ORIGINAL

Decision No. 1109

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

EDMOND THOMAS DOOLEY, EMIL JULES GREBS and other property owners in Hopkins Terrace No.4, Berkeley, Complainants, vs. PEOPLES WATER COMPANY, a corporation, Defendant.	Case No. 442.

Edmond Thomas Dooley, Emil Jules Grebs, in propria persona, and for certain other property owners in Hopkins Terrace No. 4, Berkeley.

McKee & Tasheira and Arthur Tasheira for defendant.

THELEN, Commissioner.

O P I N I O N.

This action was brought to compel the Peoples Water Company to supply water to that portion of the City of Berkeley which is known as Hopkins Terrace No. 4.

The complaint alleges, in effect, that the complainants are residents and property owners in a certain tract within the limits of the City of Berkeley, known as Hopkins Terrace No. 4; that in no portion of the tract except the southwest corner thereof has the Peoples Water Company laid any water mains; that the residences of Dooley, Fairbanks, Manchester and Britton are inadequately supplied with water through privately owned pipe lines; that the residence of Mr. Grebe is without any supply of water; and that the development of the tract has been held back for eight years through the failure of a satisfactory water supply. The complainants ask that the defendant be compelled to supply water to this tract.

The answer alleges, in effect, that every resident of Hopkins Terrace No. 4 who has applied for water is being supplied by defendant, except Mr. Grebe., who is being supplied from Mr.Dooley's

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supply; that the residences of Mr. Manchester and Mr. Britton are adequately and sufficiently supplied by defendant; that Mr. Fairbanks has never made application; that since January, 1909, defendant has been supplying Mr. Dooley with water from the terminus of its main located at the southern end of Keith Avenue, distant about 100 feet from the northerly end of Shasta Street, in Hopkins Terrace No. 4; that defendant has offered to extend a 2-inch main from Keith Avenue to Mr. Dooley's residence, provided he could secure a right-of-way for the same, but that such right-of-way has not been secured; that defendant has offered to construct a main from a point in Tamalpais Street northerly to the residences of Mr. Grebs and Mr. Dooley if they would pay the sum of $60.00, which sum would be returned to them at the rate of $20.00 for every connection made from the extension; that defendant is ready and willing to furnish a water supply to Mr. Dooley and Mr. Grebs, either upon being paid for said extension on Tamalpais Street or upon being supplied with a right-of-way from Keith Avenue to Shasta Street; that the City of Berkeley is about to extend Keith Avenue to Shasta Street, whereupon the extension of defendant's main to the residences of Mr. Grebs and Mr. Dooley will be made without charge; and that Hopkins Terrace No. 4 is sparsely settled and that it is impossible for defendant to extend its mains thereon to isolated houses and for considerable distances without being paid for such extensions, but that defendant is ready at all times, upon being paid for such extensions, to make the same and to agree to rebate such payment by crediting certain amounts for each subsequent connection.

The hearing of this case was held in San Francisco on November 18, 1913. The case has been submitted and is now ready for decision.

The tract known as Hopkins Terrace No. 4 is located on the foothills in the northeasterly portion of Berkeley, entirely within the city limits. Its southerly boundary is Rose Street. Two streets, known as Tamalpais Street and Shasta Street, wind in a general northerly

and southerly direction through the tract. These streets are connected near their northerly ends by a street known as Tallac Street, running in a northwesterly and southeasterly direction. At the time the complaint was filed, a street known as Keith Avenue ended some 100 to 150 feet northeast of Shasta Street, outside of the limits of this tract. Although proceedings have been taken to extend Keith Avenue across the intervening ~~property~~ private land, so as to form an extension of Shasta Street, these proceedings had not been concluded at the time the complaint was filed. The general body of the tract is about 1280 feet long in a direct north and south line and about 640 feet wide in a direct east and west line. The tract, however, lies in a general northwesterly and southeasterly direction, and has a length of about 1440 feet along its northwesterly and southeasterly axis, and a width of about 560 feet along its northeasterly and southwesterly axis.

The Peoples Water Company is the only water utility serving the inhabitants of Berkeley. This Company has a 2-inch main lying along Rose Street and an extension thereof running some 300 feet up Tamalpais Street, with a branch running from this extension not over 200 feet easterly along Shasta Street. The Company also has a 2-inch main lying on Keith Avenue and running to the southerly end thereof. The Company has laid no mains in the tract other than the short main up Tamalpais Street and the extension on Shasta Street hereinbefore referred to.

