Decision No. _____.

Decision No. 26822

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the practice of Water, Gas, Electric and Telephone Utilities requiring deposits before rendering service.

Case No. 683.

ORIGINAL

WATER UTILITIES

H. P. Brown	for	Lone Oak Canal Company.
Joseph Haber, Jr.	for	Marin Water and Power Company, Willits Water and Power Company, Western Water Company, Consumers Water Company, Domestic Water Company.
Joy A. Winans	for	Eagle Rock Water Company.
A. C. Greene	for	Spring Valley Water Company.
Albert Raymond	for	South San Francisco Water Company.
Joseph Shaw	for	Washington Water and Light Company, Oak Park Water Company.
O. C. Heck	for	Heck Brothers.
Stanley J. Bell	for	Union Water Company of California.
Henry Goosen	in propria persona.	

GAS AND ELECTRIC UTILITIES.

Wm. B. Bosley and C. P. Cutten	for	Pacific Gas and Electric Company.
H. H. Trowbridge	for	Southern California Edison Company, Long Beach Consolidated Gas Company, Santa Barbara Gas and Electric Company.
S. M. Haskins	for	Pacific Light and Power Corporation.
Short and Sutherland	for	San Joaquin Light and Power Corporation.
Chaffee E. Hall	for	Great Western Power Company.
M. S. Wilson	for	Southern Counties Gas Company.
Allen Chickering	for	San Diego Consolidated Gas and Electric Company, Western States Gas and Electric Company.
Paul Overton	for	Los Angeles Gas and Electric Corporation.
L. P. Lowe	for	Economic Gas Company.
H. F. Jackson	for	Coast Valleys Gas and Electric Company, Sierra and San Francisco Power Company.
H. C. Keyes	for	Sacramento Gas Company.
Farnsworth and McClure	for	Mount Whitney Power and Electric Company.

TELEPHONE UTILITIES

James T. Shaw	for	Pacific Telephone and Telegraph Company.
E. P. Morphy	for	Home Telephone and Telegraph Company of Los Angeles, Santa Monica Bay Home Telephone Company.
George B. Ellis	for	Union Home Telephone and Telegraph Corporation.
Charles A. Rolfe and Arthur Wright	for	Southwestern Home Telephone Company.
Arthur Wright	for	Home Telephone Company of Covina.
J. C. Jensen	for	Los Gatos Telephone Company.

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THELEN, Commissioner.

O P I N I O N

This proceeding was instituted by the Railroad Commission on its own motion for the purpose of investigating the rules, regulations and practices of water, gas, electric and telephone utilities in connection with charges and practices of various kinds as conditions precedent to service. Speaking in general terms, the principal matters under investigation herein are charges, deposits, contracts and guarantees for (1) service; (2) service connections; and (3) extensions.

A large number of complaints, both formal and informal, are constantly being made to this Commission against such rules, regulations and practices. It is hoped that a comprehensive investigation will not only be advantageous to the utilities and their customers, but will also materially lighten the labors of this Commission in the disposition of such complaints.

This proceeding was instituted on September 23, 1914. Notice was served on each water, gas, electric and telephone utility in the state subject to this Commission's jurisdiction with reference to the subject matter of this inquiry or any portion thereof. A preliminary hearing was held in San Francisco on November 23, 1914, at which time argument was presented by the utilities in support of various rules, regulations and practices.

It was stipulated at the preliminary hearing that the files relating to all informal complaints before the Commission relating to the subject matter of this inquiry might be considered as being in evidence in this proceeding and that the numbers of these informal complaints should be inserted in the record. It was also agreed that the Commission should send to each utility a circular letter requesting information concerning the subject

matter of this inquiry and that this letter and the answers thereto be considered in evidence herein.

Thereafter, on December 5, 1914, the Commission mailed to each utility a "Request for Information", asking that each utility which desired to continue any charge or deposit as condition precedent to service, furnish in detail the following information:

1. What practice, if any, does your utility pursue to secure the payment of your monthly bills, and at what time was this practice instituted?

