

ORIGINAL

Decision No. 18147

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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EL DORADO WATER COMPANY, a
corporation,

Complainant

vs.

WESTERN STATES GAS AND ELECTRIC
COMPANY, a corporation,
THOMAS H. GERLE, GRANT G. GERLE,
and HENRY REYNOLDS,

Defendants.

Case No. 1712.

I. W. Browne for Complainant.

Chickering and Gregory, by Walter C. Fox, Jr.,
for the Defendant Western States Gas &
Electric Company.

H. E. Dillinger, for the Defendants Thomas H.
Gerle, Grant G. Gerle and Henry Reynolds.

BY THE COMMISSION:

O P I N I O N

In this case the El Dorado Water Company, a public utility corporation selling water in and in the vicinity of Placerville, El Dorado County, alleges that under a certain contract with Defendant Western States Gas & Electric Company it obtains its water supply; that under that contract it is under obligation to resist any and all applications for water for mining use on its system, and that Defendants Thomas H. Gerle, Grant G. Gerle and Henry Reynolds have applied for a certain amount of water for such use. The Western States Company denies this Commission's jurisdiction as to such matter,

and the other Defendants renew their application for water.

Public hearing in this matter was first had before Examiner Gordon, subsequent to which correspondence was received from counsel for Defendants Gerle, Gerle and Reynolds indicating that they might no longer desire said water. Letters from this Commission suggesting that, in view of this situation, the parties might request a dismissal hereof having met with no response, further hearing was had on February 11, 1927, before Examiner Wheat, at which time the application of Defendants Gerle, Gerle and Reynolds for water for mining use was renewed, and the matter was submitted for decision, subject to the right of applicants for water to file certain receipts for such water delivered in past years, and to the right of the parties to file briefs if so advised. No such briefs have been filed, and the time having expired this matter is now ready for decision.

As to Defendant Western States Company, this matter is somewhat in the nature of an interpleader action seeking for an interpretation of certain terms of a contract heretofore passed upon by this Commission between Complainant and this Defendant. Defendant has taken the position that we are not empowered to render such an interpretative decision, and we are of the opinion that this position is correct. The Courts, rather than this Commission, form the proper forum for such determinations as to the significance of water right and similar provisions in such contracts, and as to this Defendant this complaint must therefore be dismissed.

Defendants Gerle, Gerle & Reynolds showed that the mine for the operation of which they now desire water service has, in times past, been given such service by the predecessor of this Complainant. Rates for the sale of water for mining use by Complainant are on file with this Commission, and in

the absence of a positive and convincing showing that no water is available to meet such application we believe that this service should and must be rendered. Our order will therefore provide that Complainant comply with the application of these several Defendants and that it furnish water, at its filed rates, as so applied for.

O R D E R

Complaint having been made as above entitled against Western States Gas and Electric Company, a corporation, and Thomas H. Gerle, Grant G. Gerle and Henry Reynolds; public hearings having been had; the matter having been submitted for decision, and the Commission being fully advised in the premises:

NOW THEREFORE IT IS HEREBY ORDERED that in so far as it has reference to or concerns Defendant Western States Gas and Electric Company the said complaint be and the same is hereby dismissed; and

IT IS HEREBY FURTHER ORDERED that Complainant furnish to defendants Thomas H. Gerle, Grant G. Gerle and Henry Reynolds at its regularly filed rates such water for mining use as they, or either of them, may by application in proper form under its rules and regulations have made application for.

Dated at San Francisco, California, this 30th day of March, 1927.

Commissioners