GEH

Decision No. 45913

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF CALIFORNIA ELECTRIC POWER COMPANY FOR AN INCREASE IN RATES.	Application No. 28791 1st and 2nd Supplemental

Henry W. Coil, for applicant, California Electric Power Company; Reed F. Parker and L. B. E. Lindstrom, for Mineral County Power System; Oliver Randz, Hamilton Treadway, and F. W. Denniston, for the United States Navy; Boris H. Lakusta, for the Commission's staff.

O P I N I O N

California Electric Power Company, by its first and second supplemental applications in this proceeding, seeks determinations whether the Commission's Decision No. 41798 of July 1, 1948, authorizing certain rate increases, applies, respectively, to sales to the Navy, for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada, and to sales to Mineral County Power System for resale to consumers in Nevada. Applicant requests that such determinations be made in the affirmative, thus making the utility's Schedule P-2 applicable to the sales to the Navy and its Schedule P-3 applicable to the sales to Mineral County Power System. Should the Commission construe the decision not to apply, applicant seeks the establishment of appropriate rates for such sales.

Both supplemental applications refer to the matter of jurisdiction and the position is taken that jurisdiction lies in the California Commission rather than in the Federal Power Commission.

A hearing on the applications was held on October 7, 1949. The

evidence received at that time related only to the questions whether Decision No. 41798 is to be construed to apply to the sales referred to and whether, as related to such sales, the rates set forth in such decision, or some other rates, are reasonable. A further hearing was scheduled but taken off calendar when the Federal Power Commission evinced, through correspondence, a desire to explore the question of jurisdiction. In implementation thereof, on February 15, 1950, it issued an order to show cause against California Electric Power Company. On March 20 and 21, 1950, pursuant to mutual agreement between that Commission and this, a concurrent hearing was held which, in so far as this Commission was concerned, bore solely upon the jurisdictional question. It was announced by Commissioner Rowell that, if additional evidence should be deemed advisable at a later date, due notice would be given.

It should be stated at the outset that the Commission is now satisfied, after a careful weighing of the record, that no further evidence is necessary satisfactorily to dispose of the issues raised by the two supplemental applications. Accordingly, the order herein will include submission.

California Electric Power Company Operations.

California Electric Power Company renders public utility electric service in southeastern California in parts of Mono, Inyo, Kern, San Bernardino, Riverside, and Imperial counties. Its Nevada Division serves parts of Nye and Esmeralda counties, Nevada. Fifty-five per cent of all electricity supplied by the company comes from its own generating sources. The other forty-five per cent is obtained from Southern California Edison Company, the Department of Water and Power of the City of Los Angeles, and neighboring electric production agencies with which California Electric maintains interconnections.

During 1950, California Electric served an average of about 56,000 customers, 98 per cent of whom were in California. Residential and domestic customers purchased 11 per cent, rural customers, 15 per cent, industrial and commercial customers, 61 per cent, and other customers, 13 per cent, of California Electric's energy sales.

The company's production sources are interconnected with a network of high-voltage lines extending southerly from Mono County to San Bernardino about 300 miles along the easterly slope of the Sierra Nevada Mountains, also extending throughout its main system around San Bernardino and Riverside, and easterly from Victorville some 200 miles to Hoover Dam Power Plant. In 1950, the maximum system demand was 123,900 kw.

The two customers, Mineral County Power System, with a demand of about 1,000 kw, and the Navy, with a somewhat greater demand, are served in California from the 55 kv station bus at California Electric's Mill Creek generating plant. Each customer owns and operates a 55 kv line, including terminal switching facilities, extending from Mill Creek to Hawthorne, Nevada. The lines are about 55 miles in length, about half the distance being in California and the other half in Nevada. During periods of emergency trouble, these customers have arranged to use the more reliable Navy line jointly. California Electric adjusts its billing to conform to the disposition of deliveries upon advice from the customers. Mineral County Power System resells the energy it purchases to its retail customers in Nevada. The Navy uses its deliveries, supplemented by its own fuel generating plant, for the power and energy requirements of its industrial activities and for the residential and commercial needs of employees or personnel housed at the military reservation.

