

DECISION NO. 49305 IN APPLICATIONS
NOS. 30490 AND 34798 SET ASIDE AND
REVOKED BY DECISION NO. 54119
ORDER OF REVOCATION dated
NOVEMBER 27, 1956.

ORIGINAL

Decision No. 49305

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Death Valley Electric Cooperative Inc.
for Certificate of Convenience and
Necessity to construct power plant and
distribution system and sell electric
energy to its members.

Application No. 30490

In the Matter of the Application of
Death Valley Electric Cooperative Inc.
for approval of Loan Contract and
Mortgage of Realty and Chattels.

Application No. 34798

E. John Eriksson for Applicant, H.M. Hammack
for California Electric Power Company.

O P I N I O N

In 1949 applicant, a California nonprofit cooperative corporation, was authorized to exercise certain franchise rights and to construct and operate an electric utility system in portions of Inyo and San Bernardino counties. (Dec. No. 43497, App. No. 30490.) Construction was delayed through inability to procure necessary funds, and the certificate lapsed because of non-exercise by December 31, 1950. On October 15, 1953 applicant requested reinstatement of the prior authorization. The 1949 proceeding was reopened for further hearing and consolidated with applicant's request to execute certain instruments in connection with a proposed loan from the United States of America, acting through the Rural Electrification Administration. A public hearing was held at San Bernardino before Examiner Cassidy on October 30, 1953.

During the past three years applicant has paid annual franchise taxes and bond premiums and has engaged in membership drives. Extensive engineering studies have been made, and by letter of August 26,

1953 applicant was advised that a loan in the amount of \$2,035,000 had been authorized by the Rural Electrification Administration. ⁽¹⁾

The loan has been placed under stop order until applicant, among other things, has submitted proof that it has obtained necessary authorizations from this Commission.

Applicant proposes to distribute electricity within those portions of Inyo and San Bernardino counties delineated as its proposed service area in Exhibit A to Application No. 30490. Applicant will purchase energy from California Electric Power Company at Valley Wells. From that point, lines will be constructed easterly to Nipton, westerly to Baker, and northwesterly to Tecopa, Shoshone, Death Valley Junction, and Furnace Creek. From Shoshone a line will be constructed northeasterly into Nevada to serve users in Pahrump Valley, a major agricultural area in that State. Applicant introduced in evidence a key map of its proposed system, together with seven detail maps and a circuit diagram.

Applicant has received 341 applications for service and membership. Eighty per cent of these are located in California, where applicant will furnish service to residences and farms, industries

(1) "This loan will provide funds for the following purposes:

| | |
|--------------------|--|
| \$ 914,450 | To construct 179 miles of distribution line to serve 341 members, together with legal, engineering, mapping and related expenses. |
| \$ 30,000 | To cover cost of office, transportation and tools and working equipment. |
| \$ 10,000 | For power use activities. |
| \$ 87,900 | For sectionalizing devices and distribution bank of 2000 KVA, plus necessary switching structures and metering at Valley Wells substation. |
| \$ 992,650 | For system improvements, including 116 miles of 69 KV transmission lines, 2 substations and engineering fees. |
| <u>\$2,035,000</u> | Total Amount of Loan" (Ex. 16.) |

(principally mining), and for irrigation pumping. Among its prospective customers are United States Molybdenum Corporation, Anaconda Copper Mining Company, and Pacific Coast Borax Company. The latter corporation controls several subsidiaries in the area, including the Death Valley Hotel Company, Furnace Creek Camp and Ranch, and Death Valley View Hotel. There are several commercial establishments at Baker. No central station service is presently available within the proposed service area.

The estimated construction cost of applicant's proposed system is reported as follows:

| | |
|--|-----------------------|
| 60 miles of 69 KV transmission line Valley Wells to Shoshone, at \$5,500----- | \$ 330,000 |
| 56 miles of 69 KV transmission line operated at 14.4/24.9 KV Death Valley Junction to Shoshone to Pahrump, at \$5,500----- | 308,000 |
| 134 miles of three phase 14.4/24.9 KV, at \$2,200----- | 295,000 |
| 45 miles of single phase, 14.4 KV, at \$1,400----- | 63,000 |
| One substation (Valley Wells) 138 KV to 69 KV (7500 KVA) 138 KV to 14.4/24.9 KV (2000 KVA)----- | 250,000 |
| One substation (Shoshone) 69 KV to 14.4/24.9 KV (5000 KVA)----- | 75,000 |
| 175-10 KVA transformers, at \$275----- | 48,000 |
| 61 transformer banks Av. 75 KW or 100 KVA Includes prospective banks, at \$3,500----- | <u>213,500</u> |
| | Total-----\$1,585,500 |
| Engineering, legal and interest 16 per cent----- | <u>254,500</u> |
| | \$1,840,000 |

It is estimated that the \$195,000 difference between the above construction cost estimate and the amount of the proposed loan will

be required for real estate, office equipment, vehicles, tools and other work equipment, and for contingencies. It is intended that construction shall conform with the requirements of General Order No. 95.

