The breakdowns in service were said to have been of short duration, from 15 to 20 minutes, and to have been caused by too much demand upon the available equipment.

Respondent asserted that, although the present equipment is in as good a state of repair as it possibly can be, and is usable, it should be supplemented by a new engine unless the power line from Crescent City, hereinafter referred to, is completed in a reasonable time. His testimony regarding his ability to finance plant improvements was indefinite. He did indicate that he might have pending some arrangements for borrowing money to finance further construction of the power line from Crescent City, but gave no indication of possible sources of money for other plant improvement programs.

Adequacy of Water Equipment and Facilities

A report outlining the results of a 3½-day field investigation of respondent's water system was presented in evidence by an engineer on the staff of the Commission's Hydraulic Division. He testified that a pressure test taken for a 24-hour period at a store in Klamath disclosed that the water pressure varied from eight to 28 pounds per square inch, with considerable fluctuations between 5 p.m. to 7 p.m. (considered to be the peak load period) and between 7 a.m. and 9 a.m. He stated that about six other tests were taken. The results, according to this engineer, showed a range from no pressure at a cabin at the end of the 3/4-inch pipe line to a pressure of 25 to 26 pounds per square inch at a residence on Del Norte Street.

The hydraulic engineer testified that approximately 72,000 gallons of water per day, a continuous flow of 50 gallons per minute, would be necessary for domestic purposes during the period of peak demand in the fall of the year. He considered respondent's pumps, if operating at maximum efficiency, to be capable of producing an adequate water supply, but declared that the pipes were of such diameter that resistance in the pipe lines prevents the utilization of the maximum potential flow of the existing wells. He stated that the installation of a larger pump, a storage tank, and larger mains from the storage tank to the center of town would be essential to provide sufficient water to meet the system's peak demand. He considered storage facilities desirable for any water system. According to this witness, disastrous results would occur in the event of a fire due to the lack of any water reserve and the limited output of respondent's system.

Testimony was given by four customers concerning inadequate or unsatisfactory water supplied by respondent. Some of the conditions described were unsatisfactory pressure, a considerably reduced volume of available water during the summer, pressure frequently insufficient to flush toilets in the second story of a building, highly discolored

water with particles of foreign matter on occasions, failure of the water supply when the electric power fails, and the necessity of filtering water before using it to wash photographic plates.

Respondent stated that there were about 40 water customers at the time he commenced operation compared with 234 at the time of the hearing, the increase having been a gradual one. He asserted that, as improvements, three pumps and a tank had been purchased and a well dug. It apparently was necessary to abandon the additional well after a trial period because of the flow of sand. He stated that he had purchased 1,200 feet of six-inch pipe and 500 feet of four-inch pipe, as well as a 60,000-gallon tank, and had during the last six months undertaken negotiations for a tank site, although the tank and none of the pipe were in Klamath at the time of the hearing. He stated the reason for not completing the installation was because of the pendency of this proceeding which made it uncertain whether or not he would have use for the material in Klamath.

Respondent conceded that the present system is inadequate, but claimed that he was prepared to carry out the recommendations of the hydraulic engineer whenever sufficient funds were available. According to respondent, any discoloration of the water results from accumulations which gather in the pipes when water is shut off, and if the customers would allow the water to run for five or ten minutes, the discoloration would disappear. A report of a chemical engineer on the results of an analysis of three samples of water was offered in evidence. The engineer's conclusion stated in that report was that the iron content of the water at the source was well below the permissible limit of 0.30 parts per million and that the condition of the water is due to an action which takes place after it leaves the source of supply. Corrective measures were suggested.

Propriety and Sufficiency of Accounting Records, Practices,
Rules and Regulations.

Respondent's accounting records were examined by an accountant employed in the Commission's Department of Finance and Accounts. His report of his examination, together with his testimony, indicates that there were certain departures from the uniform systems of accounts, and that supporting data in all cases were not available. However, he stated that in general, the accounting records now set up, if maintained on a current basis, should be reasonably adequate.