Construction of Decision No. 41798.

In Application No. 28791, California Electric sought a general

increase in rates. It proposed increases in all of its filed tariff rates and in a number of special contract rates. It did not request authority to increase the rates contained in the then effective special contracts applicable to sales to the Navy and to Mineral County Power System.

For the rate proceeding, studies of the trend and projected level of applicant's revenues and expenses were made by applicant, by other interested parties, and by engineers of this Commission's staff. As can be seen from the exhibits in the proceeding, from the annual reports of applicant to this Commission, and from the testimony of the Electrical Engineer of this Commission, the revenues and expenses in connection with the sales to the Navy and Mineral County Power System were included in the statistics upon which the earning studies were based. In Decision No. 41798, the Commission concluded that applicant was entitled to an increase in rates. In prescribing rates, it undertook to spread the increase equitably among the several classes of consumers in accordance with accepted practice. The Commission indicated its dissatisfaction with special rate contracts and directed applicant to discontinue a substantial number of special rates. It prescribed Schedules P-2 and P-3 for customers of the same type and kind as the Navy and Mineral County Power System, respectively. It made those tariffs applicable to all similar customers on the California system except in the City of San Bernardino. It further satisfied itself that the credit for deliveries to the Nevada system was at a level substantially comparable to the wholesale power schedule. By establishing such rates, the Commission was satisfied that each customer would be required to pay no more than was necessary and that no customer would obtain service at the expense of other customers.

Mineral County Power System and the Navy were served under spe-

cial contract rates differing from filed tariff rates for a number of years. The rates effective for Mineral County Power System during the pendency of the rate proceeding, Application No. 28791, were those set forth in a contract dated October 5, 1945, which specified a term of three years. The rates applicable to the Navy were set forth in a contract effective for the period July 1, 1943, to June 30, 1944, and thereafter until sixty days' written notice by either party.

The rates prescribed by Decision No. 41798 became effective August 1, 1948. By letter dated July 30, 1948, California Electric notified the Navy of the termination of the July 1, 1943, contract, to be effective October 1, 1948. The contract with Mineral County Power System by its own terms expired on October 4, 1948. Since no new contract rates were sought for either the Navy or Mineral County Power System, the Schedules P-2 and P-3, respectively, became applicable on October 1 and October 5, 1948, respectively, unless Decision No. 41798 should be construed not to apply.

Decision No. 41798 does apply, as we construe it, to the sales to the Navy and Mineral County Power System. It is true that the decision does not refer specifically to such sales, but there can be no doubt from its comprehensive language and general tenor, to say nothing of the evidence upon which it is based, that it was intended to cover all sales of California Electric. The decision states:

> "As previously noted, a number of applicant's deliveries to large customers are made under special contract agreements at rates other than those contained in the filed tariffs. Under the request contained in the application, the Commission is asked to authorize applicant to make effective certain changes in special contracts. Several of the existing contracts under their present terms and conditions provide for the application of any newly effective tariffs authorized. The remaining contracts providing for deliveries at special rates either have expired or, within the next twelve months, will expire or may be terminated by appli-

cant. Under these circumstances it appears unnecessary for the Commission to order at this time the termination or extensive modification of any existing special contracts."

The decision further states:

"The tariffs herein authorized are intended for application to all electric sales by applicant to customers in California, excepting only those sales to other distributing agencies with whom applicant has interchange agreements. . . . In any one area a single rate will apply to all service to domestic customers; . . . a large block power rate will provide for the major industrial and commercial deliveries; . . . and a resale power rate will apply to deliveries for resale purposes."

We indicated in the decision that the conditions surrounding the utility's service no longer warranted special contracts except in rare instances. Accordingly, we ordered that such contracts in all instances but four be terminated on July 31, 1948, or thereafter at the earliest dates possible under the terms of the respective contracts.