Applicant's estimates of annual revenues and expenses may be summarized as follows:

Estimated Annual Revenues

| | |
|---------------------------------------|----------------|
| Farm users, excluding irrigation----- | \$ 12,892 |
| Residential users----- | 32,098 |
| Small commercial users----- | 27,281 |
| Large commercial users----- | 161,167 |
| Irrigation pumping----- | <u>110,896</u> |
| Total----- | \$344,334 |

Estimated Annual Expenses

| | |
|---|---------------|
| Transmission operation and maintenance----- | \$ 19,485 |
| Distribution operation----- | 8,339 |
| Distribution maintenance----- | 8,339 |
| Administrative and general expenses----- | 16,678 |
| Taxes and insurance----- | 8,039 |
| Power costs----- | 156,835 |
| Interest on loan----- | 40,700 |
| Depreciation expense (\$1,826,500 depreciable plant at 3.48%)----- | <u>63,563</u> |
| Total----- | \$321,978 |

Applicant intends to borrow \$2,035,000, such loan to bear interest at the rate of 2% per annum payable over a period of 35 years. It requests authority to execute a loan contract in that amount, mortgage notes (the initial note being for \$1,867,000), and a mortgage. It is hereby found that the money, property, or labor to be procured or paid for by the issue of such note, is reasonably required for the purposes specified in the application and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The authorization hereinafter granted in connection with the proposed loan is not to be construed as authorizing applicant to enter

into or carry out the terms of any provision in a manner which may conflict with the regulatory jurisdiction of this Commission or the duties and obligations of a public utility under California law. To illustrate, Section 9 of the proposed contract provides in part that the Government shall not be obligated to advance funds unless applicant, within a specified time, has entered into 10-year power contracts with named customers, ("in form and substance satisfactory to and approved by the Administrator"), providing for indicated aggregate loads at specified minimum monthly charges and a cash deposit "in the amount of the estimated cost of service connection as determined by the Administrator", the deposit being subject to a refund by credit in the amount of 10% of each monthly power bill over a 10-year period.

Under the Public Utilities Code, each public utility is required to file with the Commission tariff schedules containing its rates and rules, and may neither make changes therein which result in an increase nor deviate therefrom without first obtaining authorization from this Commission.

Although this is not a rate or service proceeding, it is noted that certain of the proposed rate schedules provide that the rates stated therein are net, the gross rates being 10% higher, and that the gross rates shall apply if the current monthly bill is not paid within fifteen days from the date of the bill. As an inducement to the payment of accounts to reduce collection costs, an additional charge for nonpayment may be preferable to a discount for prompt payment. (Fowler Ind. Tel. Co., 3 C.R.C. 1173, 1177.) However, it has heretofore been suggested that a utility can protect itself against delinquency in the payment of bills by the establishment of adequate rules covering this phase of its operation. (Pasadena Cons. W. Co., 18 C.R.C. 994, 996; Ocean View L. & W. Co., 19 C.R.C. 112, 114.)

Applicant should prepare and file a set of rules as part of its tariff schedule. Such rules should include a rule relating to disputed bills, as well as an extension rule, applicable after construction of the original system, setting forth a specific general formula to be applied uniformly to all new applicants for service extensions. Because of the nature of a cooperative organization and the declared policy of area coverage, it is recognized that the extension rule of such a utility may well differ somewhat from the general type of extension rule filed by utilities engaged in business for profit.

Applicant's articles of incorporation do not contemplate the issuance of stock but do provide for the issuance of membership certificates. Under its by-laws, any person, firm, or corporation may become a member by paying a membership fee of \$5.00, agreeing to purchase electric energy, and upon acceptance for membership. Such membership fee will be repaid on withdrawal or termination of membership. For practical purposes, each membership fee is similar to a customer deposit, refundable upon cessation of service. Yet, because of the nature of the corporation, a membership certificate is also an "evidence of interest or ownership" within the meaning of Sections 816-828 of the Public Utilities Code.