By Decision No. 40504 dated July 8, 1947 in Application No. 28357, respondent was authorized to increase his rates for electric service on an interim basis. A schedule of rates was prescribed for application until October 1, 1948. A lower scale was also prescribed to become effective on that date. The record shows that rate schedules were filed in compliance with this decision. However, an analysis of bills rendered for the months of September, October, and November, 1948, discloses that charges were not assessed at the rates published in the lawfully applicable schedules. It appears that the electric light and power sales for September were recorded as \$8,206.94, whereas by applying the schedules in effect to the meter readings plus flat-rate billings as entered in the meter books, the sales should have been \$8,655.66. The sales recorded in respondent's ledger for October and November amounted to \$7,904.80 and \$7,443.89, respectively. Calculations applying the rates prescribed for application effective October 1, 1948, indicate that the charges should have been \$6,261.37 in October and \$5,731.96 in November.

It appears from the evidence that the differences between the charges assessed and those which would have accrued at the established rates were due to numerous errors in computing bills and the failure to observe the rates which became effective October 1, 1948.

The Commission's hydraulic engineer in a report of record herein indicates that respondent in numerous instances has not properly applied his filed rates for water. Some customers, he stated, pay less for water than other customers receiving comparable service. For instance, respondent's schedule provides that water rates for auto camps will be "according to use by special agreement" subject to a minimum charge of \$2.50 per month, but one auto camp with 15 cabins and a laundry pays considerably less than the monthly minimum charge. Other examples of the failure to adhere to the lawfully applicable rates were cited. The witness further testified that virtually all customers in Klamath, except residential customers, have been assessed different charges for water than provided in the filed tariffs.

The record shows that, although respondent filed five electric rate schedules in compliance with Decision No. 40504, the only rule or regulation on file is one which relates to temporary emergency unmetered service. No contracts had been filed providing for service at other than the filed rates.

Respondent testified that he has been engaged in public utility operations for 27 years and also operates public utility water systems at West Sacramento, at Brisbane and near Redwood City, but has not familiarized himself with the provisions of the Public Utilities Act or the Commission's rules governing utility operations. He said that he depended on the Commission's staff to explain the requirements which should be complied with. He claims to have acted in good faith at all times in conducting the Klamath operations. Respondent admitted that he instructed his superintendent to charge the electric rates in effect prior to October 1, 1948, for service after that date, explaining that he applied for authority to do so, but that the authority had not been granted.

Compliance with Requirements of Decisions Nos. 39798 and 40504

In Decision No. 39798, dated December 23, 1946, in Cases Nos. 4804 and 4834, the Commission found that definite improvements in respondent's public utility systems at Klamath should be undertaken in order that minimum acceptable standards of service might be realized. With respect to the electric system, the Commission stated that such improvements should include not only the pursuing of a program to obtain an adequate electric supply through construction of a power line to connect with the facilities of The California Oregon Power Company at Crescent City, but also the undertaking of rehabilitation of the distribution system under a general plan so that present customers and additional loads might be served satisfactorily. The Commission pointed out as to the water system that respondent should start immediately with the installation of a new storage tank, the necessary pumping equipment, and the installation of new four-inch lines at certain locations.

It was recognized that some of the rehabilitation work, especially on the electric system, would require some time to complete. Respondent was directed (1) to undertake forthwith a betterment program to the end that his operations should be brought within the requirements of the Public Utilities Act in accordance with the plans outlined in the decision; (2) to submit in writing to the Commission on or before February 1, 1947 a proposed program for carrying out the order; and (3) to submit in writing to the Commission on or about March 15, 1947, and bimonthly thereafter, progress reports, furnishing copies thereof to the complainants in Case No. 4834.

By Decision No. 40504, dated July 8, 1947, in Application No. 28357, respondent was authorized to make certain increases in his rates for electric service. In doing so the Commission directed

respondent to file on or before August 10, 1947, and monthly thereafter, three copies of a monthly report setting forth (1) sales of electricity by classes of service, in kilowatt hours; (2) revenues from the sale of electricity by classes of service, in dollars; and (3) expenses by accounts and principal subdivisions thereof, for the calendar month next preceding the dates on which the reports were submitted. The order also required that the reports include a brief statement of the physical work performed during the preceding month in connection with respondent's rehabilitation and reconstruction program.