The testimony shows the following facts with reference to the present users of water on the remaining portions of this tract:

Mr. G. P. Manchester lives at No. 2655 Shasta Street. His property is served with water from a tap in the Rose Street main through a half inch pipe, which Mr. Manchester constructed at his own expense a distance of some 200 feet from the main, partly over private property on the surface of the ground, under a revocable permit from the owner of the land, and partly across Shasta Street, without any permit from the city authorities. The evidence shows that the Peoples Water Company refused to lay a main to the property unless

Mr. Manchester paid for the extension and that the present private pipe line is only a temporary expedient. While the evidence shows that Mr. Manchester is at present receiving an adequate supply of water, he is fearful that when the cold weather sets in the temporary pipe line may burst, as was the case last winter with Mr. Dooley's line, to which reference will hereinafter be made. From Mr. Manchester's supply, water is taken to irrigate a few trees planted on the three adjoining lots to the west, being lots 27, 28 and 29, in Block 4.

Mr. Claire Britton lives on Shasta Street, some 95 or 96 feet northerly from Mr. Manchester's property. The Peoples Water Company also refused to build a main to this property unless Mr. Britton would pay for the extension. Mr. Britton accordingly built a private pipe line from a tap in the Rose Street main, partly over private property under a revocable permit, if any was secured, and partly over Shasta Street without permit from the city authorities. The total length of this line is about 500 feet. The testimony shows that this line is laid mostly along the surface of the ground and that it is only a temporary expedient. The testimony shows that during the summer time, the water delivered through it is warm and that there is considerable danger that in the winter time the pipe will burst.

Mr. E. T. Dooley lives on Lot 5, Block 2, at the intersection of Shasta Street and Tallac Street. In order to secure water it was necessary for him to build a private pipe line northerly along Shasta Street and thence across private property to a connection with the end of the Peoples Water Company's 2-inch main lying on Keith Avenue. Mr. Dooley testified that the service through this pipe line is not satisfactory in so far as affects the use of water in the second story of his residence, and that when Mr. Grebs takes water from the line, as hereinafter indicated, there is no water at all upstairs in Mr. Dooley's house.

Mr. E. J. Grebs has just completed a house on Lot 28 in Block 1, near the head of Tamalpais Street. He secures his water from a connection with Mr. Dooley's private pipe line by means of a half inch pipe line laid partly over private property and partly along Tamalpais Street. Mr. Dooley permitted him to make this connection for the reason that there was no other way in which Mr. Grebs could secure water except by paying to the defendant Company for an extension which the complainants claim the defendant ought to make at its own expense.

Mr. H. W. Fairbanks owns Lots 30, 31 and 32, in Block 1, and Lot 3 in Block 2, all facing the upper end of Tamalpais Street. Mr. Fairbanks has a private supply of water through a pumping plant pumping water from a creek. Mr. Dooley has permitted him to take water from his private pipe line to a tank located on Lot 3 of Block 2, from which tank Mr. Fairbanks draws in case his pumping plant is not in operation or breaks down. There is no satisfactory evidence that Mr. Fairbanks has ever made a demand upon the defendant for a service connection. Two houses are located on the Fairbanks property.

The owners of land in this tract, particularly Mr. Dooley and Mr. Grebs, have frequently tried to induce the Peoples Water Company to build its mains into the tract and to serve them through permanent pipe lines. The Company has offered to extend its mains, but only under either one of two conditions. The first condition was that the property owners should secure for the Company the right-of-way for a water pipe from the southerly end of Keith Avenue to the northerly end of Shasta Street, whereupon the Water Company agreed that it would construct a 2-inch main to the property of Mr. Dooley and Mr. Grebs, free of charge. The Company, however, has refused to agree to serve anyone else unless payments were made for extensions to this line. The other proposition is one which has been made in varying forms to different property owners, but which contemplates the payment by the owners for the necessary extensions to their property,