Authorization to issue membership certificates will be granted, it being found that the money, property, or labor to be procured or paid for by the issue of such certificates is reasonably required for the purposes specified and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

As heretofore indicated, applicant will purchase power from California Electric Power Company. That utility has advised the Commission as follows:

"It occurs to us that, in the course of consideration of this case, the Commission may want to know, as in previous hearings resulting in the granting of

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the Certificate which later expired, whether or not California Electric Power Company is ready and willing to serve the Applicant at wholesale from its Boulder Canyon transmission line. This willingness of the Company was previously indicated and the rate assumed and announced was the Company's California Schedule P-3. Since that time several court decisions have been rendered which indicate that the rate charged by this Company to the Applicant will be under the exclusive jurisdiction of Federal Power Commission and also all facilities used in whole or in part in that service, that is, all transmission facilities which at any time carry interstate energy which is delivered to Death Valley Electric Cooperative, Inc. (Wisconsin-Michigan Power Co. vs. Fed. Power Com. 197 F. (2d) 472, June 2, 1952; California Electric Power Company vs. Federal Power Commission, 199 F. (2d) 206; October 14, 1952).

We must assume that such is the law unless your Commission can, with the concurrence of Federal Power Commission, establish a different arrangement.

Under the altered situation as we understand it, this Company must modify its former statement to say that it is ready and willing to serve the Applicant from the Boulder Canyon transmission line if the Company can obtain the approval by the Federal Power Commission of a rate which the Company deems fair and adequate."

The certificate of public convenience and necessity hereinafter granted is subject to the following provision of law:

That the Commission shall have no power to authorize the capitalization of the franchises involved herein, or such 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 a political subdivision thereof as the consideration for the grant of such franchises, certificate of public convenience and necessity, or right.

The issue of the \$2,035,000 of notes is hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614 of January 15, 1946.

ORDER

Public hearing having been held in the above proceedings, the

matters having been submitted and now being ready for decision,

IT IS ORDERED as follows:

1. Finding that public convenience and necessity so require, a certificate is hereby granted to Death Valley Electric Cooperative, Inc., authorizing the construction and operation of a public utility electric transmission and distribution system in those portions of Inyo and San Bernardino counties delineated as the requested service area of applicant on the map attached as Exhibit A to Application No. 30490, said map being made a part of this order by reference, and authorizing the exercise by applicant of the rights, privileges, and franchises granted by Ordinance No. 224 of the County of Inyo and Ordinance No. 636 of the County of San Bernardino.

2. Applicant shall not supply electricity in California outside of the above specified service area except under further certificate of this Commission first obtained.

3. The Commission may hereafter, by appropriate proceeding and order, limit the authority herein granted to applicant as to the territory within said counties not then being served by applicant.

4. On or before June 30, 1954, applicant may enter into a loan contract in substantially the same form as Exhibit A to Application No. 34798, may execute a mortgage of realty and chattels in substantially the same form as Exhibit C to that application, and may issue its mortgage note, or notes, in the aggregate principal amount of not exceeding \$2,035,000 in substantially the same form as Exhibit B to that application, provided that such authorization does not constitute approval or authorization to enter into or carry out the terms of any provision in any manner which may conflict with the regulatory jurisdiction of this Commission or the duties and obligations of a public utility under California law. Applicant shall use the proceeds to be received through the issue of said note, or notes,

for the purposes set forth in the application.

5. The authority hereinabove granted by ordering paragraph 4 shall become effective upon the effective date of this order or upon the payment of the fee prescribed by Section 1904(b) of the Public Utilities Code, whichever date is later. The amount of said fee is \$1,517.50.

6. Applicant may issue membership certificates upon the payment of \$5.00 for each such membership certificate.

7. Applicant shall file with this Commission, in quadruplicate, at least thirty (30) days prior to furnishing service, a tariff schedule of rates and rules, in accordance with the requirements of General Order No. 96.

8. Applicant shall file with this Commission monthly reports as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

The effective date of this order shall be the date hereof.

Dated, San Francisco, California, this 10th day of November, 1953.

A. E. Anderson
President
Justin J. Calvert
Kenneth Pottier
John E. Mitchell
Deane Higgins
Commissioners