One of the Commission's engineers testified in this proceeding concerning an inspection on January 18, 1949, at the north end of of the proposed pole line. He stated there were 26 poles standing, covering a distance of about two miles, three poles on the ground, and 18 crossarms installed. No wires or transformers had been installed. An examination of equipment on hand revealed a total of 136 poles which appeared to be usable for the transmission line, about 300 insulators, 128 crossarms, coils of wire of an estimated length of four miles, and a sufficient number of crossarm braces, throughbolts, lag screws and insulator pins to construct the line. The engineer stated that respondent's superintendent informed him that some equipment, wire and transformers were to be shipped from Pittsburg.

In the First Supplemental Application No. 28357, filed November 3, 1948, a verified petition for authority to increase rates, respondent alleged that he has met with many difficulties, has been unable to carry out his program, and while approximately four miles of poles are in place, it would be another 12 months before the line could be completed and in service and longer if financing could not be readily secured.

With reference to materials, respondent testified that about 100 or 150 poles were on hand at Klamath, about 40 at Gold Point, about

20 at Crescent City, and about 100 at Port Orford, Oregon. He stated that approximately two miles of poles had been erected southerly from Crescent City, that about one mile of pole holes had been dug, that a survey had been made, and that all rights of way except one had been secured. He asserted that practically everything necessary for the pole lines had been purchased with the exception of six transformers, about ten tons of wire, and possibly some insulators. He claimed that the total cost of the extension was estimated at \$105,000, that a little over \$40,000 had been expended on the project, and that it had not been completed because of lack of funds. He contended that additional financing was offered but had been withdrawn temporarily because of the pendency of an investigation into his operations and certain adverse publicity.

In the opinion of a witness for the Commission's Electric Division a comparison of voltage recordings taken in 1946, which are of record in Case No. 4804, with the recordings introduced in this proceeding, disclosed a better condition in 1946 than existed during his investigation in January, 1949. The president of the Klamath Chamber of Commerce expressed the opinion that the electric current at the time of the hearing was approximately the same as in 1946. However, he asserted that during December, 1948 when the lumber mills were operating, numerous outages occurred, sometimes for hours at a time; that lights were of insufficient intensity for reading or working purposes; and that it was impossible to operate electrical equipment. Another customer was of the opinion that the service at the time of the hearings in this proceeding was worse than the service in 1946.

In his report in evidence herein, the Commission's hydraulic engineer stated that none of the plans for improving the water system, which respondent was directed to undertake by Decision No. 29798, had

been accomplished by December 30, 1948. He testified that no part of the work had been done, but he understood that respondent had purchased a water tank. The president of the Chamber of Commerce testified that no improvement had been noticed in the water pressure or the appearance of the water since December, 1946.

The Commission's assistant secretary, having custody of its formal files, testified that nothing appears in the Commission's record to indicate that any of the requirements of Decisions Nos. 39798 and 40504 respecting the submission of reports had been complied with. Respondent's explanation was that his office force was overworked, and did not have time to prepare the reports, although they should have been made. He claimed that he could not afford to employ additional help, and although he had made some oral reports to certain members of the Commission's staff, no written reports had been filed.

Use of Proceeds of Promissory Note Authorized by Decision No. 41279

By Decision No. 41279 dated March 3, 1948, the Commission authorized respondent to execute a deed of trust and to issue a note in the principal amount of \$36,000, and directed him to use the proceeds to pay the balance due on an outstanding note in favor of Stewart Day, and to pay in part the cost of constructing a new 12-kv line, including transformers and appurtenances, to connect with the facilities of The California Oregon Power Company at Crescent City.

The examination of the records disclosed that the proceeds realized were deposited by respondent in several of his bank accounts, and that it was impossible to trace the application of all of such proceeds. It is clear that some of the proceeds were expended by respondent for purposes other than those specified in the Commission's decision such as, for example, the purchase of a tank for his water system, repairs to diesel equipment, payments for water purchased and

payment of current obligations other than the so-called Day note or for constructing the pole line. It does appear, however, from the testimony of the Commission's accountant, that respondent had expended in excess of \$31,000 on the pole line up to the time of the hearing, although a portion of the funds may have been obtained from sources other than the \$36,000 note.