Having construed our Decision No. 41798 as applicable to the sales to the Navy and Mineral County Power System, we turn to the question of jurisdiction.

Jurisdiction.

The question is presented whether California is precluded from jurisdiction over the sales to the Navy and Mineral County Power System, either by virtue of the interstate commerce clause operating of its own force, or by enactment of the Federal Power Act (1935, c. 687, 49 Stat. 841, 16 USCA Sec. 791, et seq.). In arriving at the conclusion that jurisdiction is not precluded, we have been substantially aided by the several briefs filed in connection with the concurrent hearing. We are not unmindful that the Federal Power Commission, in its Opinion No. 212 issued on April 13, 1951, asserted jurisdiction, Commissioner Smith dissenting. It may be noted that the Federal Examiner had prepared an opinion stating that

the Federal Power Commission was without jurisdiction. Rehearing was denied on June 6, 1951.

We will consider separately the sales to the two customers.

Sales to the Navy.

The service to the Navy was begun, as indicated above, in 1943 pursuant to a contract for the sale of all energy required by the government "for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada, except such electric energy as may be generated by the government on said premises." The energy purchased by the Navy is consumed wholly on the Naval reservation which, in addition to the installations devoted directly to Naval use, includes the quarters for Naval personnel described as "public quarters" and the "Navy Low-Cost Housing Project" known as Babbitt, which provides living quarters and facilities for those civilians connected directly or indirectly with the Navy's activities on the reservation.

The evidence indicates that, while a large percentage of the energy furnished to the Navy is derived from licensed projects, there are times when all or a portion of it comes from non-licensed sources.

As stated above, the energy is delivered by California Electric to the Navy at Mill Creek and transmitted by the Navy over its own line to Nevada for consumption.

It is our opinion that upon such facts there is nothing either in the interstate commerce clause of the Federal Constitution or in the Federal Power Act to preclude our jurisdiction.

Considering first the interstate commerce clause, the United States Supreme Court held in P.U.C. v. Attleboro Steam and Electric Co. (1927), 273 U.S. 83, 71 L. ed. 549, P.U.R. 1927B 348, in a case where no federal statute delineating state and federal jurisdiction

was involved[1], that a state cannot regulate the rates charged by a local electric utility for current sold to a foreign electric utility for resale in another state and delivered at the state boundary, inasmuch as the interstate business carried on between the two utilities is essentially national in character, and state regulation would constitute a direct burden upon interstate commerce, placing a direct restraint on that which, in the absence of federal regulation, should be free.

Even if it be assumed that the sales by California Electric to the Navy are in interstate commerce, regulation by the State of California of the rates for such sales does not fall within the proscription of the Attleboro decision. Only one state, viz., California, is directly concerned, since no state can have jurisdiction over the Navy, an arm of the federal government. Nevada has no jurisdiction over the rates the Navy pays to California Electric, nor over the rates the Navy charges its personnel and tenants. California's jurisdiction arises solely from its authority over California Electric. Thus, there is absent that potential clash of respective state interests which underlay the conclusion in the Attleboro decision.

Perhaps an even more conclusive circumstance for the proposition that the interstate commerce clause does not preclude California jurisdiction is the fact that electric rates prescribed by our Commission are not the rates which a utility must charge an arm of the United States Government. The Commission in 1942 issued General Order No. 96, which provides in Section X-B, that an electric utili-

(1) The Federal Water Power Act (1920, Ch. 285, 41 Stat. 1063, later incorporated as Part I of the Federal Power Act, 16 USCA, Sec. 792, et seq.) was in effect at the time of the Attleboro decision but was not applicable because the electric power in question was not derived from projects licensed by the federal government.

ty may furnish electric service "at free or reduced rates or under conditions otherwise departing from its filed tariff schedules to the United States and to its departments." (See Public Utilities Act, Section 17.) Thus, while the difference between charges under filed tariffs which have been found reasonable, and the revenue actually received for service supplied to the federal government, would have to be borne by California Electric rather than its customers, the federal government is in no way burdened in its negotiations with the utility by a California rate order.