with certain rebates for each new connection from such extension. The usual offer has been to extend upon the payment by the property owner of 25¢ for each foot of 2-inch main involved in the extension, with a promise to rebate to the property owner in the amount of $25.00 for each service connection thereafter to be made from such extension. The Company offered to extend a 2-inch main in Tamalpais Street from the Rose Street main to the residences of Mr. Grebs and Mr. Dooley for $60.00, and to the residence of Mr. Grebs alone for $85.00, with an agreement to rebate in the amount of $25.00 for each subsequent service connection from the extension. Mr. Dooley and Mr. Grebs refused the second proposition on the ground that it was the duty of the Water Company to make the extension at its own expense. With reference to the first proposition, these gentlemen appeared before the City Council of Berkeley and induced the Council to adopt the necessary resolutions for the extension of Keith Avenue across the intervening private property to connect with Shasta Street, so that the water main could be laid over this extension to serve the tract. The report of the Commissioner of Public Works of assessments and damages was approved and confirmed by the City Council on October 21, 1913. An assessment district was regularly formed and the cost of the extension, amounting to $1750.00, was assessed on that portion of the tract which it was thought could advantageously be served with water from the Keith Avenue main, if extended. The evidence shows that each lot in this district was assessed for between $10.00 and $70.00. While the Peoples Water Company did not hold out the promise that it would serve the entire tract without charge for extensions if Keith Avenue were opened, there is no doubt that the hope of being served with water is responsible for the opening of Keith Avenue and for the payment by the lot owners of the assessment for that purpose.

The Keith Avenue main is fed from the Summit Reservoir, having an elevation of some 800 feet and a capacity of thirty-six million gallons. All parties agree that the Keith Avenue extension is far preferable to a connection with the Rose Street main as the most efficient

way of serving the tract. The Water Company has agreed that as soon as it can lawfully lay its mains along the extension of Keith Avenue, it will build the extension to the residences of Mr. Dooley and Mr. Grebs, without charge. Mr. C. D. Maloney, the Berkeley manager of the defendant, testified that this could be done by simply securing the usual permit for the tearing up of the streets. The defendant makes no point that it cannot go ahead without securing some additional franchise, so that the difficulties which confronted the Court of Appeals in the case of Lukrawka vs. Spring Valley Water Company, 15 Cal. App. Decisions, advanced sheets, page 793, are not present in this case.

While the problem will thus be solved with reference to Mr. Dooley and Mr. Grebs, it will remain unsolved in so far as affects Mr. Britton and Mr. Manchester and the remaining property owners on the tract, unless they are willing to pay for the extensions of the mains. Both Mr. Britton and Mr. Manchester own residences on the tract and desire a permanent supply of water, but are unwilling to pay for the extensions on the ground that it is the duty of the Water Company to install them at its own expense. The defendant has offered to extend its mains to them from the nearest available source in accordance with a purported rule or regulation under which such extensions are claimed to be made only on the payment by the property owner of 25¢ per foot for each foot of 2-inch main, with a rebate of $25.00 for each new service from the extension.

The Commission paid some attention at the hearing to this alleged rule or regulation. The defendant's attorney stated that this was more in the nature of a custom than of an established rule or regulation. The Commission tried to ascertain the specific circumstances under which this rule, regulation or custom is applied by the defendant, but was not entirely successful, for the reason that the defendant itself apparently cannot say definitely when it will demand payment for an extension and when it will install the extension at its own expense. It appeared that among the other elements considered

by the Company in this connection are the length of the extension, the density of population, and the physical conditions of the territory. It appears that if the extension is a long one or the territory is sparsely settled or the physical conditions are difficult, the Company is more likely to claim payment for the extension than in other cases. It appears also that it is more likely to claim the payment in the case of a new tract than otherwise. That this rule, regulation or custom is not definitely established is shown in the case of this very tract, for the reason that the defendant offered to build an extension of a main up Tamalpais Street, a distance of some 1010.15 feet, to serve Mr. Grebs, for the sum of $85.00 instead of the sum of $505.00 which would be the charge if this rule, regulation or custom were enforced. That this rule, regulation or custom, whatever, it may be, is vague, uncertain, likely to result in discrimination as between different individuals and different lots or blocks, and so uncertain in its application as very likely to result in friction, seems clear. This is true even though the Water Company tries to act with a desire to do what from its point of view will be fair and equitable in each individual case.

