

Decision No. 23162

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EAGLE ROCK (LOS ANGELES) CHAMBER OF COMMERCE,
EAGLE ROCK (LOS ANGELES) TAXPAYERS PROTEC-
TIVE LEAGUE,
WEST EAGLE ROCK (L.A.) IMPROVEMENT ASSO-
CIATION,

Complainants,

vs.

LOS ANGELES RAILWAY CORPORATION,

Defendant.

ORIGINAL

Case No. 2916.

Charles A. Butler, for Eagle Rock Chamber
of Commerce.

A. E. Nelson, for Eagle Rock Taxpayers
Protective League.

R. E. Rose, for West Eagle Rock Improve-
ment Association.

J. Ogden Marsh, for the Board of Public
Utilities and Transportation of the City
of Los Angeles.

Gibson, Dunn & Crutcher, by Woodward M.
Taylor, and H. G. Weeks, for Los Angeles
Railway Corporation.

DECOTO, COMMISSIONER:

O P I N I O N

The Eagle Rock Chamber of Commerce, Eagle Rock Taxpayers Protective League and the West Eagle Rock Improvement Association filed the above entitled complaint with this Commission, requesting that an order be issued requiring the Los Angeles Railway Corporation to extend its rail line so as to serve the westerly portion of the section known as Eagle Rock in the City of Los Angeles, County of

Los Angeles.

A public hearing on this complaint was held at Los Angeles on November 8th, 1930, at which time the matter was submitted.

The Los Angeles Railway Corporation now operates a street car line between the down town section of the City of Los Angeles and that portion of the city known as Eagle Rock. In the Eagle Rock section this line operates along Eagle Rock Boulevard and along Colorado Boulevard east of Eagle Rock Boulevard to Townsend Avenue.

Complainants request an order of the Commission directing the Los Angeles Railway Corporation to construct and operate a street car line from the intersection of Broadway and Eagle Dale Streets (immediately east of the easterly city limits of Glendale), thence easterly along Broadway to Colorado Street; thence easterly along Colorado Street to Eagle Rock Boulevard; thence south on Eagle Rock Boulevard to a street and via a route to be determined upon, so as to provide a direct through street car service from the westerly portion of the Eagle Rock section to down town Los Angeles.

Complainants, in support of their complaint, allege that the Los Angeles Railway Corporation is a public utility and is under the jurisdiction, rules and regulation of the Railroad Commission of the State of California; that the lack of through, direct rail transportation between the westerly portion of the Eagle Rock section and the down town section of Los Angeles is depriving the residents of said section of their lawful rights; that public convenience and necessity warrant the establishment of such service; and that the Railroad Commission, under Sections Nos. 31, 35 and 36 of the Public Utilities Act of the State of California, has the jurisdiction to require the defendant to provide the service requested by complainants.

Counsel for defendant, Los Angeles Railway Corporation, moved to dismiss the complaint, on the grounds that this Commission was without jurisdiction in the matter, inasmuch as defendant does not own a

franchise from the City of Los Angeles, providing for the service requested by complainants, nor has defendant applied, nor will defendant apply, for such franchise. In support of said motion, counsel for defendant cited the cases of A.T. & S.F. Ry. Co. v. Railroad Commission, 173 Cal. 577, and Hollywood Chamber of Commerce v. Railroad Commission, 192 Cal. 307.

The California Supreme Court, in the A.T. & S.F. Rwy. Co. case, used the following language:

* * * "Section 36 of the Public Utilities Act authorizes the commission to make an order directing that 'additions, extensions,' etc., be made in the plant or facilities of any public utility. It might be argued that this language is broad enough to include additions to the plant, even though such additions may involve a service never contemplated nor undertaken by the owner of the utility. But if this be taken to be the true meaning, the section expresses an intent which cannot, under the restrictions of the federal constitution, be given effect.

* * * "But there is a vital distinction between regulation of this character and a requirement that the railroad company shall extend its operations by building a new line of road to tap or supply a territory which has not theretofore had the benefit of direct railroad service. Such a requirement cannot be justified by saying that the points to be thus reached are within the area already served by the railroad. The area served by any railroad may, in a certain sense, be said to include all of the territory, in any direction, from which freight or passengers may be brought to the railroad by any other mode of conveyance. Such area may extend to a distance of many miles from the line of the road. Certainly the public duty of the company does not include the obligation of building lines to any or every portion of this indefinite expanse of territory."

In the Hollywood case, the same court said:

"In other words, the franchise rights of a street railroad are important in ascertaining the extent of the company's obligation to serve the public, because they represent the authority which the company has asked for and obtained from the municipality. If the company has obtained authority to extend into a given territory, by securing the franchise rights therein, then it has impliedly undertaken to so extend when reasonably necessary, and if it refuses to do so, it may be ordered by the State to fulfill its obligation. But when, as in the present case, the company does not hold franchises allowing it to voluntarily construct these extensions, there is no justification for saying that the company has impliedly undertaken to extend its lines whenever it should become necessary.

* * * "We conclude, therefore, that Section 36 of the Public Utilities Act (Stats. 1915, p. 115), in so far as it seeks to confer jurisdiction upon the Railroad Commission to order a street railway company to extend its lines into a new territory in which it has no franchises, is ineffective for the purpose, and to that extent void."

It is conceded by complainants and the record shows that the defendant does not have a franchise for the rail line sought. Furthermore, the record does not show that defendant has in any other manner indicated that it has held itself out to render the street railway service sought or to dedicate its property to that service.

In view of this situation I believe we have no other alternative at this time, under the Court decisions, but to hold that the present case should be dismissed.

O R D E R

The above entitled complaint having been filed, a public hearing having been held and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled complaint is hereby dismissed.

The effective date of this order shall be twenty (20) days after the service hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of December, 1930.

W. J. Quinn
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 Commissioners.