It follows that since a sister state is not deprived of anything to which it is entitled and the federal government is in no way burdened, by the exercise of California jurisdiction, such jurisdiction does not impose an undue burden upon interstate commerce and, therefore, does not violate the interstate commerce clause of the Federal Constitution.

It should be noted in passing that the situation here presented is distinguishable from the Attleboro decision not only for the reasons already stated but because the sales to the Navy are not sales by one utility to another utility for resale. The Navy is not in business; its purchases of electricity are in furtherance of its national defense obligation; and its undertaking to provide electric service to its personnel and tenants at Hawthorne is merely incidental thereto.

Not only do we conclude that the interstate commerce clause presents no barrier to the exercise of our jurisdiction over the sales to the Navy, but we find nothing in the Federal Power Act taking such jurisdiction away. Such conclusion is reached even if it be assumed that Part I of the Act (setting forth the provisions applicable where power from licensed projects is involved) and Part II (applying "to the sale of electric energy at wholesale in

interstate commerce but . . . not . . . to any other sale") both apply, or that either Part I or Part II applies. See Safe Harbor Water Power Corp. v. FPC (CCA 3d, 1941), 124 F. 2d 800, cert. dnd. (1942), 316 U.S. 663, 86 L. ed. 1740; Safe Harbor Water Power Corp. v. FPC (CA, 3d, 1949), 179 F. 2d 179, cert. dnd. (1950), 339 U.S. 957, 94 L. ed. 1368.

Turning first to Part I (derived from the Federal Water Power Act (1920, ch. 285, 41 Stat. 1063)), if it be assumed that the sales to the Navy are in interstate commerce, the applicable language is found in Section 20 providing, in so far as pertinent, that when:

> "said power or any part thereof [presumably any power furnished by a licensee] shall enter into interstate or foreign commerce the rates . . . and the services . . . by any . . . licensee . . . or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable . . . to the customer . . .; and whenever any of the states directly concerned has not provided a commission or other authority to enforce the requirements of this section within such state . . . or such states are unable to agree through their properly constituted authorities on the services . . . or . . . rates . . . jurisdiction is hereby conferred upon the [Federal] Commission . . . to regulate . . . so much of the services . . . and . . . rates . . . therefor as constitute interstate or foreign commerce. . ."

It will be observed that Congress has conferred jurisdiction on the Federal Power Commission under Section 20 only if any of the states directly concerned has not provided a commission or other authority to enforce the requirements of Section 20 within such state ("requirements" apparently referring to the provision that the rates and services by licensees or persons purchasing from licensees for resale in public service shall be reasonable), and furthermore, even though the requisite state commissions or other authorities have been provided, only if the states directly concerned are unable to agree on the services or rates through their properly constituted authorities.

Assuming that the language of Section 20 applies at all, it is our opinion that, under such language, the sales to the Navy are excluded from Federal Power Commission jurisdiction. The California Commission is the kind of state "commission or other authority" contemplated by Section 20, for it has comprehensive power to regulate electric utility rates and service "within such state," viz., California. We have already pointed out, in considering the interstate commerce clause, that California is the only state which can, because of its authority over California Electric, affect the sales to the Navy. Nevada cannot order the Navy to pay a certain rate for electricity purchased, nor can it order the Navy to charge a certain rate for electricity distributed. It follows that, since only one state is "directly concerned," no question can arise of inability as between two states directly concerned to agree on the reasonableness of the rates charged to the Navy. Thus, Federal Power Commission jurisdiction is excluded because the two conditions to its exercise, as prescribed by Congress in Section 20, are absent.