2. What deposits or charges, if any, does your utility demand for so-called service connections, such as the charges of certain water companies for the service connection, and when did your utility first adopt such practice?

3. What practices, if any, does your utility pursue with reference to demanding charges or deposits of any kind as conditions precedent to the construction of extensions, and when was such practice first adopted? Make this explanation full and complete.

4. What other charges or deposits, if any, does your utility make as a condition precedent to rendering service and when were such charges or deposits first demanded?

5. If your utility desires to continue to make any charge or require any deposit of the kind hereinbefore referred to, state the reasons in full in support of your desire, together with the facts, if any, on which you rely in support thereof, and such authorities, if any, as you can furnish on the legal questions, if any, involved.

6. What rule or rules does your utility consider equitable to be adopted with reference to any or all classes of charges or deposits as conditions precedent to service?

Replies were received from 120 water utilities, 72 gas and electric utilities and 30 telephone utilities. These replies, by stipulation, are all in evidence in this proceeding.

The following utilities either incorporated with their replies or prepared separately in the form of briefs, statements of their views on points of law:

Home Telephone & Telegraph Company (Los Angeles),

Los Angeles Gas & Electric Corporation,

Pacific Gas & Electric Company,

Pacific Telephone & Telegraph Company,

San Diego Consolidated Gas & Electric Company,

San Joaquin Light & Power Corporation,

Southern California Gas Company,

Southern Sierras Power Company,

South Los Angeles Water Company,

Southwestern Home Telephone Company,

Union Home Telephone & Telegraph Corporation,

Western States Gas & Electric Company,

West Side Gas Company.

A number of utilities having expressed a desire to present further evidence, an adjourned hearing was held in San Francisco on June 4, 1915. At this hearing, the Commission introduced as Railroad Commission's Exhibit No.1, 2 and 3, statements containing the numbers of the informal complaints filed with this Commission, referring to the subject matter of this proceeding, against the gas and electric utilities, the water utilities and the telephone utilities, respectively. The exhibits show 410 complaints of this character against gas and electric utilities, 141 against water utilities and 83 against telephone utilities.

At the hearing of June 4, 1915, the utilities completed the presentation of their additional evidence and the case was submitted.

The subject matter of this inquiry will be discussed under the following general heads: (I) Service Charges; (II) Service Connection Charges; (III) Charges for Extensions, and (IV) Modification of Rules.

I.

SERVICE CHARGES

A large number of complaints have been made to the Commission concerning rules, regulations and practices of utilities requiring the making of deposits, the giving of guaranties, and the signing of contracts to insure payment for service to be delivered in the future, and payments in advance for service.

In considering this subject, a distinction must be made between metered and unmetered (flat rate) service.

This branch of the inquiry will be considered under the following outline:

A.

METERED SERVICE

1. Right of utility to protection in re metered service to be delivered.
2. Amount of deposits.
3. Procedure if consumer who has established his credit by showing that he owns the premises, or by furnishing a guarantor, or by paying all his bills promptly during the twelve months prior to the effective date of the order herein, becomes delinquent.
4. Procedure if consumer who has made deposit becomes delinquent.
5. Minimum notice before utility may discontinue metered service.
6. Discontinuance of service for failure to pay delinquent bills.
7. Telegrams and long distance telephone messages.

B.

UNMETERED SERVICE

8. Right of utility to protection in re unmetered service to be delivered.
9. Minimum notice before utility may discontinue unmetered service.

C.

RETURN OF DEPOSITS

10. Return of deposits after one year or on closing.

11. Interest on deposits.

D.

CONTRACTS

12. Contracts.

1.

Right of utility to protection in re metered service to be delivered.

The courts have uniformly held that a utility has the right to take reasonable protective measures to insure payment for service to be delivered in the future. It will be helpful to refer to the decisions on this point affecting water, gas, electric and telephone utilities.

The leading decisions have been rendered with reference to gas utilities. In Shepard v. Milwaukee Gas Light Company, 6 Wisc. 539, 70 Am. Dec. 479, the Supreme Court of Wisconsin upheld as reasonable a rule of a gas utility requiring the consumer to make a deposit or give other security for the payment of gas thereafter to be delivered to him. In Williams v. The Mutual Gas Company, 52 Mich. 499, 18 N. W. 236, the Supreme Court of Michigan upheld as reasonable a demand of a gas utility from a hotel keeper that he make a deposit of $100.00 to insure the payment of gas bills amounting to approximately $60.00 per week. In Owensboro Gaslight Company v. Hildebrand, 19 Ky. L. Rep. 985, 42 S. W. 551, the Supreme Court of Kentucky assumed the general right of gas and electric utilities to require deposits, but held that a utility can not lawfully make such demand from particular consumers while not making similar demands from other consumers similarly situated. In Cedar Rapids Gaslight Company v. City of Cedar Rapids, 144 Iowa 426, 120 N. W. 966, the Supreme Court of Iowa held that gas utilities may establish rules exacting payment in advance in reasonable amounts or the deposit of security. In Phelan v. Boone Gas Company, 147 Iowa 626, 125 N. W.

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The same rule has been established with reference to water utilities. In Turner v. Revere Water Company, 171 Mass. 336, 50 N. E. 634, 40 L. R. A. 657, the Supreme Court of Massachusetts said, by way of dictum, that water utilities may demand deposits if they do not know the consumer. In Harbison v. Knoxville Water Company, 103 Tenn. 421, 53 S.W. 993, the Court upheld a rule of a water utility providing for the payment in advance of a quarter's rent for water supplied for domestic purposes. In State v. Butte City Water Company, 18 Mont. 199, 44 Pac. 966, the Supreme Court of Montana said, by way of dictum, that a water utility may demand payment in advance for a reasonable time.

The leading case with reference to telephone utilities is Southwestern Telegraph and Telephone Company v. Danaher, decided by the Supreme Court of the United States on June 21, 1915, in which case the Court said: "It is uniformly held that a regulation requiring payment in advance or a fair deposit to secure payment is reasonable." For other cases containing similar language with reference to telephone utilities, see Buffalo County Telephone Company v. Turner, 82 Neb. 841, 118 N. W. 1064 and Malochee v. Great Southern Telephone and Telegraph Company, 49 La.Ann. 1690, 22 So. 922.

A number of state commissions have rendered illuminating

decisions establishing the same principle:

Cole v. Ft. Scott & Nevada Light, Heat, Water and Power Company, Volume 1, Advance Sheet No. 2, pp. 209,253, Reports of Public Service Commission of Missouri, decided On November 17, 1913.

In re Easton Gas Works and Eastern Pennsylvania Power Company of New Jersey, decided by Board of Public Utility Commissioners of New Jersey on February 20, 1914.

McAlester Publishing Company v. Choctaw Railway and Lighting Company, decided by Oklahoma Corporation Commission on November 23, 1911.

Canffiel v. Citizen's Light, Heat and Power Company, decided by Public Service Commission of Pennsylvania on October 6, 1914.

Berend v. Wisconsin Telephone Company, 4 W. R. C. R. 150, decided by the Railroad Commission of Wisconsin on September 15, 1909.

In re Refusal of Farmers Union Telephone Company to furnish service to William Remcke, 13 W. R. C. R. 599, decided by the Railroad Commission of Wisconsin on December 9, 1913.

In re Refusal of Service by Madison Gas and Electric Company to F. M. Wylie, 15 W. R. C. R. 518, decided by the Railroad Commission of Wisconsin on January 2, 1914.

The question is frequently asked: "Why does a water, gas, electric or telephone utility have the right to demand pay-

ment in advance, or deposits or other security to insure payment for service to be delivered, while the ordinary tradesman does not make similar demands?"

The answer is that the condition of the tradesman is entirely different from that of the utility. The tradesman sells only to whom he pleases. If he does not like a person or believes that his credit is not good, he is free to demand cash on delivery or to refuse to sell at all. The utility, on the other hand, is obliged to supply its service to all who demand it within the area to which the utility's obligations extend. As the law now stands, a baker may refuse to sell bread, but a water utility may not refuse to sell water to any one who complies with its reasonable regulations. Water, gas, electric and telephone service have come to be regarded largely as public necessities and they may not be denied even to the impecunious or to the financially irresponsible members of the public. Hence, unless some measure of protection is accorded the utility, it will find itself in the position of having delivered, under compulsion, service for which it receives no pay. Such a condition not merely decreases the ability of the utility to perform effectively its duties to the public but also affects injuriously those consumers who pay their bills and who, in the last analysis, will have their rates increased by the failure of other consumers to pay their bills.

Granting that some measure should be devised to protect the utility and the consumer who pays his bills, what rule or

regulation would be reasonable? The bare statement that protection should be accorded, is by no means synonymous with a declaration that this or that or the other means to attain this end must necessarily be adopted. The returns filed by the utilities in this proceeding show that some require payments in advance or guarantees, while other utilities have made no such demands; that some utilities require either deposits or other guarantees in all cases, while others require them only if the applicant does not own the property; and that other utilities make no requirements even of non-property owners unless they are unknown or are known to be financially irresponsible. To say that a utility must necessarily have the right to demand a deposit in all cases of metered service is to confuse a means with the end, and to regard only one of the paths which lead to the goal instead of keeping the eye steadfastly directed to the goal itself.

In considering what rule or regulation will be reasonable, consideration must also be given to the desirability of subjecting the general mass of consumers to only such burdens as are reasonably necessary to the accomplishment of the end in view. A rule requiring each consumer to make and maintain a deposit large enough to insure at all times the payment of all his bills would enable the utility to make 100 per cent collections, but such rule would be unjust because it would subject the great body of the consumers to burdens far greater than are reasonably necessary. As was said by the Supreme Court of Iowa in Cedar Rapids Gaslight Company v. City of Cedar Rapids, 120 N. W. 966, 971:

> "The company may not base a rule on the theory that the people as a whole are dishonest, but it has the right to adopt a rule which, while giving the honest citizen what he pays for, will prevent the dishonest from getting that which he will never pay for."

Another requisite of the rule or regulation to be adopted is that it shall reduce to a minimum the possibility of discrimination by the utility in its application. A rule which permits a utility to demand a deposit from one applicant for service and to deliver service to another applicant, in exactly the same condition as the first one, without a deposit, is not a desirable rule. Many of the complaints which have been made to the Commission concerning the subject matter of this proceeding have been complaints of discrimination. This objection could be removed by a rule requiring each applicant for metered service to make a deposit, but such a rule, as already suggested, would be inadvisable because it would compel deposits in many cases in which they are entirely unnecessary. Nearly every rule which has hitherto been suggested is subject to the objection that it permits wide discrimination by the utility.

The only feasible method which occurs to me to minimize the possibility of discrimination by the utility is to place the initiative on the consumer and not on the utility. The utility is entitled to be reasonably safeguarded and to this end to have the consumer's credit established before service is delivered. This credit may be established by the consumer in one of several methods. If he owns the property, that fact alone should prima facie establish his credit. If he does not own the property, he can establish his credit by making a uniform deposit to be established for such cases. If he does not own the property and does not desire to make the deposit, he can establish his credit by presenting a guaranty for the payment of his bills, signed by a guarantor satisfactory to the utility. If he has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, his credit will also be deemed established. If the applicant is thus permitted to take the initiative and to establish his credit as herein suggested, the cases in which a deposit will be presented will be reduced to a minimum, while the utility and the consumers who pay their bills will secure the maximum protection to which they are reasonably entitled.

The return of deposits after a specified period and the applicability of deposits to service rendered to the same consumer at different successive premises will be considered in connection with other rules.

With reference to all rules herein established, the utilities may, if they so desire, as provided in Rule 18 herein, establish and enforce uniform, non-discriminatory rules more favorable to their consumers than the rules herein prescribed. A utility is not obligated to exact the full measure of that to which it is lawfully entitled, provided that discrimination does not ensue.

I suggest the following rule as Rule 1:

Rule 1.

A water, gas, electric or telephone utility may, under uniform, non-discriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

2.

Amount of Deposits.

In the relatively few cases in which deposits will henceforth be presented, it will be necessary to determine the amount of the deposit. No uniform rule on this subject is practiced in this state nor has any been adopted elsewhere.

Where service is metered or measured and is billed for monthly, the bill usually reaches the consumer within ten days after the meter is read. Another ten days or more is usually allowed for collection, after which time various practices are followed with reference to discontinuance of service. Generally the consumer has received service at least two months before his service is discontinued.

A reasonable cash deposit for the consumers within any given class under a system of monthly bills would thus appear to be twice the estimated average monthly bill of the consumers within that class.

It is not feasible to estimate the average monthly bill for each individual consumer. This is a case in which the law of averages must govern. All consumers offering deposits within the same class should pay the same deposit. The utility should have the right to make such classifications of consumers as may be necessary to prevent small consumers from bearing the burdens in this respect of large consumers. The rule herein suggested will eliminate the exercise of individual discretion on the part of the utility's employees and will minimize complaints of discrimination.

The consumers of domestic or residence metered service of water, gas ,electric and telephone utilities who establish their credit by furnishing deposits will generally not be the larger consumers. To establish the amount of a deposit by taking the average consumption of all domestic or residence consumers would obviously be unfair for the reason that such average would be considerably in excess of the average bills of the consumers who present deposits. Bearing in mind the actual consumption of the consumers who will present deposits, I find that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities should not exceed $2.50.

In case of certain larger consumptions, the utility may desire to establish a schedule of more frequent collections and to demand a deposit which will be reasonable under the circumstances, not exceeding the average bill for twice the period for which collections are made.

I suggest the following rule as Rule 2:

Rule 2.

If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided, that the deposit for domestic or residence

monthly service of water, gas, electric and telephone utilities shall not exceed $2.50.

3.

Procedure if consumer who has initially established his credit by showing that he owns the premises, or by furnishing a guarantor, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein becomes delinquent.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the date of the order herein, later fails to pay his bills, the utility may demand as a condition precedent to further service and as a guaranty for the payment of bills thereafter to be incurred a cash deposit in the amount specified in Rule 2. Service should not be discontinued until the expiration of the time specified in Rule 5 herein after notice of intention to discontinue service unless such demand is complied with. The question of the recovery of back bills will be considered in connection with Rule 6.

I suggest the following rule as Rule 3:

RULE 3.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by Rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in Rule 5 herein after notice of intention to discontinue ser-

vice unless such demand is complied with.

4.

Procedure if consumer who has made deposit becomes delinquent.

If a consumer whose bills for metered or measured service are protected by a cash deposit fails to pay his bill, the utility may apply such portion of his deposit as is necessary to liquidate the bill and may at the same time require that the deposit be restored to its original amount. If the deposit is not restored by the time it has been completely absorbed, service may be discontinued, provided that notice of intention so to do as specified in Rule 5 herein has theretofore been given. In Reincke v. Public Service Gas Company, decided on April 20, 1914, the Board of Public Utility Commissioners of New Jersey very properly held that the utility can not discontinue service as long as it still has in its possession a portion of the consumer's deposit.

I suggest the following rule as Rule 4:

Rule 4.

If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill and may require that the deposit be restored to its original amount; provided, that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in Rule 5 herein.

5.

Minimum notice before utility may discontinue metered service.

Occasional complaints have been made to the Commission that utilities have arbitrarily discontinued service without notifying the consumer that they intended to do so. Fair dealing requires that the consumer be given reasonable notice of the utility's intention to discontinue service, so that he can make every reasonable

effort to comply in time with the utility's lawful demands. Particular care should be taken not to injure irrigation consumers whose crops frequently may be ruined if water or electric energy to pump water is shut off.

I suggest the following rule as Rule 5:

Rule 5.

A water, gas, electric or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least 15 calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least 4 calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least 7 calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least 30 calendar days after written notice of intention so to do.

6.

Discontinuance of service for failure to pay delinquent bills.

If a utility avails itself of the right herein recognized of requiring all consumers to establish their credit before metered or measured service is delivered, the utility will have only few delinquent bills except those which it voluntarily permits to accrue. Nevertheless in such cases and also in cases in which the utility does not choose to avail itself of the right to compel applicants to establish their credit, the question whether the utility has the right to discontinue service by reason of the failure to pay a delinquent bill may arise.

On the one hand, it is urged by the utility that it should be accorded this right as the most efficient method of collecting its bills. Emphasis is laid on the fact that these bills are usually small, that the expense incident to collecting them by legal process is relatively high and that persons failing to pay such bills are frequently execution proof.

On the other hand, it is contended that there is frequently an honest dispute with reference to a bill and that if the utility has the right to discontinue service when payment is not made, the consumer is placed at an unfair disadvantage. The services of water, gas, electric and telephone utilities have come to be regarded largely as necessaries of life, so that the consumer feels compelled to accede to the utility's demand even though he considers it unjust. A number of such cases have come to the Commission's attention. It is also urged that the utility's public duty requires the delivery of service on tender of the established rates or deposit, irrespective of real or alleged delinquencies.

In considering this question, I shall refer first to statutory provisions and decisions in California and then to the law in other states.

The law in California as affects water utilities was established in the case of Crow vs. San Joaquin and Kings River Canal & Irrigation Company, 130 Cal. 309. In that case an action was brought to recover damages for the refusal on the part of the defendant water company to furnish water to the plaintiff for the irrigation season of 1896, on tender by the plaintiff of the regular rates therefor. The water company justified its refusal on the ground that the plaintiff was indebted to it for water furnished to him in the years 1893 and 1894, and that under the regulations of the company, to which the plaintiff had subscribed, the payment of all dues and claims for previous service was made a condition precedent to the right to receive further water. At page 313, the Court points out that there was no consideration for this rule or regulation, for the reason that it was the duty of the defendant water company to furnish the plaintiff with water, whether he agreed to these regulations or not. Referring to this point, the Court says, at page 313:

> "The use of water, in this state, appropriated 'for sale, rental, or distribution' is a public use (Const. art. XIV, sec. 1), and by the act of March 12,

1885 (Stats. 1885, p. 96), enacted to carry out this provision of the constitution, it is made the duty of the company administering such use, 'upon demand therefor and tender in money of the established water rates.... to sell, rent, or distribute such water' to the inhabitants of the county 'at the established rates regulated and fixed therefor, as in this act provided, whether so fixed by the board of supervisors or otherwise,' etc. And it is further provided in said act that for failure to do so an action may be maintained ~~xx xxxx xxx~~ for 'damages to the extent of the actual injury sustained.' By section 552 of the Civil Code the same duties are also imposed upon such corporations in favor of those to whom water had been previously sold by such company. (Price v. Riverside Land Etc. Co., 56 Cal. 431; McCrary v. Beaudry, 67 Cal. 120; Merrill v. South Side Irri. Co., 112 Cal. 435, 436.) It was therefore the duty of the defendant, under the law as established in this state, to furnish the plaintiff water upon a tender of the established rates; and this rule precludes the idea that any other duties can be prescribed or imposed, except the tender of the rate, as a condition for supplying water, as required by law."

The conclusion of the Crow case to the effect that it is the duty of water utilities in this State to supply water upon tender of the established rates in advance, notwithstanding the failure to pay a back bill, was confirmed in Leavitt vs. Lassen Irrigation Co., 157 Cal. 82, at page 93, where the Court says:

"In Crow vs. San Joaquin, etc., Canal Company, 130 Cal. 509, it was held that a consumer did not deprive himself of the right to take water under the rate established by law by reason of his refusal to pay under and in accordance with the terms of his contract."

The same conclusion is reached in San Joaquin and Kings River Canal & Irrigation Co. vs. Stanislaus County, 191 Fed. 875, 892.

With reference to gas and electric utilities, the subject was heretofore covered by Section 632 of the Civil Code, enacted in 1905, and reading as follows:

"All gas and electric-light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, fittings or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity."

This section, however, was impliedly repealed with reference to all territory in which this Commission was granted jurisdiction over public utility rates by the Public Utilities Act, (Statutes Ex. Sess. 1911, p. 18) and was expressly repealed by Section 86 of the revised Public Utilities Act (Statutes 1915, Ch. 91), effective August 8, 1915. Under Sections 30, 31 and 35 of the revised Public Utilities Act, this Commission clearly has the authority to prescribe just and reasonable rules and regulations on all subjects which are included within the present inquiry.

I have been unable to find on this point any decision by the courts of California or any statutory provisions prior to the enactment of the Public Utilities Act, in so far as telephone utilities are concerned.

In other states conflicting decisions have been rendered.

The following cases hold that water utilities may discontinue service for failure to pay delinquent bills:

McDaniel v. Springfield Waterworks Co., 48 Mo. App. 273.
State v. Butte City Water Co., 18 Mont. 199, 44 Pac. 966.
Jones v. Nashville, 109 Tenn. 550.
Tacoma Hotel Company v. Tacoma L. & W. Co., 3 Wash. 316, 28 Pac. 516, 14 L.R.A. 669.

The following cases establish the same principle with reference to gas utilities:

People v. Manhattan Gaslight Co., 45 Barb. 136.
Vanderberg v. Kansas City Gas Co., 126 Mo. App. 600, 105 S.W. 17.

The same rule was established with reference to telephone utilities in:

Rushville Co-operative Telephone Co. v. Irvin, 27 Ind. App. 62, 161 Ind. 524.

In The Southwestern Telegraph & Telephone Company v. Danaher, supra, the Supreme Court of the United States reversed a judgment for $6300.00 in favor of a patron of a telephone com-

pany in Arkansas under a statute providing for the recovery of penalties for discrimination in telephone service, on the ground that under all the circumstances of the case the telephone utility had been deprived of its property without due process of law. The Supreme Court pointed out that the Legislature of Arkansas had not declared unreasonable the rule of the telephone utility providing for discontinuance of service for failure to pay bills. While drawing attention to decisions in other states upholding the reasonableness of such a rule, the Supreme Court clearly intimates that a finding by competent state authority either way on this question will not be disturbed by the Supreme Court in the absence of facts clearly showing a violation of the Fourteenth Amendment to the Federal Constitution.

A contrary conclusion was reached in the following decisions in other states, declaring unreasonable and void rules of various classes of utilities providing for discontinuance of service for failure to pay delinquent bills:

Water utilities - Crumley v. Watanga Water Co., 99 Tenn. 420, 41 S.W. 1058, 1060.

Gas utilities - Gaslight Co. v. Colliday, 25 Md. 1.

Telephone utilities - State v. Nebraska Telephone Co., 17 Neb. 126, 22 N.W. 237.

The Wisconsin Railroad Commission has taken the same view in a number of recent decisions. In Refusal of The Farmers' Union Telephone Company to Furnish Service to William Lemcke, 13 W.R.C.R. 399, decided on December 9, 1913, the Commission, at page 402, said:

> "The question before the Commission, therefore, is whether a telephone company has the right to refuse service on the ground that previous bills have not been fully paid. A telephone company, as has been shown, may, by establishing proper rules, require its

patrons to pay in advance for a reasonable period for the desired service, and if a patron who is in arrears to the company offers payment in advance for future service, we do not think it is consistent with its public duty for the company to refuse such service" (Quoting from 1 Wyman on Public Service Corporations, Sec. 451).

