

Decision No. 67745

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, and DESERT ELECTRIC COOPERATIVE, INC., a corporation, FOR AN ORDER AUTHORIZING THE ACQUISITION BY SOUTHERN CALIFORNIA EDISON COMPANY AND THE SALE BY DESERT ELECTRIC COOPERATIVE, INC., OF THE ELECTRIC DISTRIBUTION SYSTEM AND OTHER PROPERTIES OF DESERT ELECTRIC COOPERATIVE, INC.

Application No. 46649

(Filed May 20, 1964)

Rollin Woodbury, Donald J. Carman, and John R. Bury, for Southern California Edison Company; Bert L. Lunceford, and Best & Krieger, by Eugene A. Nazarek, for Desert Electric Cooperative, Inc., applicants.

Lawrence A. Hutton, for William A. Stone and Forrest Riordan, protestants.

Robert C. Marks, Norman R. Johnson, and Ray E. Heytens, for the Commission staff.

O P I N I O N

Southern California Edison Company (Edison) seeks authority to acquire and Desert Electric Cooperative, Inc., (Cooperative) seeks authority to sell the latter's entire electric distribution system and other properties pursuant to the terms and provisions of the Agreement of Purchase and Sale, dated April 2, 1964, a copy of which is Exhibit A, attached to the application.

Public hearings were held before Examiner Warner on June 17 and 18, 1964, at Twentynine Palms.

All of Cooperative's members were notified by post card, and notice was published.^{1/}

About 150 persons were in attendance, of whom about 35 supported the application and between 50 and 60 opposed it. Many participated in the hearings.

Briefs due on or before July 17, 1964, limited to the argument of whether the proposed transfer of properties constituted a merger or a sale, have been received, and the matter is ready for decision.

Cooperative was incorporated on February 27, 1950, and was granted a certificate of public convenience and necessity by Decision No. 52526, dated January 31, 1956, in Application No. 37250, which said decision also granted Cooperative a certificate of public convenience and necessity to exercise the rights and privileges of a franchise, dated June 8, 1953, granted by Ordinance No. 713 of San Bernardino County. Its certificated area includes approximately 226 square miles of property east of Twentynine Palms, and approximately 252 square miles west thereof, or a total of 478 square miles of property in the High Desert. Certain portions are mountainous and undeveloped and the Cooperative's 600 miles of distribution lines and 2,642 connected meters are generally

^{1/} Although notices designating the hearing place incorrectly listed the address of the Community Hall, Little Church of the Desert, Twentynine Palms, as 5318 North Adobe Road instead of 6079 North Adobe Road, and attention was called thereto by protestants' counsel, the Commission takes note that the Community Hall of the Little Church of the Desert is a commonly known and recognizable place in the community of Twentynine Palms and could not easily be confused as a hearing place with the motel at the address as published. Accordingly, the error in street number was inconsequential.

located in developed areas totaling about 200 square miles. Many of the private properties served are homesteaded parcels with minimum (400 square feet) improvements and minimum (lighting and appliances -- 50 KWHR per meter per month) requirements and usage.

Cooperative purchases its electric power from Edison (formerly California Electric Power Company) on a wholesale basis at a substation on the north side of Twentynine Palms Highway between Joshua Tree and Twentynine Palms. As shown in red on the map, Exhibit H, Cooperative's two areas are surrounded by Edison's service territory.

Edison alleged, and its vice president in charge of its eastern division, which includes Twentynine Palms, testified that: by the granting of the application and the integration of Cooperative's territory with its own artificial islands as barricades to future orderly system planning would be eliminated; future duplication of facilities near the periphery of Cooperative's present territory would be prevented; confusion in the minds of prospective customers as to which utility to apply to for service would end; economies of operation through the transfer of administrative, engineering and accounting work to Edison's general division office or accounting center and through the merging of Cooperative's operating organization with Edison's Twentynine Palms organization should be produced; Cooperative would be relieved of its indebtedness to Rural Electrification Authority (REA); Cooperative's employees would be provided positions with a large well-established utility at no less pay than they are presently receiving and with greater opportunity for advancement; development of the area by the

availability of an abundant supply of economic electric energy would be promoted; and Cooperative's members would enjoy substantially lower electric rates.