Respondent testified that the transfer of funds to his other bank accounts was for the purpose of making them available to pay for operating the several utilities he owns, but that he was reimbursed by such other utilities for the construction of the pole line. He testified that he had expended more than \$40,000 for materials, supplies and work necessary for such line. No vouchers or canceled checks covering transactions of this nature were offered in evidence.

CASE NO. 4993. THE CALIFORNIA OREGON POWER COMPANY

This respondent was, by Ordinance No. 160 of the Board of Supervisors of Del Norte County, adopted April 20, 1945, granted a franchise to erect and maintain poles, wires and other appliances and appurtenances for the purpose of transmitting electric energy for power, light, heat and other necessary and useful purposes over, along and upon the roads, trails and highways of that county and the several unincorporated towns and villages therein for a term of 50 years.

By Decision No. 37936 dated May 29, 1945 in Application No. 26685, this respondent was authorized to exercise the rights and privileges granted by said franchise, subject to the condition that "except upon further certificate of this Commission, Applicant shall not exercise said franchise for the purpose of supplying electricity within any portion of said county now being supplied with electricity by any other public utility."

California Oregon's district superintendent presented a number of exhibits comprising estimates of the cost of providing facilities to furnish electric service to the town of Klamath and vicinity. The estimates were predicated both upon an interconnection with the present utility and, in the alternative, upon the furnishing of retail service by California Oregon in the Klamath area.

The cost of building a 12-kilovolt line from the south end of California Oregon's existing system to the north end of respondent Henry's system and a 1,000-kilovolt-ampere substation was estimated to be \$73,485. If the load were to exceed 1,000 kilowatts, California Oregon would consider it desirable to convert the line to 66-kv operation. The estimated cost of such a line, if constructed at the outset, including substation, was \$100,740. The cost of converting an initially installed 12-kv line to 66-kv operation is estimated at \$20,280.

If California Oregon provides retail service to the Klamath area, with a load of 1,000 kilowatts, through a 12-kv line from its existing facilities to the north end of the Klamath system and builds a distributing system of 12 kv throughout, conforming to all standards prescribed by the Commission and good engineering practice, with regulation to provide satisfactory voltage conditions at all points, it is estimated that the cost would be \$138,785. This amount does not include the cost of standby generating facilities at Klamath.

According to the witness, should the utility undertake to provide retail service it would be advisable to make provision for the ultimate conversion to 66-kv operation. In such case the cost was estimated at \$154,859, with a future cost of conversion of \$51,100, or a total investment in the 66-kv line and a 12-kv distribution system

in Klamath and vicinity of \$205,959. In the opinion of the witness, the installation of a 66-kv line with 12-kv distribution would adequately take care of the entire foreseeable growth in the area.

California Oregon's rate engineer compared the charges for electricity based upon respondent Henry's rate schedules applicable immediately prior to October 1, 1948, with the charges which would have accrued at the rates applicable throughout California Oregon's system in California. Using the kilowatt-hour consumption for the year 1948, the witness computed the billings of the Klamath system as having been \$79,730.78, as compared with \$29,740.96 under California Oregon's rates.

California Oregon's vice president and general manager declared that the position of the company is that (1) it is ready to fulfill its commitments under an existing contract to supply electric energy to respondent Henry upon the completion of interconnection facilities and (2) while not voluntarily seeking to extend its facilities into the Klamath area, California Oregon recognizes the Commission's jurisdiction and will abide by and carry out to the best of its ability any orders directed to it. He stated, however, that on the basis of the volume of business during 1948, as indicated by respondent Henry's books, the revenue to be derived under the present rates of California Oregon would not be sufficient to justify the extension of facilities.

In the opinion of the witness, a three-to-one ratio is a reasonable basis ^{1/} upon which to estimate the revenue required to support an extension of facilities to provide a retail service to the town of

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An annual revenue amounting to one-third of the amount of the investment. The witness testified that contracts for supplying electricity at wholesale on this basis have been authorized.

Klamath and vicinity. He indicated that, based on the estimated cost of \$138,785 for constructing a line and retail distribution facilities for 12-kv operations, an annual revenue of about \$46,262 would be necessary. If the existing rates of California Oregon were applied, there would be a deficit of about \$16,000, according to the witness, based upon the business done by the Klamath system in 1948. He suggested that the existing rates of California Oregon might be established, subject to a surcharge (readjusted from time to time) to take care of the deficiency for such period as may be necessary. A surcharge yielding \$16,000 in addition to the revenue from the existing rates would, based upon the calculations made by the rate engineer, result in aggregate annual charges for electric service about \$34,000 less than those resulting from the rates now being charged by the present utility.

The vice president and general manager expressed the opinion that California Oregon has sufficient available power to supply the Klamath area. With respect to standby facilities, he said that the customary practice of this respondent is to have two sources of power provided by either (a) interconnecting lines or (b) a temporary power plant until such time as transmission facilities prove adequate. In his opinion, a diesel engine should be provided as standby equipment at Klamath to take care of essential services. Interconnection in the future with another utility having facilities south of Klamath was also mentioned as a possible means by which essential service could be maintained at all times.

It was testified that California Oregon would not be interested in acquiring the present Klamath system as a system, but there might be certain units which could be used either in a new system at that point or at some other location if obtainable at a reasonable price. The

length of time required to construct an interconnecting line was estimated to be 60 days. No estimate of the period necessary in which to install a new distributing system is of record.

The president of the Klamath Chamber of Commerce testified concerning the views of that organization. He said that the community is desirous of relief in the matter of electric service; that the Chamber of Commerce is of the belief that a change of utilities would be beneficial; and that consideration should be given to revoking the certificate of public convenience and necessity now held by respondent Henry. This witness asserted that business operations in the community have increased from 30% to 35%, or more, since the Chamber's complaint was filed in Case No. 4834 (1946). The Chamber's conception of an adequate electric system, he stated, is one which maintains a consistent and reliable supply of electric energy of a proper standard, with adequate standby provisions in the event of a transmission failure.

In its reply brief, the Chamber of Commerce urged that respondent California Oregon be authorized and directed to commence the construction of a transmission line to Klamath, with an adequate distribution system and standby facilities, the latter to be of sufficient capacity to provide adequately for community requirements exclusive of large commercial customers..

Seven customers in addition to the president of the Chamber of Commerce testified that there existed a definite public demand for improved electric service.

DISCUSSION AND CONCLUSIONS

The record in these proceedings discloses that the electric and water utility systems at Klamath are inadequate both as to the service rendered and the equipment and facilities in use. The existence of these conditions is admitted by respondent Henry in his testimony

and brief. The evidence also indicates numerous violations on the part of this respondent of various sections of the Public Utilities Act and of the Commission's orders and regulations thereunder.

It is also noteworthy that these unsatisfactory conditions in service and facilities have existed for several years and that respondent Henry has been directed by formal orders to remedy the situation, but has failed to do so. The fact that some time would be required to complete a certain amount of the rehabilitation work was recognized in prior decisions of the Commission. Nevertheless, a review of the entire record in these proceedings fails to reveal any extenuating circumstances justifying either the failure to complete the work or to keep the Commission informed of his activities as required by its orders. It also seems that the use for unauthorized purposes of proceeds of the promissory note, which respondent was authorized to issue, may have been a contributing factor, at least in part, to the delay in improving the electric utility service at Klamath.

Respondent Henry asserted in his brief, that the cost of operating the present electric system is so expensive as to make it impractical to continue operations. He also stated that in order to preserve his investment and business he is willing to make any reasonable arrangement with California Oregon for constructing the necessary transmission line and purchasing his power requirements at wholesale. If such a central-station service were to become available, respondent promised to make every effort to rebuild over a two- or three-year period such portions of the present distribution system as may be considered hazardous, provided that earnings permit. It is claimed that after the electric system becomes self-sustaining necessary improvements could then be made in the water system.

