

continued:

"It does not, therefore, appear that respondent has suffered injury, especially in view of the fact that testimony was confined solely to the question of the public utility status of respondent and his water system. The motion for dismissal is, therefore, denied."

It appears that upon the filing of this complaint no copy thereof was served upon said C. J. Klatt, although, upon the filing of a complaint this Commission is directed, by section 60 of the Public Utilities Act, to cause a copy of the complaint to be served upon "the corporation or person complained of." Such service may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of California; and section 60 of the Public Utilities Act provides that it may be served either personally or by mailing in a sealed envelope, registered, with postage prepaid.

Such service was not made in this case, and, within the time allowed by law, after the said hearing, C. J. Klatt petitioned the Commission for a rehearing upon the ground that the Commission had never acquired jurisdiction over his person; that the finding that his water system is a public utility is contrary to the evidence adduced at the said hearing, and that the uncontradicted evidence showed that he was not a public utility, and that his water system had not been dedicated to public use, and also, upon the ground that the Commission had no jurisdiction to decree that his pumping plant ever had been dedicated to a public use, or that the same was a public utility.

The rehearing was granted chiefly upon the ground that service had not been made as required by section 60 of the Public Utilities Act. Notice of such rehearing was given to plaintiffs and service of the complaint, in compliance with section 60 of the Public Utilities Act, was made upon the said Klatt more than ten days prior to the time set for the rehearing. The

rehearing was held on the 15th day of November, 1922, at the Court House at Santa Ana, California, before Examiner Williams, said Klatt personally appearing and being represented by counsel, and having previously filed an answer.

It was stipulated at the rehearing that all the evidence adduced at the original hearing might be considered as testimony upon the rehearing. Upon further consideration, we are satisfied that this evidence conclusively establishes the public utility character of said C. J. Klatt's undertaking. The only new evidence presented was that of Mr. Klatt, and this was confined solely to the point that two of his former consumers had orally agreed to assist in the building of the new pumping plant, recently installed. It was shown, however, that they had not actually assisted in the same, and that they had received water at all times upon an equal basis with the other consumers as far as rates are concerned.

No new evidence having been adduced which would change the opinion of the Commission in this matter, the former opinion heretofore referred to will, therefore, be adopted in so far as it applies to all matters, save jurisdiction over the person of the said C. J. Klatt.

The following order is, therefore, made:

O R D E R

Theo. W. Bose, Flake L. Smith, Robert Gerwing and J. Sebastian having complained to this Commission as entitled above; the said matter having been heard and rehearing upon the same having been granted and had, and the Commission being fully advised in the matter:

IT IS HEREBY FOUND AS A FACT, that the water system operated by C. J. Klatt, in the vicinity of Santa Ana, Orange County, California, is a public utility, and that the said C. J. Klatt has been rendering public utility service therefrom, and that such system and service are subject to the jurisdiction of the Railroad Commission of the State of California;

And, basing its order upon the foregoing findings of fact and upon the other statements of fact contained in the preceding opinion, and upon the evidence adduced at the original hearing and rehearing herein,

IT IS HEREBY ORDERED, that C. J. Klatt be, and he is hereby directed to resume service of water for irrigation use to such persons as were formerly served by the pumping plant located upon the property of said C. J. Klatt, under such reasonable rates, rules and regulations as may be filed with, and approved by this Commission; and

IT IS HEREBY FURTHER ORDERED, that the said C. J. Klatt be, and he is hereby directed to file with this Commission, within twenty (20) days after the date of this order, a schedule, setting forth such rates, rules and regulations.

Dated at San Francisco, California, this 29th day of December, 1927.

H. R. Sandberg
Dwight Martin
J. P. Benedict

Commissioners.