Exhibit No. 1 is a rate comparison which shows the following:

RATE COMPARISON - RESIDENTIAL AND COMMERCIAL SERVICE
SOUTHERN CALIFORNIA EDISON CO. - DESERT ELECTRIC COOPERATIVE INC.
TYPICAL MONTHLY BILLS*

<u>Residential Service</u>	Ltg.& Small Appls. 50 Kwhr	Ltg.etc. and Refrig 100 Kwhr	Ltg.etc., Ref. & Cooking 250 Kwhr	Ltg., etc., Refrig., Cookg. & Wtr. Heating 500 Kwhr	750 Kwhr
Desert Electric Schedule D	\$ 6.00	\$10.00	\$14.00	\$19.00	\$24.00
Edison Co. Pres. Schedule	3.67	5.47	9.71	12.07	15.74
Prop. Schedule	3.67	5.47	9.71	12.07	15.74
<u>Commercial Service</u>	3.0 Kw 375 Kwhr	6.0 Kw 750 Kwhr	12.0 Kw 1500 Kwhr	30.0 Kw 6000 Kwhr	40.0 Kw 10,000Kwhr
Desert Electric Schedule No. A	\$21.00	\$36.00	\$63.00	\$201.00	\$311.00
Edison Co. Pres. Schedule	18.98	34.73	59.57	185.71	262.61
Prop. Schedule	18.98	34.73	59.57	185.71	258.61
Schedule P-1	13.63	24.50	45.80		
Schedule P-2				124.25	179.25

Street Lighting service is provided for on Desert Electric Cooperative Inc. Schedule No. LS-1 at \$4.00 per lamp per month for all night service to utility-owned 175 watt incandescent lamps. Service on Southern California Edison Co. Schedule LS-1 is provided for at \$3.00 per lamp per month.

*Levels of usage are the standards used in the Federal Power Commission publication of Typical Electric Bills.

Exhibit No. 1 (supra) shows that Edison's estimated rate of return for the year 1964, without Cooperative, would be 6.48 per cent, and with Cooperative, 6.47 per cent. Edison's vice president

testified that Edison was willing to assume the risk of the economic future of the High Desert and of Edison's ability to operate economically in the area under its present tariffs over a period of time. One of the provisions of Exhibit A is that Edison will not apply to this Commission for a rate increase applicable to Cooperative's service area unless it concurrently seeks a similar increase in other similar rural areas, nor will Edison apply for a general decrease in rates in other similar rural areas unless it seeks a similar decrease in Cooperative's present service area. A system-wide decrease in Edison's rates became effective July 1, 1964, part of which would have been applicable to Cooperative's service area, and it would be if the instant application were granted.

The record shows that as of the date of the hearings, Cooperative had 2,358 members,^{2/} of whom 1,659, or about 70 percent, had signed consents to the amendment of Cooperative's Articles of Incorporation, Exhibit C, attached to the application, and had approved the principal terms of the proposed sale and the nature and the amount of the consideration, and had given written consent in the form, Exhibit F, attached to the application.

By the Agreement of Purchase and Sale, Exhibit A, supra, the base purchase price is to be an amount equal to Cooperative's obligation to the REA, which as of May 31, 1964, amounted to

2/ Exhibit No. 3, Cooperative's Bylaws, provides that a member be required to make a written application for membership; agree to purchase from Cooperative electric energy; agree to comply with and be bound by the Articles of Incorporation and Bylaws of the Cooperative and any rules and regulations adopted by the Board of Directors; and pay the membership fee of \$10.00. No member may hold more than one membership.

\$2,391,935 in principal, plus \$55,713 in deferred interest, plus \$626 in accrued interest, for a total of \$2,448,274, and unrefunded membership fees totaling \$24,530. The base purchase price, as of May 31, 1964, would have amounted to \$2,472,804. Said Agreement also provides that Edison will assume all of Cooperative's current liabilities, as of December 31, 1963, plus all additional undischarged liabilities incurred subsequent to that date, which have been consented to or approved by Edison. As of May 31, 1964, additional liabilities consist of accounts payable \$16,751; customers' deposits \$8,658; patronage capital \$18,385; other current and accrued liabilities \$4,487; for a total of \$48,281. The total purchase price would have been \$2,521,085 on May 31, 1964.

Cooperative's president testified, and Exhibit No. 7 shows, that in response to 601 member petition signers, the Cooperative had on July 31, 1963, solicited offers for purchase from San Diego Gas and Electric Company, Pacific Gas and Electric Company, Southern California Edison Company, and California Electric Power Company. Pacific Gas and Electric Company and San Diego Gas and Electric Company replied that they were not interested. Edison's reply suggested that California Electric might have the most interest, and the latter was interested. On March 6, 1964, subsequent to the merger of Edison and California Electric, authorized by Decision No. 65820, dated August 6, 1963, in Application No. 45494, Edison submitted a new proposal which substantially resulted in the instant application. Cooperative's president gave four reasons why Cooperative's directors deemed the sale advisable.

First, Cooperative's annual operating losses since 1958 were as follows: 1959, \$1,151; 1960, \$25,573; 1961, \$36,879; 1962, \$44,966; 1963, \$50,169.^{3/} It appeared unlikely that Cooperative would be able to break even or show a profit at any time in the foreseeable future.

Second, partially because of operating losses, Cooperative's debt to REA had constantly grown and had risen from \$1,500,000 in March of 1958 to \$2,448,274 as of May 31, 1964.

Third, Cooperative customers would realize substantial rate reductions under Edison rate schedules, and

Fourth, the economic development of the service territory would be encouraged by the availability of an abundant supply of economical electric energy.

This witness testified that in the event the Commission does not approve the sale, the only way for Cooperative to get out of debt and to get the operation into the black would be to make an application to the Commission for an increase in rates.

^{3/} Exhibit D, Cooperative's balance sheet as of December 31, 1963, and statement of revenue and expenses for the year ended December 31, 1963, shows operating revenues and patronage capital, \$253,564.38; operating expenses, including cost of power, \$65,715.99; distribution expenses, \$16,857.17; consumer accounts expenses, \$19,677.93; administrative and general expenses, \$40,639.49; distribution maintenance expenses, \$8,601.22; maintenance of general plant expenses, \$2,587.93, for total operating expenses of \$154,079.73; depreciation and amortization expense, \$75,452.76; taxes, \$30,984.69, for total operating revenue deductions of \$260,517.18; electric operating margin (deficiency), \$ (6,952.80); interest on long-term debt, \$47,233.44; operating deficiencies, \$ (54,186.24); non-operating margins, \$4,017.07; and net deficiencies of \$ (50,169.17).

Edison's rate research engineer testified that under Cooperative's present Line Extension Rule No. 15, an applicant for lights, small appliances and refrigerator -- 100 KWH per meter per month usage -- would be entitled to 1,000 feet of line extension without cost. Such extension under Edison's rules would cost \$812.50. He further testified that for various loads and usages, free footage allowances would vary substantially under both Edison's and Cooperative's line extension rules. He cited examples as follows: For the extension on a 5 HP pump, Cooperative's free footage allowance would amount to 500 feet, whereas Edison's would be 875 feet; when a customer installs a refrigerator and a range, neither Cooperative's nor Edison's rules require a deposit on a line extension of 575 feet or less; free footage allowances for line extension of 300 feet are the same under both rules; and under Edison's rule, a customer who installs a refrigerator gets an additional 75 feet, or 375 feet of free extension under Edison's rule.

Whereas Edison's rule with respect to refunds of line extension deposits contains a 10-year limit, Cooperative's rule provides that if service is discontinued or not used for a period of one year, the balance of the unrefunded advance payment is forfeited.

Cooperative bills monthly. Edison proposes to bill bi-monthly. Some Cooperative members objected to this. The record shows, however, that if a Cooperative customer is now paying \$10 per month for the use of 100 KWH for lighting and a refrigerator,

a total of \$20 every two months, under Edison's bimonthly billing he would pay \$5.47 in each of those two months, or during the billing period, he would pay approximately \$11.00.

Protestants alleged that Cooperative was mismanaged to the extent that expenses were deliberately incurred to increase operating losses; stockholders' meetings had been improperly called and conducted; directors had been improperly elected; consents to the proposed sale had been obtained from nonresident members and from members not in attendance at stockholders' meetings; and signatures to such consents were unauthorized. They contended that the elected directors and appointed officers had "wrecked" Cooperative, and that members had been "sold out". Their principal concerns were that the agreed consideration of sale had not been negotiated, and did not produce a maximum return to members. They requested that the Commission appraise Cooperative's fair market value. They contended that Edison's line extension rules were so restrictive that development of the High Desert would be retarded and property values would be inhibited. They showed that the Superior Court of San Bernardino County had issued a writ of mandate on June 15, 1964, against Cooperative's president and secretary to compel their cooperation with reference to the examination of Cooperative's books and records; that an action had been filed in the Superior Court of San Bernardino County on behalf of Mr. Riordan as a shareholder's derivative suit against the board of directors and against the Cooperative to test and examine their actions with reference to their conduct concerning the sale of

Cooperative's assets; and that there was an Order to Show Cause, returnable the 3rd day of July, 1964, why the Cooperative and its board of directors should not be restrained from pursuing the instant application.