Turning to Part II of the Federal Power Act (enacted as part of the Public Utility Act of 1935, ch. 687, 49 Stat. 803), it is declared in Section 201(b) that:

> "The provisions of this Part shall apply . . . to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy. . ."

In addition to this jurisdictional language, it is provided in the policy declaration of Section 201(a) that federal regulation of the "sale of such [electric] energy at wholesale in interstate commerce is necessary in the public interest, such federal regulation, however, to extend only to those matters which are not subject to regulation by the states."

Putting aside the question whether the sales are in interstate

commerce, it is clear that the sales to the Navy do not fall within the language "sale of electric energy at wholesale," which is defined by Section 201(d) to mean "a sale of electric energy to any person for resale." The sales in question are neither sales to a "person" nor are they sales "for resale."

The word "person" is defined by Section 3(4) of the Act to mean "an individual or corporation." A "corporation" by Section 3(3):

> "means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities' . . ."

It is obvious that the Navy is not a "person" as defined.

Not only is the Navy not a "person" but the sales to it cannot properly be described as "sales for resale." We have already alluded to the contract entered into in 1943 whereby California Electric agreed to supply "all electric energy required by the Government . . . for use of the Government's Ammunition Depot . . ." The evidence shows that the use in fact made of the energy furnished is consistent with such language. All of the energy is consumed on the Naval reservation; part is used in the Depot's industrial operations or dissipated in system losses; the balance is used by the individuals and business establishments located on the government reservation. Individuals may reside or conduct business only so long as their presence is consistent with the Navy's obligations. The lease agreements with those occupying "public quarters" and with those occupying the low-cost housing project known as Babbitt, both provide that the rental privilege ceases upon termination of employment. For the business concessions, the government issues a "Revocable Permit" reciting that the concession is "for accommodation of employees of the Depot."

It follows that the sales to the Navy are in effect for its sole use. It is true that, in supplying electricity to those living or conducting business at the reservation, the Navy is in a sense "reselling" energy purchased from California Electric Power Company, but it is clear that the term "sale for resale" in Part II of the Federal Power Act was intended to refer to a very different situation. The courts have repeatedly pointed out that Part II was enacted to close the gap in utility regulation revealed by the Attleboro decision. See Jersey Central Power & Light Co. v. FPC (1943), 319 U.S. 61, 87 L. ed. 1258, 63 S. Ct. 953. The Navy is certainly not a public utility. Even assuming it would not be precluded from that status by virtue of its position in the federal government, it could not be deemed a public utility by virtue of furnishing electricity to tenants whose continued tenancy depends upon the needs of the Navy landlord.

We are satisfied, in the light of the foregoing observations, that the sales to the Navy are not to a "person for resale" under Part II of the Federal Power Act, but quite aside from that conclusion jurisdiction is denied the Federal Power Commission by the proviso clauses of Sections 201(a) and 201(b) of Part II. Section 201(a) declares that federal regulation shall "extend only to those matters which are not subject to regulation by the States" and Section 201(b), in making Part II applicable to "sales at wholesale in interstate commerce", contains the proviso that Part II "shall not apply to any other sale of electric energy." Taking these sections together and construing them in the light of their statutory history, it is plain that Congress intended the Federal Power Commission to have jurisdiction only in that area where the United States Supreme Court had declared state regulation over sales could not be exercised because of the interstate commerce clause. See Connecticut

Light and Power Co. v. FPC (1945), 324 U.S. 515, 89 L. ed. 1150, 65 S. Ct. 749. In the case presented here, we have already pointed out that the interstate commerce clause does not apply to prevent state jurisdiction and we have further pointed out that the machinery set up by Congress in Section 20 of Part I to enable states upon certain conditions to exercise jurisdiction without burdening interstate commerce is available upon the facts shown and makes it possible for California to regulate the sales to the Navy. Thus, both under the Constitution and Part I of the Federal Power Act, California may exercise jurisdiction. Therefore, the provisos of Sections 201(a) and 201(b) in Part II operate to deny Federal Power Commission jurisdiction under Part II. It follows that there is nothing in Part II to prevent the exercise of California jurisdiction over the sales in question, and we so conclude.

Sales to Mineral County Power System.

As previously noted, California Electric sells electric energy to Mineral County Power System at Mill Creek, and the latter transmits the energy over its own line to Nevada, reselling to local consumers in Nevada. As in the case of the Navy, the evidence indicates that, while a large percentage of the energy is derived from licensed projects, there are times when all or a portion of it comes from non-licensed sources.

Many of the propositions set forth above in support of our conclusion that we may properly exercise jurisdiction over the sales to the Navy apply with equal force to the sales to Mineral County Power System. However, there are certain differences which will be pointed out in the analysis which follows.

We have stated that independently of any consideration of federal statute, the interstate commerce clause does not operate to prevent California from exercising jurisdiction over the sales to the

Navy inasmuch as no clash between state interests can be involved and inasmuch as the national government is not burdened by the exercise of California jurisdiction. A different situation exists with the sales to Mineral County Power System, for the State of Nevada clearly has an interest in the cost of electricity to Mineral County Power System and the rates in turn charged by it to its customers. Turning to the Federal Power Act, however, we are satisfied that the machinery set up in Section 20 of Part I, which allows state jurisdiction under certain conditions, when applied to the facts in issue enables this Commission to exercise jurisdiction without interfering with the rights of Nevada and without imposing an undue burden on interstate commerce. We are further satisfied that Part II does not apply because the sales to Mineral County Power System are not to a "person" as defined. We are further satisfied that, even if Part II were construed to apply, the proviso clauses alluded to in Sections 201(a) and 201(b) of Part II operate to preserve the exercise of jurisdiction recognized in Part I.

Turning specifically to Part I, we have pointed out that two conditions must, by the terms of Section 20, be present before states directly concerned may exercise jurisdiction: (1) they must have commissions with authority to enforce the requirements of Section 20 within the state; (2) such states must not be unable to agree upon the rates to be charged. In the case of the sales to Mineral County Power System, (1) each of the states directly concerned, viz., California and Nevada, <u>has</u> provided "a commission or other authority to enforce the requirements of this section within such state," and (2) such states <u>have not</u>, through their properly constituted authorities, been shown unable to agree on the rates for the sales in question.

Considering the first of these propositions, it cannot be seriously contended that the California Commission, entrusted as it is

with very broad regulatory authority over the rates and service of utilities within the state, fails to qualify as "a commission or other authority to enforce the requirements of this section within such state." While the Nevada Public Service Commission does not exercise as great a degree of control over Mineral County Power System as it does over private organizations engaged in public service in Nevada, it nevertheless has express jurisdiction over Mineral County Power System's rates. Nevada Statutes of 1925 provide at page 55:

> "Sec. 16. The maintenance and operation of said Mineral County Power System shall be under the control, supervision and authority of the board of managers, and rates charged to consumers for sale and distribution of electric energy and current, and the tolls from telephone service, with the terms and conditions thereof, shall be fixed by said board, subject to the supervision of the Nevada Public Service Commission, who may revise, raise or lower the same." (Emphasis added.)

The quotation makes clear that the Nevada Public Service Commission is, with respect to Mineral County Power System's rates, "a commission or other authority to enforce the requirements of this section within such state."

The Federal Power Commission, adopting the contentions of its counsel, has declared in its Opinion No. 212, above referred to, that in order to qualify as "a commission or other authority to enforce the requirements of this section within such state," a commission must have authority not only to regulate the rates charged by a utility but the rates such utility pays for power purchased outside the state and transmitted in interstate commerce. It is claimed that the Nevada Commission does not qualify because it is not empowered to fix the rates Mineral County Power System pays to California Electric Power Company in California. We are convinced, however, that Congress did not contemplate state commissions with

powers beyond those normally entrusted to them, powers which might indeed be found to be unconstitutional.

