

Decision No. 55271**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CALIFORNIA ELECTRIC )  
 POWER COMPANY under Section 1002 )  
 of the Public Utilities Code for a )  
 certificate of public convenience )  
 and necessity to exercise rights )  
 under franchise in the County of )  
 San Bernardino. )

Application No. 38676

Donald J. Carman, Henry W. Coil, and McCutchen, Thomas, Matthew, Griffiths and Greene by Donald J. Carman, and Gerald H. Trautman, for applicant.

Bruce Renwick and Rollin E. Woodbury by Rollin E. Woodbury, for Southern California Edison Company, interested party.

O P I N I O N

California Electric Power Company, a corporation, herein- after referred to as applicant, by the above-entitled application filed on December 17, 1956, requests a certificate of public convenience and necessity to exercise the rights and privileges of Franchise Ordinance No. 789 of the County of San Bernardino, California, which authorizes applicant to construct, maintain, use, and replace, for a period of 50 years from and after the effective date of the ordinance, an electric transmission and distribution system and lines now existing or hereafter constructed, erected, installed or placed, and necessary or convenient for transmitting, distributing and supplying electricity and electric energy for light, heat and power uses and purposes in, upon, over, under, along and across any and all public roads, streets, ways, places and highways in the County of San Bernardino, State of California, not now within any incorporated city, together with the right, privilege and franchise,

during the said 50-year period, to sell, furnish, supply and distribute to the public electricity and electric energy for any and all such uses and purposes.

Applicant at present, as the successor to Southern Sierras Power Company, is authorized by this Commission to exercise rights and privileges under San Bernardino County Franchise Ordinance No. 172 pursuant to Decision No. 4597, dated August 29, 1917, in Application No. 3047 (13 C.R.C. 801). Paragraph 1 of the order of said decision reads as follows:

- "1. Present and future public convenience and necessity require and will require the extension of The Southern Sierras Power Company of its electric system in the unincorporated territory of the County of San Bernardino and the exercise by it of the franchise rights and privileges conferred upon it by Ordinance No. 172 of the County of San Bernardino, adopted August 14, 1916."

Franchise Ordinance No. 789 supersedes Franchise Ordinance No. 172.

A public hearing on the application was held before Examiner Kent C. Rogers on February 20, 1957, in San Bernardino. Prior to the hearing notice thereof was published as required by this Commission. Southern California Edison Company, a corporation, hereinafter referred to as "Edison", appeared at the hearing and requested that any authority granted be made subject to the conditions set forth in its authority to serve San Bernardino County (Decision No. 34741, dated November 4, 1941, in Application No. 23635), namely:

- "(2) That, except upon further certificate of this Commission first obtained, applicant shall not exercise such franchise for the purpose of supplying electricity within those parts or portions of said County now being served with electricity by any other public utility.
- "(3) That the Commission may hereafter, by appropriate proceeding and order, limit the authority herein granted to applicant as to any territory within said County not then being served by it."

Applicant's commercial vice president testified concerning the following facts:

The franchise ordinance referred to, a copy of which is attached to the application as Exhibit A (granted by San Bernardino County in accordance with the Broughton Act, Division 3, Chapter 1, California Public Utilities Code) supersedes San Bernardino County Franchise Ordinance No. 172. The franchise became effective on June 13, 1956, and the term of the franchise is fifty years. A fee will be payable annually to the County of 2 per cent of the gross annual receipts of the grantee arising from the use, operation, or possession of said franchise within the County of San Bernardino. Applicant has filed written acceptance of the franchise as required by Section 11 thereof, and has posted its bond as required by Section Section 12 thereof.

The costs incurred by the applicant in obtaining the franchise totaled \$602.13, exclusive of the fee for filing the herein application (\$50) and the publication of the notice of hearing thereon (\$10.50).

Although Franchise Ordinance No. 172 does not expire until 1966, the applicant secured the new franchise here involved for the reason that, from the financial standpoint, it is necessary or desirable to have franchises which continue beyond the maturity dates of applicant's outstanding bonds, and it is necessary to have such franchises in order to qualify applicant's bonds as legal investments in many of the eastern states which constitute its principal bond market. Applicant has for many years been furnishing and providing electric energy and service to the public and serving a portion of the unincorporated territory of San Bernardino County. Public convenience and necessity require that such a service be continued therein.

The cost to the applicant of the existing franchise for the year 1956 was \$12,132. The new franchise would have cost the same.

Upon the record herein the Commission finds that public convenience and necessity require the exercise by the applicant of the right, privilege and franchise granted to applicant by Franchise Ordinance No. 789 of the County of San Bernardino, California. The certificate of public convenience and necessity herein granted is subject to the conditions set out in the order herein and to the following provision of law:

The Commission shall have no power to authorize the capitalization of the franchise here involved 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.