According to respondent Henry, to permit another utility to take over his service would be unfair and amount to the confiscation

of his property. He testified, however, that it is rather difficult to state whether he is able financially to carry on the utility operations in an adequate and satisfactory manner and that, although assured of financial support should the decision in these proceedings be favorable to him, he does not have any guarantee that funds will be forthcoming.

The Klamath Chamber of Commerce in its reply brief contended that respondent Henry has failed to keep abreast of the development of the community and had the business people of the community been approached for financial assistance many would have gladly contributed in order to obtain adequate electric power. This organization characterized respondent's proposals and promises as entirely too vague and indefinite to be satisfactory or acceptable. It questioned, based upon past experience, the ability of respondent to meet the community's requirements.

In view of the constant failure to render adequate service and the violations of law and of this Commission's orders and regulations by respondent Henry and of all of the circumstances disclosed by the record herein, we are of the opinion that approval of the plans proposed by this respondent would not solve the problem of assuring the community proper public utility facilities and service. On the other hand, it appears that pursuant to an order of this Commission respondent California Oregon is willing and able to supply the Klamath area with adequate electric service and proper facilities at lower rates than heretofore in effect. Respondent Henry's claim of confiscation in the event that another utility is directed to supply the community's electric requirements is without merit. The present facilities have through neglect been permitted to become obsolete as public utility property serving a community such as Klamath. The paramount interest of the public must, therefore, prevail.

The order in these proceedings will, accordingly, provide for the revocation of respondent Henry's authority to operate a public utility electric service in the town of Klamath and vicinity. A certificate of public convenience and necessity will be issued directing respondent California Oregon, to extend its facilities and service to the Klamath area. No action will be taken with respect to the water system, there being no party before this Commission in these proceedings against whom an order directing the establishment of water service might be entered. The order in Decision No. 39798 presently is effective and requires respondent Henry to take immediate steps to improve the present water system and to submit periodic progress reports as directed therein.

In the discontinuance of electric service by respondent Henry and the commencement of service by respondent California Oregon, it is obvious that there must be no interruption of service. The record herein does not disclose the time required by California Oregon to construct a new distribution system in the Klamath area. Under the circumstances, the date set for the change-over from one utility to the other will be subject to modification by supplemental order, if necessary.

FINDINGS

Upon careful consideration of all of the facts of record in these proceedings, the Commission is of the opinion and finds:

1. That the public utility electric and water services provided by respondent Henry to the inhabitants of Klamath and vicinity, and the equipment and facilities used in connection therewith, are, and for several years last past have been, inadequate to meet the reasonable requirements of the community;

2. That respondent Henry has charged and demanded a greater or less or different compensation for electric and water services than the rates and charges applicable to such services as specified in his schedules on file and in effect at the time, in violation of Section 17 (b) of the Public Utilities Act;

3. That respondent Henry has failed to file with the Commission rules, regulations, and contracts which affect or relate to rates or service, in violation of Section 14 (b) of the Public Utilities Act and the Commission's General Order No. 96;

4. That respondent Henry has failed (a) to carry out a program for improving his electric and water systems so as to meet the requirements of Section 13 (b) of the Public Utilities Act, and (b) to submit reports with respect thereto, as directed by Decision No. 39798 dated December 23, 1946 in Cases Nos. 4804 and 4834;

5. That respondent Henry has failed to file with the Commission reports of the sales, revenues and expenses covering electric services and of the physical work performed in connection with a rehabilitation and construction program, as directed by Decision No. 40504 dated July 6, 1947 in Application No. 28357;

6. That respondent Henry used proceeds of a promissory note authorized by Decision No. 41279 dated March 3, 1948 in Application No. 29132, for purposes other than those authorized in said decision, in violation of Section 52 (b) of the Public Utilities Act;

7. That by reason of respondent Henry's failure and refusal to render adequate public utility service and his continued disregard for and violations of the Public Utilities Act and the Commission's orders and regulations thereunder and in order to provide adequate public utility electric service and facilities, the certificate of public convenience and necessity now possessed by respondent Henry, in so far as it authorizes the operation of a public utility electric

system serving the town of Klamath and vicinity, should be revoked and annulled;