I shall now address myself to the question whether, assuming that the defendant has some rule, regulation or custom, any public authority can compel the Company to extend its mains in any case in which it is unwilling to do so at its own expense, and to the further question whether, in case such power exists, it should be exercised in this case.

Before examining Section 23 of Article XII of the Constitution of this State, as amended on October 10, 1911, and the statutes which have been passed in pursuance thereof, I shall first consider the general law applicable to the question of the service connections and extensions of water companies, apart from such

power as may have been granted to public authorities in this State to compel such connections or such extensions.

The question of the duty of a water utility to serve the inhabitants of cities and towns has most frequently come to the courts in cases in which persons owning or occupying property fronting on a street in which a water main had already been laid, have desired a service connection which the water company has refused to make unless the applicant paid a certain sum for the connection and the meter. The overwhelming weight of authority is to the effect that it is the duty of the water company to make such connection and install the meter at its own expense. This expense then becomes a part of the moneys properly chargeable to capital account and necessary to be considered by public authorities in establishing rates for water service.

The problem, in so far as it affects the case of the meter, is solved by the Supreme Court of this state in the case of Spring Valley Water Works vs. City and County of San Francisco, 82 Cal. 286. This was an action to set aside and declare void an ordinace of the City and County of San Francisco establishing water rates for the year commencing July 1, 1889. Referring to the question of meter installation, the Court, at page 316, said:

> "It is also contended that the requirement that meters shall be furnished by the plaintiff (water company) is unreasonable and cannot be enforced, but we think otherwise. The requirement that the party furnishing water shall provide the means necessary for its measurement, so that the quantity furnished and to be paid for may be known, is not an unreasonable requirement."

The Court then reaches the following conclusion:

> "The expense of the meter could not be imposed on the consumer (Red Star Steamship Company vs. Jersey City, 45 N.J.L. 246)".

The same conclusion would seem logically to follow with reference to the service connection to the property line. The service connection is just as necessary to enable the company to "furnish water to the inhabitants" as provided by Section 549 of the Civil Code, as is the main on one end of the connection and the meter on the other.

The same conclusion is reached by the United States Circuit Court for the Southern District of California in the case of Lanning vs. Osborne, 76 Fed. 319, in which case Judge Ross, at page 333, after referring to certain decisions of the Supreme Court of this State, says:

> "It is impossible to reconcile the declarations of the Supreme Court of California in either of the two cases last referred to or in any other case to which my attention has been called with a right on the part of any corporation appropriating water under and by virtue of the Constitution and laws of California for sale, rental or distribution, to exact any sum of money or other things, in addition to the legally established rates as a condition upon which it will furnish to consumers water so appropriated."

While the immediate matter before Judge Ross was the imposition of a charge for water right, the reason which underlies his decision applies equally to any other charge which a water utility might desire to impose in addition to the legally established rates for the water supplied.

In other states in which the courts have been called upon to pass upon this question, they have concluded with practical unanimity that it is the duty of the water utility to install at its own expense both the meter and the service connection. A typical case is Bothwell vs. Consumers Company, 13 Idaho. 568, 92 Pac. 533. In that case, a property owner in Coeur d'Alene applied for a writ of mandamus to compel a water utility to tap its main and to connect with the plaintiff's water pipes at his property line. The court below sustained the defendant's demurrer and dismissed the case. The Supreme Court of Idaho thereafter held that such action was error and reversed the decision of the lower court. At page 534 of the Reporter, the Supreme Court says:

> "The only further point to be considered in this case is whether the water company can require the consumer to pay for the tap and for making the connection with its main. It seems that this point ought to be disposed of without much difficulty. The franchise for laying pipes in the streets and alleys and maintaining and operating a water system is granted by the municipality to the water company. The property owner has no right or franchise to dig in the streets and alleys and lay pipes, and, if he should do so, he would acquire no property right therein. The mains and all the laterals, fixtures, and connections within the franchise limit (i.e., within the street limit) belong to the company, and together constitute the water system."

The Court then continues:

> "It is not the business of the citizen or consumer to construct any part of the company's system, nor is it the company's business to place the pipes and fixtures on the consumer's premises. There is a clearly and well defined boundary line existing between the property of the water company and the property of the lot owner--that line is the one existing between the lot and the street or alley. The citizen owns his pipes and fixtures to that line, and beyond it is the company's property and water system. The rights, duties and obligations of each go to this extent, and no further. The company in the enjoyment of its franchise privileges is placed by the Constitution under a public duty to supply water to all living within the franchise limits, on payment of the rental rates ..... Water rates are established and collected in order to compensate the company for its investment, and it cannot be allowed, in addition to these rates, to require a citizen to pay for a part of its system before supplying him with water."

In the following cases in other states, the courts have held that it is ~~xxx~~ the duty of a water utility serving a city or town to install service connections or meters or both, as the case may be, at its own expense:

City of Montgomery vs. McDade, (Ala.) 60 So. 798;

Pine Bluff Corporation vs. Toney, 96 Ark. 345, 131 S.W.680;

Pocatello Water Company vs. Standley, 7 Idaho 155, 61 Pac.518;

Hatch vs. Consumers' Company, 17 Idaho 204, 104 Pac.670;

State, Red Star Line Steamship Co., prosecutors, vs. Mayor and Aldermen of Jersey City, 45 N.J.L. 246;

Griffin vs. Goldsboro Water Co., 122 N.C. 206, 30 S.E. 319;

Hangen vs. Albina Light & Water Co., 21 Ore. 411, 28 Pac.244;

International Water Company vs. City of El Paso, 51 Tex.Civ. App. 321, 112 S.W. 816;

Cleveland vs. Malden Water Company, 69 Wash. 541, 125 Pac.769;

State ex rel. Hodgdon vs. Hoquiam Water Company, 70 Wash. 682, 127 Pac. 304.

The principle established by the foregoing cases has been applied by this Commission in a number of cases, including Case No.365, City of Glendale vs. Title Guarantee & Trust Company, Trustee, and Case No. 383, City of Glendale vs. Miradero Water Company, both decided on June 11, 1913, which two cases are now pending on review before

the Supreme Court of this State.

I shall now address myself to the question of the extension of mains to serve additional customers as distinguished from a service connection from an existing main.

Section 549 of the Civil Code of this State reads in part as follows:

> "All corporations formed to supply water to cities or towns must furnish fresh pure water to the inhabitants thereof, for family uses so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means in case of fire or other great necessity, free of charge."

This section makes it the affirmative duty of a water utility in this State to furnish water to the inhabitants of a city or town in which it supplies water. It is not sufficient that the utility should have water in its mains. The Code provides that it is its duty to furnish water to the inhabitants. It seems clear, under the provisions of this section, that it is in general the duty of a water utility actually to supply the water to the customer at his property line. This is a duty which a water utility undertakes when it accepts its franchise from the State or any political subdivision thereof, and which under such franchise it must perform.

The question of the duty of a water utility to extend its mains within a city or town came before the Court of Appeals of the First District in this State in Lukrawka vs. Spring Valley Water Company, 15 Cal. App. Decisions, advanced sheets, p. 793. This was an action in mandamus to compel the Water Company to extend its water mains some 2000 feet in the City and County of San Francisco, to supply petitioners with water. The judgment of the Superior Court sustaining a demurrer to the first amended complaint was affirmed on the ground that under the provisions of Section 19 of Article XI of the Constitution of this State, as amended on October 10, 1911, and the decision of the Supreme Court of this State in Ex parte Russell, 163 Cal. 668, interpreting this section, as amended, the Water Company had no right to make an extension unless it had first complied

with an ordinance of the City and County of San Francisco enacted under said constitutional provision, and establishing certain requirements before any public utility could further extend its mains, wires or conduits in the City and County of San Francisco. This particular difficulty is not present in the case now under consideration. Referring to the duty of a water company, apart from such constitutional provision and ordinance, to make extensions of its mains within the city limits, the Court says, at page 798:

> "Upon a review and a careful consideration of all of the authorities bearing directly and indirectly upon the subject under discussion, we are strongly of the opinion that it is the law that a water company, committed by its charter to the public service, is in duty bound to serve the whole public; and that when necessary to such service the company's existing mains must be gradually extended so as to keep pace with the growth of the community which the company has undertaken to serve."

A similar conclusion was reached by the Supreme Court of Idaho in Pocatello Water Company vs. Standley, 7 Idaho 155, 61 Pac. 518, and by the Appellate Court of Pennsylvania in the case of Hyndman Water Company vs. Hyndman, 7 Pa. Sup. Ct. Rep. 191.