Should Restrictions be Imposed Similar to Those in Southern California Edison Company's Franchise?

As heretofore stated, applicant has a county-wide franchise for electric service in San Bernardino County, and Edison has a county-wide electrical franchise for the same county subject to the heretofore quoted restrictions. Both the applicant and Edison have power lines from Boulder Dam into the vicinity of the City of San Bernardino. The applicant serves numerous areas in the county west, roughly, of a line through Twentynine Palms and Baker (see areas indicated in red on Exhibit No. 2). Edison serves small areas in the western portion of the county (see areas outlined in yellow on Exhibit No. 2). Over half of the county is served neither by the parties hereto nor by any other electrical utility. Each of the parties serves portions of an area in San Bernardino County which

include a part of the City of San Bernardino, Crestline, Patton, Redlands, and territory between. This area is outlined in black on Exhibit No. 2 and is shown in greater detail on Exhibit No. 4 on which the portions of the territory claimed to be served by applicant are outlined in cross-hatching and labeled N.C.E. for applicant's predecessor Nevada-California Electric Corporation, and Edison's territory is labeled S.C.E. Exhibit No. 3 herein consists of a map and two memoranda. The first memorandum recites that territory A on the map is the territory served by Edison as of February 25, 1914, territory B on the map is the territory served by applicant's predecessor on the same date, and territory C is the territory being served by both companies. The C territory is very nearly coextensive with the territory shown on Exhibit No. 4 which is in San Bernardino County and has the same northern boundary. Between 1914 and 1937 the division of territory pursuant to the Exhibit No. 3 map was observed, and in the C territory new customers were served by the company whose lines were closest. Because of the rapid growth of business in the C territory, it became difficult for the parties to adhere to the 1914 understanding, and the parties allocated the C territory in accordance with Exhibit No. 4 in 1937. In 1947, by mutual agreement of the parties, Edison commenced serving a small portion of San Bernardino County west of Adelanto, and in 1953 applicant released an additional 11 contiguous sections in the area west of Adelanto to Edison (Exhibit No. 5). In 1948, with the consent of the applicant, Edison commenced serving 25 sections north of Crestline in San Bernardino County (Exhibit No. 6).

The applicant urged that it be given an unrestricted certificate, and pointed out that the parties have in the past been able to arrive between them at working agreements for the allocation of territory. Edison urged that the certificate contain the same

restrictions imposed on it in its certificate, and pointed out the controversy then existing between the parties over service in Riverside County (California Electric Power Company v. Southern California Edison Company, Case No. 5815), as a result of which this Commission issued its Order Instituting Investigation (Case No. 5898) affecting both the applicant herein and Edison.

By Decision No. 55123, issued by the Commission on June 11, 1957, in Cases Nos. 5815 and 5898, consolidated, the Commission said:

"It is clear from the record herein, however, that there is some overlapping of facilities and service of the two companies not only in Riverside County but also in San Bernardino County. The companies have, until the present instance, avoided conflict, but in the light of recent developments the situation is one which may have to be resolved. We do not intend to permit needless and destructive competition to develop to a point where the public might suffer.

"Accordingly we believe the parties hereto should make a serious attempt to negotiate some workable arrangement for dividing their territory wherever disputes are likely to arise. In this matter the Commission prefers not to order a division of territory so long as a reasonable possibility exists that the parties may voluntarily reach an equitable agreement."

The before-quoted language is now and hereby restated for the guidance of applicant in the exercise of its franchise rights and privileges in San Bernardino County.

We are of the opinion that the placing of restrictions on applicant's certificate is appropriate and will obviate future controversy concerning territory. It is obvious, from the fact that Edison is urging such restrictions, that relations between the companies are not as amicable as they have heretofore been, and the existing controversy over Riverside County rights could have been forestalled by appropriate restrictions. We will, therefore, include in the certificate appropriate restrictions.

O R D E R

The above-entitled application having been filed, a public hearing having been held thereon, the matter having been submitted, and the Commission having made the foregoing findings, and based upon said findings,

IT IS HEREBY ORDERED that California Electric Power Company be, and it hereby is, granted a certificate that public convenience and necessity require the exercise by it of the right, privilege and franchise granted to it by the County of San Bernardino by Ordinance No. 789, adopted May 14, 1956, provided, however, that this certificate shall be subject to the following conditions:

1. That except upon further certificate of this Commission first obtained, applicant shall not exercise such franchise for the purpose of supplying electricity within those parts or portions of said county now being served with electricity by any other public utility.
2. That the Commission may hereafter, by appropriate proceeding and order, limit the authority herein granted to applicant as to any territory within said county not then being served by it.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of JULY, 1957.

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President

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Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.