

**ORIGINAL**

Decision No. 54516

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA ELECTRIC POWER COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTHERN CALIFORNIA EDISON COMPANY, )  
 )  
 Respondent. )

Case No. 5815

McCutchen, Thomas, Matthew, Griffiths & Green,  
 attorneys, by Gerald H. Trautman, Henry W. Coil  
 and Donald J. Carman, for California Electric  
 Power Company.

Bruce Renwick, Harry W. Sturges, Jr., and Rollen E.  
Woodbury, for Southern California Edison Company.

L. S. Patterson for the Public Utilities Commission  
 staff.

INTERIM OPINION

The California Electric Power Company is a public utility electrical corporation engaged in the generation, transmission and distribution of electric energy in the Counties of Mono, Inyo, Kern, San Bernardino, Imperial and Riverside. This company and its predecessors in interest have been serving Riverside County for many years. The specific authority authorizing service in Riverside County is found in Decision No. 4597, dated August 29, 1917, in Application No. 3049 wherein the Southern Sierras Power Company, a predecessor of California Electric Power Company, was granted a certificate of public convenience and necessity to exercise the franchise rights and privileges conferred upon it by Ordinance No. 127 of the County of Riverside adopted August 19, 1916.

The Southern California Edison Company likewise is a public utility electrical corporation and is engaged in the generation, transmission and distribution of electric energy in the counties of Los Angeles, Ventura, Santa Barbara, Tulare, Kern, Kings, Fresno, San Bernardino, Orange and Riverside. This company's most recent authority to serve in Riverside County is based upon Decision No. 34723, dated November 4, 1941, in Application No. 23634 wherein the Southern California Edison Company was granted a certificate of public convenience and necessity to exercise the rights and privileges granted to it by the County of Riverside in its Ordinance No. 259 adopted July 20, 1940.

In the instant matter the California Electric Power Company complains that the Southern California Edison Company is attempting to provide service to a mine operated by the Kaiser Steel Corporation in the vicinity of Eagle Mountain in Riverside County. The complaint alleges that the defendant has no right to provide service to this mine, that the complainant has served this mine since the opening of its operations, and that the mine is in territory which has been exclusively reserved to the California Electric Power Company. The complaint requests that the defendant be ordered to cease and desist from soliciting or offering to serve this mine. The answer of the defendant generally takes the position that both parties have authority to serve throughout Riverside County.

A public hearing was held before Commissioner Ray E. Untereiner and Examiner Grant E. Syphers in Los Angeles on Thursday, January 24, 1957. At the hearing the direct case of the complainant was presented and at the conclusion thereof the defendant made a motion to dismiss the complaint. This motion is now before the Commission for ruling.

The evidence of the complainant consisted principally of documents and oral testimony relative to the historical situation as to service in Riverside County by the two companies. Exhibit No. 6 is a map which shows an area in the northwest portion of Riverside County, which according to the testimony is an area in which both the complainant and defendant companies perform service. It was the contention of the complainant that the territory generally to the west of this joint territory has been exclusively reserved to the defendant company, and the territory to the east and south has been exclusively reserved to the complainant company. This is so, according to the complainant, because of agreements between the two companies dividing their service areas in Riverside County. The alleged agreements, and various documents showing the practices of the two companies thereunder, were introduced in evidence by the complainant, tending to show that it has been the intention and practice of the companies to divide Riverside County into the areas above mentioned.

It was the position of the defendant that any agreements, either alleged or actual, cannot limit a certificated utility's right, or its correlative obligation, to serve within its certificated area. The defendant contended that since it has a certificate permitting it to exercise a franchise from the County of Riverside, and since this authority covers the entire county, the defendant company has the right and the obligation to provide service to the Kaiser mine at Eagle Mountain.

