

Decision No. _____

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 2353

MT. KNOCTI LIGHT AND POWER COMPANY,
a corporation,

Complainant,

-vs-

Case No. 641.

JAMES A. GUNN, JR.,

Defendant.

Wm. S. McKnight, for complainant
James A. Gunn, Jr., in propria persona

GORDON, Commissioner:

OPINION ON REHEARING.

The complaint in this case prays for an order of the Commission restraining the defendant, Gunn, from distributing electric energy in and adjacent to the village of Finley, Lake County, California. It is admitted that the complainant, Mt. Knocsti Light and Power Company, was distributing electric energy in this community prior to the time when the defendant began such service. The defendant did not seek a certificate of public convenience and necessity to go into this territory. The only question presented in this case is whether, under these facts, this Commission has the right to restrain the defendant, Gunn, from distributing electric energy in this community.

On October 5, 1911, in Ordinance No. 154, the Board of Supervisors of Lake County granted to the defendant, Gunn, a franchise "of erecting and maintaining poles and stringing, suspending and maintaining wires thereon for the purpose of trans-

mitting and distributing electricity for the purpose of producing light, heat and power along and upon the public highways, streets and alleys in the County of Lake, State of California, and in the several unincorporated towns and villages therein." This franchise was granted in accordance with the provisions of the Broughton Act. After obtaining this franchise Gunn immediately proceeded to construct a small hydroelectric plant on Kelsey Creek and has since been supplying electric energy in and about the town of Kelseyville. Thereafter Gunn extended his distributing system to the northern part of the county, and in July, 1914, began supplying electric energy in and adjacent to the village of Finley. Previous to this time Mt. Konocti Light and Power Company had begun to supply electric energy in this community, and now claims that inasmuch as Gunn had not obtained from this Commission a certificate of public convenience and necessity, this Commission has jurisdiction to restrain Gunn from supplying electric energy in this territory.

The question presented in this case has not yet been passed upon by this Commission, and was raised for the first time in the application for rehearing in the present proceeding. The answer to this question must be governed by Section 50(b) of the Public Utilities Act, which provides as follows:

"(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may proscribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided...

further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state."

The purpose and scope of this section of the Public Utilities Act was considered at length in the decision of the Commission in Application No. 485,- In the matter of the application of Southern Sierras Power Company for the determination of whether it is necessary for said Company to secure from this Commission a certificate of public convenience and necessity or a permit under the provisions of Section 50 of the Public Utilities Act, for the prosecution of its operations in San Bernardino County, and if so, for an order granting such certificate or permit."

Vol. 2, Opinions and Orders of the Commission, 647. It is important to note that section 50(b) provides in part "that when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work, and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege." The record in the present case shows that upon receipt of his franchise from the Board of Supervisors of Lake County Gunn immediately began the construction of a hydroelectric plant on Kelsey Creek, and has since that time proceeded in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, to enlarge and extend this distributing system to supply other portions of Lake County. While it must be clear, therefore, that under Section 50(b) of the Public Utilities Act the Commission may prescribe such rules and regulations as seem proper, governing the

construction and extension of defendant's hydroelectric system in Lake County, the Commission is given no power to refuse to the defendant the right to exercise his franchise at all in or about the village of Winley, in Lake County. I must conclude, therefore, that the Commission does not have jurisdiction to grant the relief requested by the complainant in this case. I recommend, therefore, that the order heretofore made in this proceeding on December 30, 1914, be annulled and that the complaint herein be dismissed, and submit herewith the following form of order:

ORDER ON REHEARING.

James A. Gunn, Jr. having filed an application for rehearing of this proceeding, and said application having been heard, and the matter being now ready for decision,--

IT IS HEREBY ORDERED that the order heretofore made in this proceeding on December 30, 1914, be, and the same is, hereby annulled and that the complaint in this proceeding be, and the same is, hereby dismissed.

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 5th day of May, 1915.

Max Thelen
Edwin O. Egerton
Frank R. DeWitt
Commissioners.