

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

Decision No. 2362

ORIGINAL

THE CRESCENT CITY LIGHT, WATER
& POWER COMPANY,

Complainant,

-vs-

Case No. 607.

GEORGE M. KELLER and HOBBS, WALL
& COMPANY,

Defendants.

Henry J. Rogers and T. B. Cutler,
for Complainant
C. G. Dall, of Titus, Creed & Dall,
for Defendants.

LOVELAND, Commissioner:

O P I N I O N.

In this case Crescent City Light, Water and Power Company asks this Commission to direct Hobbs, Wall & Company and George M. Keller, superintendent of Hobbs, Wall & Company, to discontinue furnishing electric energy for light or power to the residents of Crescent City, Del Norte County, California. There is no dispute as to the facts presented in this case, which, briefly, are these:

Hobbs, Wall & Company was incorporated under the laws of California in 1896, and has since been engaged principally in the milling and lumber business with headquarters at Crescent City. This Company generates electric energy to operate its lumber mill. Having more energy than the Company, itself, could use, the Company began, in 1905, to supply electric energy for light and power to residents of Crescent City. To this end the city authorities, on September 12, 1904, granted to George M. Keller or assigns a franchise to operate an electric light distribution

system within Crescent City. George M. Keller is the Superintendent of Hobbs, Wall & Company. This franchise has never been assigned to the Company, nor has George M. Keller personally ever operated an electric light distribution system under this franchise.

Crescent City Light, Water and Power Company was incorporated in 1902, under the laws of California, and the following year began to distribute electric energy in Crescent City for light and power purposes.

Crescent City Light, Water and Power Company is here asking the Commission to direct Hobbs, Wall & Company to discontinue supplying electric energy in Crescent City. Complainant, in support of its contention, argues (1) that Hobbs, Wall & Company is not empowered under its articles of incorporation to engage in the business of supplying electric energy for light and power, and (2) Hobbs, Wall & Company has no franchise to engage in such a business within Crescent City. In answer to this argument Hobbs, Wall & Company claims that its articles of incorporation do empower it to engage in the business of supplying electric energy for light or power; further, that under Section 19 of Article XI of the Constitution of this State it was not necessary to obtain a franchise from the municipal authorities to begin the supply of electric energy for light or power at the time when Hobbs, Wall & Company first engaged in this business, and also, that if a franchise was necessary the franchise granted to George M. Keller is sufficient. The defendants contend that this Commission has no jurisdiction under the facts of this case to grant the relief prayed for.

It is my opinion that the contention of defendants, that this Commission has no jurisdiction to grant the relief prayed for under the facts of this case, is correct. When the Public Utilities Act became effective on March 23, 1912, there were two

electric distribution plants in operation supplying electric energy to the inhabitants of Crescent City. There is nothing in the Public Utilities Act which requires the consent of this Commission to the continued operation of a public utility in operation when the Public Utilities Act became effective. The claim that one of these utilities is an ultra vires utility, or is operating without a necessary franchise, cannot alter the position of this Commission. This Commission is not the proper tribunal to adjudicate these questions. Complainants should have these matters adjudicated by quo warranto or other appropriate proceedings in the proper tribunals vested with jurisdiction to determine these matters. Under the facts of this case, therefore, I am of the opinion that the Commission does not have jurisdiction to grant the relief prayed for, and therefore recommend that the complaint herein be dismissed.

I submit herewith the following form of order:

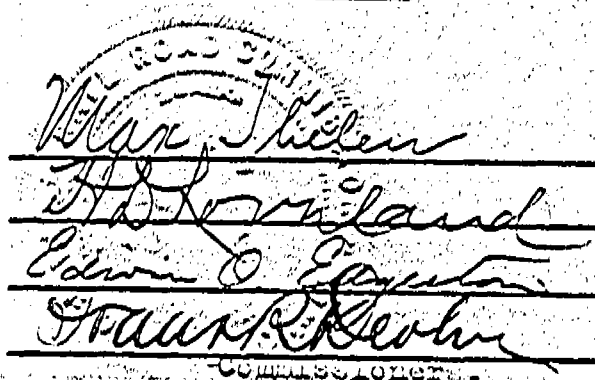
O R D E R.

This case having come on regularly for hearing and the Commission being of the opinion that it does not have jurisdiction to grant the relief prayed for in the complaint,--

IT IS HEREBY ORDERED that the complaint herein 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 7th day of May, 1915.


The seal is circular with the text "RAILROAD COMMISSION OF THE STATE OF CALIFORNIA" around the perimeter. In the center, there is a smaller emblem. Below the seal, there are four lines of handwritten signatures, each followed by a horizontal line. The signatures are: "Wm. J. Hillen", "H. D. ...", "Edwin O. ...", and "Frank ...".