Based on the evidence, the Commission finds that:

1. This application is by Edison for authority to acquire and by Cooperative to sell Cooperative's properties and assets pursuant to the terms of the Agreement of Purchase and Sale, dated April 2, 1964, Exhibit A, attached to the application. The proposed transfer would not be a merger of Cooperative into Edison.

2. (a) As of April 1, 1964, there were 2,500 Cooperative members.

(b) On April 1, 1964, 1,309 of Cooperative's members consented to an amendment to its Articles of Incorporation to provide, among other things, that all of Cooperative's properties and assets could be sold, transferred, or otherwise disposed of upon the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of members entitled to exercise a majority of the voting power of the corporation, and said amendment was filed with the Secretary of State on April 2, 1964.

(c) As of June 17, 1964, there were 2,358 Cooperative members. Of these, 1,659, or 70.36 percent, had signed consents to the amendment to Cooperative's Articles, and to the proposed sale of its properties to Edison.

3. No formal request for an appraisal or a determination of Cooperative's fair market value is before the Commission. Initiation by the Commission on its own motion of the making of such an appraisal or determination is not warranted.

4. Cooperative has incurred increasing operating losses since 1958.

5. Edison's rates for electric service are substantially lower than Cooperative's.

6. Edison's line extension rules, although more restrictive for lighting and appliance customers, are the same as, or less restrictive and more liberal for the electric energy requirements, demands, and loads of other customers. Edison's rules will not deter the growth and development of the High Desert area.

7. Acquisition and operation of Cooperative by Edison will not materially burden Edison's operations or customers.

8. The granting of the application would not be adverse to the public interest.

We conclude that the application should be granted in accordance with the order following.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

Applicant Edison is placed on notice that should it appear in a rate proceeding that the revenue derived from operation of the system herein authorized to be transferred is not compensatory, such revenue inadequacy is not to be imposed on Edison's other electric customers.

C R D E R

IT IS ORDERED that:

1. Southern California Edison Company is authorized to buy and Desert Electric Cooperative, Inc., is authorized to sell all of Cooperative's properties and assets pursuant to the terms of the Agreement of Purchase and Sale, dated April 2, 1964, attached to the application as Exhibit A.

2. Decision No. 55271 is amended, and effective as of the date Southern California Edison Company acquires Desert Electric Cooperative, Inc., it is authorized to exercise the rights, privileges and franchise granted to California Electric Power Company by Ordinance No. 789 of San Bernardino County and transferred to Southern California Edison Company by Decision No. 65820, throughout San Bernardino County.

3. Applicants shall, within ten days after the closing of escrow, provided for in Exhibit A, so certify to the Commission. Desert Electric Cooperative, Inc., will then stand relieved of its public utility obligations.

4. Southern California Edison Company shall, within thirty days after the date transfer has been effected, file with this

Commission, in conformity with General Order No. 96-A and in a manner acceptable to this Commission, such revised tariff sheets, including tariff service area maps, as are necessary to provide for the application of its present Rate Zone 6.1 tariff schedules to the service areas transferred herein.

5. Southern California Edison Company shall maintain its records in such form as may be required so that the investment in and operating results of the electric system herein transferred may be separately and readily determined. Commencing in 1965 and until further notice by this Commission, applicant shall file with this Commission on or before March 15 of each calendar year, a summary of earnings statement for the prior calendar year for the electric system herein transferred.

6. The authority granted herein shall expire in the event that the acquisition by Southern California Edison Company and the sale by Desert Electric Cooperative, Inc., is not consummated under the agreement of April 2, 1964, within two years from the date hereof.

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

Dated at San Francisco, California, this 25th day of AUGUST, 1964.

Fredrick B. Hallock
President

[Signature]
[Signature]

George H. Hoover
William C. Durdell
Commissioners