It may be that cases will occur in which it would not be fair either to the water utility or to its existing consumers to apply this rule strictly. For instance, a proposed customer may live so far from the existing main or his land may be so difficult of access or it may be necessary to install such additional machinery to pump water to his property that the detriment to the utility itself and to its existing customers resulting from the large expenditure necessary to be made would be such as to outweigh the advantage to the individual customer and such as to make it fair to ask that the customer should himself pay for all or a part of the necessary extension or increase in machinery. In other words, it may well be that the foregoing rule should not be rigidly applied in a case in which a considerable burden would be cast upon the remaining consumers in order to serve one or more intending consumers. While there may be difficulties in the application of this general rule, I am of the

opinion that the rule is correct as a general principle and that it should be applied in all cases in which an exception is not clearly established. If the water utility, in reaching its conclusion as to whether or not the rule should be applied in a particular case, reaches a decision which does not seem equitable to the intending customer, there should be some public authority with the right to pass on the question and to say whether or not the course which the utility desires to adopt is a/proper one. As I shall now show, the power to take such action has been vested by the people of this State in the Railroad Commission, except in those few cases in which the Legislature of this State has granted such power to incorporated cities and towns under their freeholders' charters.

I shall now consider what public authority, if any, has the power to compel an extension in the present case.

Section 23 of Article XII of the Constitution of this State, as amended on October 10, 1911, after defining the classes of corporations, associations and persons who should be known as public utilities, and after conferring upon the Legislature the power to confer upon the Railroad Commission such jurisdiction to supervise and regulate such public utilities as the Legislature might desire to confer, provides, in effect, that the Railroad Commission shall have the right to exercise all its jurisdiction so to be conferred upon it by the Legislature, with the exception that the incorporated cities and towns of the State shall retain the powers over public utilities which might be vested in them on the effective date of such legislation as might be so enacted, with the privilege of thereafter voting to confer such powers upon the Railroad Commission. In considering whether the power to compel a water company to build an extension has ever been vested in the City of Berkeley, it is necessary to consider both constitutional and statutory provisions. It appears that nowhere in the Constitution is there any provision specifically conferring upon any political

subdivision of the State the power to compel any public utility to make an extension. Nor is there any statutory provision conferring such power, apart from a few acts of the Legislature granting freeholders' charters. The City of Berkeley operates under a freeholders' charter, but under this charter it is granted simply the power to establish the rates and to prescribe the quality of the service of public utilities (Art. 8, Sec. 49, sub-div.49). No power to compel an extension is granted directly or by necessary inference. It follows that such power, if it exists in any public authority in this State, vests in the Railroad Commission.

I shall now consider the appropriate constitutional and statutory provisions bearing on the question whether this power vests in the Railroad Commission.

As hereinbefore stated, Section 23 of Article XII of the Constitution of this State, as amended on October 10, 1911, conferred upon the Legislature the right to grant such powers as the Legislature might choose to confer upon the Railroad Commission in the matter of supervision and regulation of public utilities. In pursuance of this power, the Legislature of this State enacted the Public Utilities Act, approved December 23, 1911 and effective March 23, 1912. This Act contains, among others, the following provisions bearing upon this question:

> Sec. 13 (c). "All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."
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> Sec. 30. "Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees."
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> Sec. 31. "The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."
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> Sec. 35. "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or

service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules."

I desire to draw particular attention to Section 36, specifically conferring the power to compel the construction of additions and extensions where they ought reasonably to be made, and reading in part as follows:

Sec. 36. "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof."

The Legislature of 1913 enacted the act approved April 25, 1913, effective August 10, 1913, known as Chapter 80 of the Laws of 1913, and appearing on page 84 of the Statutes of 1913, providing for the regulation of water companies, defining their powers and duties and defining the powers and duties of the Railroad Commission with reference thereto. Section 5 of this act provides in part as follows:

"The commission shall likewise have the power after a hearing upon its own motion or upon complaint, to require any such water company to allow additional consumers to be served when it shall appear that to supply such additional consumers will not withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility."

I think it must be clear that under these constitutional and statutory provisions, the Railroad Commission has the power in a proper case, after notice and hearing, to compel a water utility to extend its mains at its own expence in all territory in this State

other than incorporated cities and towns in which this power may vest by virtue of specific provisions of their freeholders' charters. That a public utility is subject to regulations of this character, even though such regulations may be enacted after it has commenced its service, is clearly established by a long line of decisions, beginning with the leading case of Munn vs. Illinois, 94 U.S. 113. It is well established by these cases that when the owner of property devotes it to a use in which the public has an interest he must, to the extent of the interest thus acquired by the public, submit to the control of such property by the public for the common good.

The only remaining question in this case is whether the present case is a proper one for the exercise of the Railroad Commission's power in the premises. Mr. Britton and Mr. Manchester are demanding extensions and the defendant has refused to make them unless these gentlemen pay for the extension. While it is true that these gentlemen are at present being served with water from the Rose Street main of the Peoples Water Company, I find as a fact that this service is only temporary in character, that there is danger that the private pipe lines through which the service is being made may burst in the winter time and that the service is not a reasonable or satisfactory permanent service. If it is reasonable for the Water Company to extend its mains to serve Mr. Britton and Mr. Manchester, it seems unreasonable to say that the construction by these gentlemen of a temporary pipe line as the only means of securing water, by reason of the Water Company's fault, should now bar these gentlemen from the relief to which they xxx otherwise would have been entitled. When the Keith Avenue main has been extended to Mr. Dooley's property, an extension of some 400 feet down Shasta Street will suffice to serve Mr. Britton and an additional extension of 150 feet or thereabouts would suffice to serve Mr. Manchester. It should be remembered that this tract is a portion of the City of Berkeley, that its entire extent is small and that the Water Company is serving territory both to the north and to the south thereof, and is already serving the southwestern

portion of the tract.

After a careful consideration of all the facts of this case, I find that it is not a proper case for the establishment of an exception to the general rule obligating a water utility to make the necessary extensions to serve the inhabitants of a city or town in which it is operating. I find that the extensions to the premises of Mr. Britton and Mr. Manchester ought reasonably to be made at the Water Company's own expense and shall so recommend in the order.

I have considered the questions of law involved in this case somewhat more fully than would ordinarily be done, for the reason that considerable uncertainty and confusion seems to exist with reference to the duty of utilities to make extensions in this State and the power of this Commission to compel such extensions in case the utility refuses to make them at its own expense. I am of the opinion that the doubt which may exist with reference to a particular case will be largely removed if the following propositions are clearly borne in mind:

1. As a general rule, it is the duty of a water utility in this State to install, at its own expense, such extensions to its mains as may be necessary to serve the inhabitants of any community which it is serving.

2. While it may be that in certain cases exceptions to this rule may be established in the first instance by the utility, the justification for the exception must be clear and the exception must not result in discrimination.

3. Any rule, regulation or custom which the utility may establish in this connection is subject to alteration or amendment by the Railroad Commission in all portions of this State other than those where incorporated cities and towns may, under their freeholders' charters, have power over public utility extensions vested in them, and in all such territory, the Railroad Commission has the power, when an extension ought reasonably to be made, to compel such extension, both within and without city limits, after notice and hearing, in

such manner and within such time as the Railroad Commission may in its order specify.

I submit herewith the following form of order:

O R D E R.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that an extension of the water mains of the Peoples Water Company ought reasonably to be made by said Company, at its own expense, to the property of Dooley, Grebs, Britton and Manchester, in Hopkins Terrace No. 4, in the City of Berkeley, California.

Basing its order upon the foregoing finding of fact and on the additional findings which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that Peoples Water Company be and the same is hereby directed, as soon as the city authorities of Berkeley will permit the use of the extension of Keith Avenue for the purpose of installing a water main thereon, to extend, with reasonable diligence, a water main having a diameter of at least two (2) inches, from the end of the present water main in Keith Avenue, to serve the premises of Dooley, Grebs, Britton and Manchester, in said Hopkins Terrace No. 4, and thereafter to serve them with water at the regular rates without additional expense. The cost of such extension will be a proper capital expenditure and should be considered by the appropriate public authority in establishing the rates to be charged by defendant for water supplied in the City of Berkeley.

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 3rd day of November, 1913.

H. D. Loveland

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.