Turning to the second proposition, there was no evidence whatever to indicate that California and Nevada "through their properly constituted authorities" were "unable to agree." No evidence whatever was offered respecting any course of dealing, or an absence thereof, between the California and Nevada commissions, or between any other authorities of the respective states. The Chairman of the Nevada Public Service Commission, stated at the concurrent hearing that his Commission had determined not to participate in the cooperative procedure and that he would appear only as an interested party. He further stated:

> "The State of Nevada, therefore, is not interested except to the extent that the users are living in Nevada and, therefore, I will say that we are very much interested. I am not prepared to state at this time what the position of our Commission would be, until after this matter of jurisdiction has been decided. That is all the statement I wish to make."

These words make apparent that there was no inability to agree, and that the Nevada Commission has adopted a neutral position.

It follows that, since neither of the circumstances prevail upon which Federal Power Commission jurisdiction is conditioned under Section 20, jurisdiction properly may be exercised by this Commission over the sales to Mineral County Power System, at least until such time as the properly constituted authorities of California and Nevada are unable to agree on the rates to be charged for such sales.

Considering next the effect of Part II upon our jurisdiction, we observed in discussing the sales to the Navy that that Part gives the Federal Power Commission jurisdiction only over sales "to any person for resale." The sales to Mineral County Power System undoubtedly are "for resale" but they are not sales to a "person."

Section 3(4) defines a "person" as "an individual or corporation." A "corporation" by Section 3(3) "shall not include 'municipalities' as herein defined." A "municipality" by Section 3(7) means "a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power . . ." Mineral County Power System, as we understand it, is the operating name for the County of Mineral in its proprietary capacity as the seller of electric energy at retail. Thus, it is a "municipality" as defined in Section 3(7) and, therefore, is excluded from the definition of a "corporation" in Section 3(3) and from the definition of a "person" in Section 3(4). It follows that Part II does not apply to the sales to Mineral County Power System.

Finally, even if the sales to Mineral County Power System were to be regarded to be within the purview of Part II, the proviso clauses of Sections 201(a) and 201(b) apply. Our views heretofore stated respecting them apply with equal force. Since by the provisions of Part I, Section 20, the California Commission upon the facts may exercise jurisdiction, the proviso clauses in Part II operate to ensure that jurisdiction by denying it to the Federal Power Commission.

In the light of the conclusion we have reached respecting the construction properly to be placed upon our Decision No. 41798 and the conclusion that we have jurisdiction over the sales both to the Navy and to Mineral County Power System, we herewith order as follows.

O R D E R

The first and second supplemental applications of California

Electric Power Company having been duly considered after hearing and the filing of briefs, and it appearing that no further hearing is necessary to dispose of any of the issues presented, and the Commission finding that it has jurisdiction in the premises,

IT IS HEREBY ORDERED that the matters upon each of the supplemental applications herein are submitted.

IT IS FURTHER ORDERED that California Electric Power Company is hereby authorized to charge and collect from the United States for electric service furnished at the Mill Creek hydroelectric generating plant and transported by the United States to the United States Naval Ammunition Depot at Hawthorne, Nevada, the rates prescribed for such service by Decision No. 41798, viz., the rates set forth in Schedule P-2 attached to such decision.

IT IS FURTHER ORDERED that California Electric Power Company is hereby authorized and directed to charge and collect from Mineral County Power System for electric service furnished at the Mill Creek hydroelectric generating plant and transported by Mineral County Power System or the United States into Nevada for resale by Mineral County Power System, the rates prescribed for such service by Decision No. 41798, viz., the rates set forth in Schedule P-3 attached to such decision.

IT IS FURTHER ORDERED that California Electric Power Company take all reasonable steps to collect from Mineral County Power System the charges hereinabove referred to from the time that such charges became effective.

Dated, San Francisco, California, this 3rd day of July, 1951.

R. E. Mittelstaedt
Justus F. Craemer
Harold P. Hulet
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Commissioners