The complainant has been serving the Kaiser mine at Eagle Mountain since 1947. The electricity it has been using for this purpose has been generated at the Hoover Dam Power Plant and has been received through the Metropolitan Water District of Southern California. On June 20, 1956, this water district notified the complainant that since the amount of energy available at Hoover Dam

Power Plant had been decreased by 35 per cent the amount of electricity which could be furnished to complainant would be greatly diminished. According to the testimony this, in effect, means that the complainant will not receive enough energy from this source to supply the Kaiser mine at Eagle Mountain.

Upon receipt of this information the complainant began negotiations with the defendant company in order to secure additional electric energy to provide the service to the Kaiser mine. In the course of these negotiations a representative of the Kaiser mine contacted the defendant company and that company now takes the position that it is willing and able to furnish electric energy directly to the mine.

As of the present time the complainant is not able to furnish this electricity through its own resources. However, it now plans to construct additional facilities at a cost of \$1,400,000 which facilities it plans to have completed by September 1, 1957. Specifically, these facilities are diagramed in Exhibit No. 37 and will consist of a line from the Blythe substation to a new substation to be constructed at Desert Center, and a tie-in line from that point to the Kaiser mine. The evidence also indicates that it is the intention of complainant to build this line immediately in order to provide service to the Kaiser mine. If there were no need for service to the mine then the line would not be built for another five or ten years.

A consideration of the evidence adduced thus far in these proceedings raises the following issues:

(1) Does each company have authority to serve all of Riverside County as a result of the certificates registering the respective county franchises, or has the authority of the companies been limited to certain areas of Riverside County as a result of the agreements and practices of the parties?

(2) Even if each company does have authority to serve all of Riverside County, should this Commission permit the competition between the two companies to continue, or is it in the public interest to allocate specific territories to each utility?

The instant proceeding concerns a complaint relative to service to a specific point in Riverside County and, strictly speaking, the issues of this complaint are limited to whether or not the Southern California Edison Company should be ordered to cease and desist from soliciting or offering to serve the Kaiser mine in the vicinity of Eagle Mountain. While it is true that each party has a certificate of public convenience and necessity which grants it authority to exercise a franchise covering all of Riverside County, subject to the restrictions set out therein, it is also true, as a matter of law, that the authority of a utility may be changed or altered by this Commission should it be necessary to do so in the public interest.<sup>(1)</sup> It is also true that any private agreement between the parties cannot alter their obligations as a public utility, nor can any such agreement affect the power of this Commission to make appropriate orders in the public interest (see Meadow Valley Lumber Company vs. Pacific Gas & Electric Company, Decision No. 45028, dated November 21, 1950, in Case No. 5182; 50 P.U.C. 270).

Accordingly, the facts in this case present to this Commission the problem as to whether or not each company should be permitted to compete for the business of the Kaiser mine or whether it would be in the public interest to allocate this particular consumer to one or the other of the parties. In addition to this there is a broader question which should be considered by the Commission.

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(1) Section 1708, Public Utilities Code of California.

It does not appear that the sole purpose of the California Electric Power Company in proposing to construct the new facilities at a cost of \$1,400,000 is to serve the Kaiser mine. Apparently these facilities will be used to provide other services as required in the area and the need for them may well depend upon the extent to which complainant is the utility that is to serve the new load as it develops. Therefore, the Commission finds it to be in the public interest to issue an order of investigation in order to broaden the inquiry to include a consideration of all service in the area.

In the light of this situation the motion to dismiss will be denied and the matter set for further hearing.

INTERIM ORDER

A complaint and answer thereto as above entitled having been filed, a public hearing having been held thereon, the complainant having presented evidence, and the defendant having moved to dismiss the complaint, the Commission being fully advised in the premises, and good cause appearing,

IT IS ORDERED:

- (1) That the motion to dismiss be and it hereby is denied.
- (2) That this matter shall be set for further hearing on March 20, 1957, at 10 a.m., in Los Angeles, before such commissioner and

examiner as the Commission may designate.

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

Dated at San Francisco, California, this  
11<sup>th</sup> day of FEBRUARY, 1957.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners