

ORIGINAL

Decision No. 64306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LOUIS S. RICHTER, et al.,
Complainant,

vs.

DESERT ELECTRIC CO-OPERATIVE,
INC., a corporation,
Defendant.

Case No. 7303
(Filed March 22, 1962)

Best, Best & Krieger, by Glen E. Stephens, for
complainants.
Bayard R. Rountree, for defendant.
Timothy E. Treacy, R. R. Entwistle, and
N. R. Johnson, for the Commission staff.

O P I N I O N

Hearings

Public hearings on the above-entitled complaint were held before Examiner Stewart C. Warner on July 24 and 25, 1962, at 29 Palms. The matter was submitted and is now ready for decision.

Complainants are customer-members of defendant. A total of 160 customer-members signed the complaint. It is alleged that:

1. Defendant's rates have been and now are excessive, and unreasonable surpluses have been and now are being created;

2. Defendant's management has made expenditures for purposes not in the best interests of the utility;

3. Defendant has persistently refused to carry out instructions of this Commission relative to complaints on the time for reduction in minimum charges for electric energy; and

4. Defendant's funds have been given away to certain consumers to avoid complaints when delivery of such cash was not authorized or justified under defendant's tariffs.

Relief Prayed For

Complainants prayed for an order calling for a full investigation, an audit of defendant's books and accounts, such hearings as might be proper to determine the reasonableness of defendant's rates, and a reduction of such rates as might be proper, and for such other and further orders as might be just and proper to bring electric rates to a reasonable level and conserve defendant's funds for purposes consistent with the objectives of the Cooperative.

Objections and Answer

Defendant filed an answer on April 9, 1962, denying all the allegations of the complaint and alleging affirmatively that:

1. Construction of its electrical system was financed by loans from the Rural Electrification Administration under certain loan contracts and mortgages, the execution of which had been authorized and approved by this Commission;

2. Under the terms of its loan contracts with REA any reduction of electrical rates must have the latter's approval as well as the approval of this Commission before such reduction of rates could be put into effect;

3. In November, 1960, defendant received approval from REA to reduce the rate for all kilowatt hours used over 500, which said reduction was approved by this Commission on January 20, 1961, but, at the time of approving said reduction, REA indicated it would not approve any further reduction until defendant's income had increased substantially; and

4. Defendant's operating income does not, in fact, justify any reduction in electrical rates, and REA would not approve such reduction.

Motion to Dismiss

Defendant prayed that the complaint be dismissed, and at the hearing of July 24, 1962, filed a motion to dismiss, made on substantially the grounds contained in defendant's objections and answer.

General Information -- Organization, Territory Served, Operations and Rates

Defendant was organized in 1950. Its board of directors and officers are customer-members and serve without pay except the reimbursement of travel expense to directors' meetings. By Decision No. 52526, dated January 31, 1956, in Application No. 37250, it was granted a certificate of public convenience and

necessity to construct, extend, and operate a public utility electrical system in the vicinity of 29 Palms, San Bernardino County. Electric power is purchased from California Electric Power Company at wholesale rates at a substation located about ten miles west of the center of 29 Palms on the 29 Palms Highway. Domestic and a small amount of commercial electric service is furnished to approximately 2,300 customers, all of whom are also members of the Cooperative, except the State of California and United States governmental agencies which are prohibited by law from being members of the Cooperative but which, nevertheless, receive electric service for a produce inspection station, an air navigational aid station, and a radar station. Defendant's system extends about 20 miles west of 29 Palms, 20 miles east of 29 Palms, at least six miles north of 29 Palms and, in some instances, to the southern limits of Lucerne Valley and, because of mountainous terrain, only a maximum of three or four miles south of 29 Palms. The record shows that about 80 percent of customers are in the area west and northwest of the center of 29 Palms, with the balance elsewhere. Defendant does not serve the community of 29 Palms itself; that being served by California Electric Power Company. Because of the very large service area and extensive electric distribution system therein, customer density is low and operating, maintenance, and capital costs per customer are high. The record shows that in many instances a single 3 kva or 5 kva transformer is installed at the end of an electric distribution power line to serve one isolated customer on a 2½- or 5-acre homesteaded parcel. Many of such homesteaded parcels which have

been improved are either unoccupied or are occupied infrequently with little or no monthly or annual electric power consumption registered on meters. Defendant's tariffs provide for 1,000 feet of free power line extension and a \$10-per-month minimum charge for the first year, which is reduced to \$6 per month thereafter. The \$10-per-month minimum charge entitles the customer to 100 kwhr; the minimum charge of \$6 per month entitles the customer to 50 kwhr. Customers are required to sign up for a minimum of five years' electric service when application for service is made. The record shows that defendant purchases about 3,000,000 kilowatt hours per year from its wholesaler but total sales reach only approximately 2,000,000 kilowatt hours. Much of the difference is explained by power consumed in the energizing of the dormant or little-used transformers.

Complainants' Showing

Complainants produced three witnesses.

A former billing clerk of defendant testified that defendant's former manager in the period from July 1958 to September 29, 1960, had instructed her to make refund to at least one customer in excess of the amount computable under the customer's consumption of electricity registered by the meter and billed. This witness testified that the manager had given as his reason that the customer was a troublemaker and that, in effect, the refund would keep her from making more trouble.

A complainant submitted, and testified regarding, a group of documents received by him from defendant's secretary addressed to each member. Said documents were admitted as Exhibit 1. Said Exhibit contains a notice by defendant's

secretary that the administrator of the REA had requested that the annual meeting of members be postponed in order that the administrator or one of his chief assistants might be present; that such meeting had been postponed; and that notice of a new meeting would be sent. Exhibit 1 also contains a statement of the defendant's board of directors, over the secretary's signature, outlining some of the actions of the board and the management from March 1959 to February 15, 1962, discussing a controversy with a minority group of members and urging members to be present at the annual meeting. The Exhibit also contains a letter from a certified public accountant in the State of Washington, dated February 15, 1962, together with a financial statement and balance sheet certified to by defendant's bookkeeper and former manager February 21, 1962, for the quarter ending as of December 31, 1961.

Called by complainants under Section 2055 of the Code of Civil Procedure, a director of defendant since October 28, 1960, its secretary since June 8, 1961, and its treasurer since January 24, 1962, testified, among other things, that defendant's board of directors had approved advances to defendant's former manager for trips to Washington, D.C., Miami Beach, Florida, and Atlantic City, New Jersey, and for numerous telephone calls to various places in the United States including REA offices in Salt Lake City, Utah, and the offices of the certified public accountant in Vancouver, Washington. The manager's trips to Washington, D.C., and Florida were made to attempt to secure approval of a loan from REA to build a 100-mile electric line from Blythe to 29 Palms and to

secure an allocation of U.S. Bureau of Reclamation power from the Davis-Parker Dam complex on the Colorado River. This witness did not know, and had no idea of, the estimated cost of the construction, operation, maintenance or any of the economics or engineering phases of the proposed power line construction project.

Defendant's Showing

Defendant's acting general manager since May 1, 1962, testified among other things that his salary was \$700 per month; that he was acting as manager until the utility could advertise for a permanent manager in a national magazine; and that he had received no orders or instructions from the board of directors to make any trips to Washington, D.C., to make any long distance telephone calls, or to incur any expense in connection with, or in any other way pursue, the proposed Blythe line project. He further testified that he intended to effect every possible economy in his management of the Cooperative.

Staff Accounting Showing

A Commission staff accounting witness submitted a report on his financial examination of defendant as Exhibit 4. This witness testified that said Exhibit was limited in nature, did not constitute an audit of all of defendant's operations, was based solely on defendant's books of accounts and records as he found them, and, because of accounting deficiencies which he found, could not be relied upon and did not necessarily reflect the financial condition and operations of defendant.

Balance Sheet. The report of the staff accountant covered the years 1959, 1960 and 1961 and showed with respect to balance sheet accounts, among other things, that certain items of expense related to utility plant should have been capitalized; in 1961 defendant lengthened the depreciation lives of certain facilities, thereby reducing accruals in 1961 by some \$12,000, which had the effect of holding defendant's operating loss to \$36,879 in 1961; defendant had a total of \$30,000 on deposit with two savings and loan associations at 4½ percent interest, set up in accordance with REA recommendations as a renewal and replacement fund; defendant had made a loan out of funds borrowed from REA to install member facilities in the amount of \$45,000 to Green District Water Development Association, a member of the Co-operative; the account for uncollectibles had been improperly used during the year 1961 in that no write-offs had been charged against it but had been charged against operating revenue accounts; as of December 31, 1961, total commitments of REA funds amounted to \$601,083.01, of which \$551,083.01 for construction purposes was unexpended and \$50,000 was committed for the installation of member appliances or facilities; a total of \$11,301.54 of other deferred debits was represented by preliminary costs of the Blythe transmission line, of which vouchers totaling \$8,922.68 were paid to defendant's general manager for expenses incurred on trips to Washington, D.C., Salt Lake City, Utah, and other places for the purposes heretofore noted; defendant's net deficit on December 31, 1961, amounted to \$54,087, which included accumulated operating losses for the years 1959, 1960 and 1961 of \$72,891, offset

by accumulated operating margins for the years 1957 and 1958 of \$17,023 and nonoperating margin for the years 1957 through 1961 of \$1,781; and defendant had executed REA notes for construction totaling \$2,686,000 less unadvanced funds of \$551,083, and had paid back principal of \$26,882, leaving net long term debt outstanding as of December 31, 1961, for construction amounting to \$2,108,035. Installation loans classified as long term debt included an executed REA note of \$100,000, less unadvanced funds of \$50,000 and principal payment of \$148, leaving a net amount outstanding as of December 31, 1961, of \$49,852. Payments aggregating \$79,000 under the terms of these REA notes will become due during the year 1962, representing \$42,500 to service the principal and deferred interest requirements and \$36,500 on interest which should be paid to REA.

Operating Revenues. Exhibit 4 shows, as to operating revenues among other things, that, generally, tariff rates on file have been applied properly to billings except in minor instances where customers may have been under-billed. However, a substantial part of billings to large commercial customers represent demand charges as contrasted to energy charges, which said demand charges in at least two instances are estimated rather than computed as required by defendant's tariffs. This Exhibit shows that the recorded net loss for 1961 was not occasioned to any substantial degree by failure of defendant to collect operating revenues to which it was entitled.

Operating Expenses. As to operating expenses, Exhibit 4 shows, among other things, that during 1961 defendant's

manager was paid \$18,850, of which \$3,500 represented back pay for the year 1960; half of the back pay was incorrectly charged to 1961 operating expenses and the remaining half to 1961 construction costs; telephone expenses during 1961 totaled \$1,460.56 and, in the first six months of 1962, \$1,039.21; office supplies and expenses for the year 1961 were \$4,796.86; defendant's legal counsel's monthly retainer was increased, effective July 1, 1961, from \$75 to \$150, and expenses for other legal services amounted to at least \$750; during the first six months of 1962, expense of outside services was \$6,048, including \$1,786.65 for local counsel, \$719.54 C.P.A. (Washington State) accounting services, and \$3,100 to attorneys in connection with civil litigation.

Gross Receipts Tax. Exhibit 4 shows that a gross receipts tax on the sale of electric energy, which is a franchise tax levied by San Bernardino County, was charged in the amount of \$15,573.55 to 1961 operating expenses, but that of this amount \$10,582.20 applied to the years 1957 through 1960.

Staff Engineering Showing

Headquarters Building. A Commission staff engineering witness, in part, testified that the headquarters office building

constructed with funds loaned by REA was of a size in excess of defendant's present or foreseeable needs; the 30 acres of land on which this building was constructed cost in excess of \$13,000 and was larger than defendant needed either for an office building location and/or a shop which it proposed to construct thereon; the location of the headquarters, six miles east of the center of 29 Palms, required travel to and from by employees not only to report for and to leave work but also in the performance of duties such as mailing and banking; the well drilled and the pump installed in such well cost in excess of \$10,000; and in his opinion defendant could have continued to operate more economically from its former offices in 29 Palms which were rented for \$145 per month.

29 Palms-Blythe Transmission Line. As to the proposed Blythe transmission line, the staff engineer testified that its estimated cost would be \$2,016,555; annual cost of its operations, including maintenance, depreciation, interest and purchase of 3,000,000 kwhr of electrical energy from the Bureau of Reclamation, would be \$152,060 based on 1961 costs; the proposed line would probably be of 161 kw, three-phase, wood-pole construction; it would be subject to outages, and standby substation and other facilities would be required together with the probable payment of a standby charge to a supplier of standby service; and defendant's present purchased power costs from California Electric Power Company were \$41,998 in 1961 or \$18.71 per customer per year. The proposed Blythe line would cost an additional average of \$44 per customer per year.

Tariffs. The staff engineer further testified that defendant did not apply its commercial tariff properly in that it

estimated the demand charge for two customers at the rate of \$17.50 with no known basis therefor. Also, defendant furnished private street and yard lighting service for luminaires, each of which was not individually metered but was billed to individual customers at a flat monthly rate, for which defendant had no presently filed tariff. Defendant requires applicants for individual electric service without line extension to execute an agreement for a five-year period, which said requirement is not provided in defendant's tariffs. Also, delinquent notices sent to customers do not conform to notices provided in the tariffs, and no adequate forms have been filed covering service to non-members such as the State of California and the United States Air Force. Defendant has not complied with the provisions of General Order No. 96-A regarding contracts with governmental agencies.

The record shows that defendant has credited customers' electric bills in amounts of \$10, \$20 and \$30 for agreeing to install electric appliances. The giving of such credits is not provided in defendant's tariffs.

Energy Loss. The staff engineer estimated that about \$16 per 5-kva transformer worth of energy was unaccounted for annually through the energizing of the dormant or little-used transformers hereinbefore described.

San Bernardino Superior Court Action
re Election of Board of Directors

Complainants called the Commission's attention to a Memorandum Opinion dated July 16, 1962, of Superior Court Judge Jesse W. Curtis, San Bernardino County, in Action No. 109,561 before the Superior Court of said County,

which action is a suit by certain of complainants herein as plaintiffs to determine the legality of the election on April 14, 1962, of a new board of directors. (Action No. 109,679, to which the Memorandum also applies, is a counter-suit filed by defendant herein against said complainants herein.) In said memorandum the court found in favor of plaintiffs. If said decision is sustained, it would result in the election of a board of directors sponsored by plaintiffs.

Findings

After reviewing the record, the Commission finds as follows:

1. The motion to dismiss should be denied.
2. As to allegation No. 1, complainants have not proved that defendant's rates have been and now are excessive. Instead of unreasonable surpluses having been created as alleged, defendant's net deficit on December 31, 1961, had amounted to \$54,087.
3. The record supports allegation No. 2, that defendant's management has made expenditures for purposes not in the best interests of the utility.
4. The record does not support allegation No. 3, that defendant has persistently refused to carry out instructions of this Commission relative to complaints on the time for reduction in minimum charges for electric energy.
5. In at least one instance, allegation No. 4 -- that defendant's funds have been given away to certain consumers to avoid complaints, when delivery of such cash was not authorized or justified under defendant's tariffs -- is supported.

6. The record does not support the granting of the full relief prayed for. Defendant should bring its books into conformance with the Uniform System of Accounts prescribed by this Commission for Electrical Corporations, Class C.

The prayers for a full investigation, for reduction in rates, and for further hearings should be denied. Orders directing defendant to conform its accounting practices to those prescribed by this Commission and to conform to its filed tariffs should be issued.

7. Defendant should compute demand charges to commercial customers where applicable, and bill them accordingly; should file a tariff for private street and yard lighting service; should cease requiring applicants for individual electric service without line extension to execute an agreement for a five-year period; should conform delinquent notices to customers to tariff provisions; should file with the Commission forms covering service to non-members; should comply with General Order No. 96-A regarding contracts with governmental agencies; and should cease crediting customers' electric bills for agreeing to install electric appliances.

In the event defendant does not comply with standing orders of the Commission with respect to its accounting practices and tariffs within six months after the date of this order, the Commission will take whatever action it deems appropriate to insure compliance.

O R D E R

Based on the record and the findings,

IT IS ORDERED that:

1. Defendant's motion to dismiss is denied.
2. Complainants' prayers for a full investigation, for a reduction in rates for electric service, and for further hearing or hearings are denied.
3. Defendant shall employ accountants and shall take immediate steps to bring its books of accounts into conformity with the provisions of the Uniform System of Accounts Prescribed by this Commission for Electrical Corporations, Class C, and shall certify in writing to the Commission within 180 days after the effective date hereof that it has complied herewith.

4. Defendant shall, within 60 days of the effective date hereof, rectify the deviations from and the deficiencies in its filed tariffs set forth in paragraph 7 of the findings herein.

5. Defendant shall file monthly balance sheet and income statements for the current month and for the year to date, commencing with the month of August, 1962. The filing of such statements shall continue to be made through the month of June, 1963.

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

Dated at San Francisco, California, this 25th day of SEPTEMBER, 1962.

George J. Grover
President
John P. ...
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...
Fredrick B. Hallock
Commissioners