

Decision No. 17696

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Investigation on the Commission's own motion of the reasonableness of the rates, charges, practices, contracts, rules, regulations, schedules and conditions of service, or any of them, of E. L. McCapes, operating a public utility water system in the Town of Raymond, Madera County, California.

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J. M. Emmert, for E. L. McCapes.

BY THE COMMISSION:

OPINION AND JUDGMENT

On the 19th day of October, 1926, an affidavit was filed with the Railroad Commission by R. E. Savage. By this affidavit it was alleged that the above named E. L. McCapes was guilty of certain omissions in violation of and in disobedience of a certain order of the Railroad Commission, being Commission Decision 17408, which order was specifically referred to in the affidavit, and that said omissions were committed by E. L. McCapes in violation of law and in contempt of the Railroad Commission.

On the 20th day of October, 1926, said E. L. McCapes was cited to appear before the Railroad Commission and show cause why he should not be punished for contempt for his disobedience of the order of the Railroad Commission as set forth in the affidavit of said R. E. Savage. On Wednesday the 17th day of November, 1926, a public hearing was held on said order to show cause. E. L. McCapes was present and was represented throughout this hearing by his attorney, J. M. Emmert.

Testimony and other evidence was offered and received both on behalf of said E. L. McCapes and in support of the allegations in the affidavit, and the matter was submitted.

After a careful review of the evidence herein, the Commission finds the following facts to be established:

(1) That on the first day of October, 1926, the Railroad Commission rendered its Decision No. 17408; that said decision, by its terms, became effective ten days from the date of its rendition; that in and as a part of said decision, the following order was made:

"IT IS HEREBY ORDERED that within five (5) days from the effective date of this order, E. L. McCapes reconnect and resume domestic water service to the premises of T. M. Nicholas at the location heretofore served by him in the Town of Raymond, Madera County, California; and that E. L. McCapes notify this Commission, in writing, within a period of five (5) days after the resumption of said service, of his compliance with this order."

That said order has never been revoked and is still in force and effect.

(2) That a copy of said Railroad Commission Decision 17408 was personally served on said E. L. McCapes on the 4th day of October, 1926, and that he had personal knowledge of the making of said order and the contents thereof at or about the time said order was made.

(3) That notwithstanding said order, the said E. L. McCapes has refused and failed and now refuses and fails to comply with the terms thereof; that said domestic water service has not been reconnected and resumed to the premises of T. M. Nicholas, and is not now reconnected and resumed.

(4) That the failure of said E. L. McCapes to reconnect and resume the domestic water service to the premises of said T. M. Nicholas was in violation of, and in disobedience of said Railroad Commission Decision No. 17408, and said omission was committed by said McCapes with full knowledge of the contents of said order and with the intention of violating said order.

(5) That at the time of the rendition of Railroad Commission Decision No. 17408, on the 1st day of October, 1926, said E. L. McCapes was able to comply with the requirements of said order set out in Paragraph (1) above, and that he has been able at all times since said date to so comply and is now able to comply.

(6) That said failure of E. L. McCapes to comply with the requirements of Commission Decision 17408 has been committed in violation of law, and in contempt of the Railroad Commission.

(7) That said contempt on the part of E. L. McCapes was willful, intentional and without lawful excuse.

In view of the foregoing findings of fact, we are of the opinion that E. L. McCapes should be punished for his said contempt of this Commission and its order. In view of the fact that the domestic public utility water system operated by said McCapes is a small one, serving but some fifteen consumers, and in view of the fact that the gross income from the system normally does not exceed Forty (40) Dollars per month, the punishment imposed herein will be less severe than the facts of the case would otherwise warrant.

JUDGMENT

An order to show cause having been issued by the Railroad Commission in this action on the 20th day of October, 1926, wherein E. L. McCapes was directed to appear and show cause before the Railroad Commission why he should not be punished for contempt for his disobedience of the order of said Commission made in Decision 17408, and the said E. L. McCapes having appeared with counsel, and having been given full opportunity to purge himself of his alleged contempt;

IT IS HEREBY ORDERED AND ADJUDGED that said E. L. McCapes has been guilty of a willful contempt in disobeying the order made by the Railroad Commission of the State of California

on the first day of October, 1926 (Railroad Commission Decision 17408) by failing and refusing to reestablish the public utility domestic water service to T. M. Nicholas, one of his consumers on his water system in the Town of Raymond, Madera County, California;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his contempt of the Railroad Commission as aforesaid, the said E. L. McCapes be punished by a fine of Twenty (20) Dollars to be paid by him to the Secretary of the Railroad Commission of the State of California, within ten (10) days from the date hereof, and in default of payment thereof that he be committed to the county jail of the County of Madera, State of California, until such fine is paid at the rate of one day's imprisonment for each two dollars of said fine.

Dated at San Francisco, California, this 2^d day of December, 1926.

H. B. Brundage
C. Leary
James West
Leon White
John Brown
Commissioners