8. That, if electric service is supplied in the Klamath area by The California Oregon Power Company under reasonable tariffs, the revenues to be expected from the electric sales would be adequate to support the operations in the Klamath area without imposition of a burden upon The California Oregon Power Company's other operations;

9. That public convenience and necessity require that The California Oregon Power Company be authorized and directed to extend its facilities for the transmission and distribution of electric energy so as to serve the inhabitants of the town of Klamath and vicinity and to exercise the rights and privileges of Ordinance No. 160 of the Board of Supervisors of Del Norte County, adopted April 20, 1945, for the purpose of supplying electricity to said inhabitants, and Decision No. 37936 should be amended accordingly.

The certificate of public convenience and necessity granted herein is subject to the following provisions of law:

That the Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate, or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.

O R D E R

Public hearing having been had in the above-entitled proceedings, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

1. That the certificate of public convenience and necessity granted to Rose Wilson, executrix of the will and estate of George Wilson, deceased, by Decision No. 21024, dated April 26, 1929, in Application No. 15182, and subsequently transferred to Clyde W. Henry pursuant to authority granted by Decision No. 34122, dated April 29, 1941, in Application No. 24122, be and it is hereby revoked and annulled as of 12:01 o'clock p.m., September 1, 1949, in so far as it authorizes (1) the construction, maintenance and operation of an electric light, heat and power plant; (2) the furnishing of electricity to the inhabitants of the town of Klamath and vicinity; and (3) the exercise of the rights and privileges granted by Ordinance No. 116 of the Board of Supervisors of Del Norte County for the purposes of transmitting and conducting electricity.

2. That, unless otherwise directed by supplemental order entered in these proceedings, Clyde W. Henry, doing business as Klamath Water, Light and Power Company, be and he is hereby directed and required to cease and desist from operating, directly or indirectly, a public utility system for the distribution and sale of electricity to the inhabitants of the town of Klamath and vicinity on and after 12:01 o'clock p.m., September 1, 1949, and to cancel all tariff schedules naming rates, charges, rules, regulations and contracts applicable to such service.

3. That a certificate of public convenience and necessity be and it is hereby granted to The California Oregon Power Company (1) authorizing and directing it to extend its public utility facilities, so as to furnish electricity to the inhabitants of the town of Klamath and vicinity and (2) authorizing it to exercise the rights and privileges of Ordinance No. 160 of the Board of Supervisors of Del Norte County, adopted April 20, 1945, for the purpose of supplying

electricity to the inhabitants of the town of Klamath and vicinity.
Decision No. 37936 is amended accordingly.

4. That The California Oregon Power Company shall, within thirty (30) days after the effective date of this order, commence construction of the necessary transmission and distribution lines and other facilities, and thereafter proceed with such construction with due diligence to the end that the supplying of electricity to the inhabitants of the town of Klamath and vicinity by The California Oregon Power Company may be commenced on the earliest practicable date.

5. That The California Oregon Power Company shall, within sixty (60) days after the date of this order, and monthly thereafter, submit to the Commission, in writing, a progress report of the work performed in connection with the construction program provided for in the preceding paragraph. Said reports shall include an estimate of the time required to complete the work and the probable date on which The California Oregon Power Company will be prepared to furnish electricity under the certificate herein granted to customers now served by Clyde W. Henry throughout the town of Klamath and vicinity.

6. That The California Oregon Power Company shall comply with the following requirements:

- a. Tariff schedules shall be filed to be effective on or before the date service is rendered to the public, together with a tariff service area map, acceptable to the Commission and in accordance with the requirements of General Order No. 96.
- b. The Commission shall be notified in writing of the completion of the system covered by the certificate herein granted within thirty (30) days thereafter.

C-4992
C-4993
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The Secretary is directed to cause a certified copy of this decision to be served upon respondents Clyde W. Henry and The California Oregon Power Company.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at San Francisco, California, this 10th day of May, 1949.

R. E. Mudd
James F. Garner
Jack Lawrence
Harold F. Hale
Samuel P. Potter
Commissioners.