

MIDDLETON, J., in a written judgment, set out the facts and correspondence very fully, and made the following findings:—

(1) That the final direction of the Controller was made after the fact that the energy was not being delivered to the Union Carbide Company (a customer of the plaintiff company) was ascertained, and that the energy was not ear-marked for that company, but was for the general purposes of the plaintiff company.

(2) That the plaintiff company was bound to exhaust its contract rights under the agreement with the defendant company before resorting to the emergency legislation to supply its needs: the power delivered must in the first place be attributed to the contract, and the excess only to the orders of the Controller.

(3) That all that the contract called for was the output of the generator at normal rating and no more.

(4) That, while the obligation of the defendant company was to maintain an output of the generator rightly described as 10,000 kilovolt amperes, the obligation of the plaintiff company was to pay for "the amount of energy taken;" and thus, as to 75 per cent. of the normal rated capacity, was at a rate "per horse power per year" of this capacity—"kilowatts" and "horse power" are convertible terms, but "kilovolt amperes" and "horse power" are not. The "per cent. of normal capacity" in the table means the per cent. of 10,000 kilowatts for the number of hours in the month. As the power factor will always be below 100 per cent., this means that until the power factor correction for below 90 becomes operative, the difference between kilovolt amperes and kilowatts must be borne by the defendant company.

(5) The payments are to be made each month for energy delivered each month; and the "additional payment" for energy in excess of 75 per cent. of capacity is to be at the rate mentioned in the table—pointing to a monthly determination of one rate applicable for a month. The rate is not to change "whenever" there is a peak.

(6) As to the accuracy of the determination of the power factor, the methods and readings of the defendant company are substantially accurate and should govern.

☛ Upon those findings the accounts should be recast; and, if desired, the learned Judge may be spoken to again.