In Refusal of Service by Madison Gas and Electric Company to F. M. Wylie, 13 W.R.C.R. 518, decided on December 16, 1913, the Wisconsin Railroad Commission applied the same principle to the delivery of gas and electric service. At page 521, the Commission says:

> "The authorities are not in accord as to the obligation of the company to serve an applicant who is in arrears at other premises, although he tenders ready money for present service, but the best considered cases take the view that it is inconsistent with public duty to refuse service under such circumstances. The authorities holding that one who is owing for past service cannot insist on future service until default has been made good, seem to consider the matter from the standpoint of the convenience to the company in making its collections. They extend the right of the private trader to the one engaged in a public calling, notwithstanding the apparent conflict between the right of the former and the public obligation of the latter."

After referring to the duty of the utility to collect its indebtedness promptly, the Commission, at page 522, continues:

> "Because of such duty a company is permitted to demand prepayment of present service where the charge may be determined in advance, or in case of metered service may require a deposit of a sum of money sufficient to secure payment for the service rendered during stated intervals for which credit is extended, or may require a bond to secure such payment. Failing to establish or to enforce a rule to secure the prompt collection of bills when due, the company stands in the position of any other creditor and must resort to the courts to compel payment of such indebtedness. It may refuse to furnish service in the future unless prepayment is made, but because of its public duty it can not condition such service upon the liquidation of past charges."

As already indicated, the Supreme Court of California took exactly this position in the Crow case, supra, with reference to water utilities. The same reasoning applies to gas, electric and telephone utilities. A finding by competent public authority either way will undoubtedly be sustained as reasonable. The utility has the right to protect itself both as to metered and unmetered service, as herein indicated, by demanding payment for service or the establishment of credit in advance of the delivery of service. In view of the decision in the Crow case, I recommend that the Commission, in the interest of uniformity, apply the principle of that case to gas, electric and telephone utilities as well as to water utilities.

I suggest the following rule as Rule 6:

Rule 6.

A water, gas, electric or telephone utility may not discontinue service by reason of non-payment of bills for metered or measured service theretofore delivered.

7.

Telegrams and long distance telephone messages.

The replies from the smaller telephone utilities to the circular letter of December 5, 1914, indicate with remarkable

unanimity a desire that this Commission enable them to protect themselves against losses from long distance toll bills. This is for the reason primarily that they are dependent for long distance toll service upon the larger operating companies which own the toll lines and to which companies they are responsible for all long distance bills incurred by their patrons regardless of whether they are able to make collection or not. The rule hereinafter suggested as Rule 7 is intended to give telephone utilities the right to demand for themselves reasonable security in connection with this class of service. If the utility offers to extend to its patrons the convenience of sending telegrams and long distance telephone messages to the extent of such deposits as the patrons care to make, the size of the deposit is left to the discretion of the patron. The larger telephone utilities, which own and operate their own long distance toll lines, will probably consider it good policy in most cases to extend this convenience, without deposit, to all their patrons.

Deposits may be withdrawn at any time, after outstanding bills for telegrams and long distance telephone messages have been paid. No interest need be paid on them as this arrangement constitutes a special concession which obviates the need on the part of the patron of going to a telegraph office or long distance prepay station. The rule hereinafter suggested requiring the return of deposits after a year is obviously not applica ble here.

I suggest the following rule as Rule 7:

Rule 7.

A telephone utility may, under uniform, non-discriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

8.

Right of utility to protection in re unmetered service to be delivered.

It is a well established principle of law, as indicated by the authorities discussed in connection with Rule 1, that water, gas, electric and telephone utilities which render unmetered or unmeasured service at flat rates may demand payment in advance. In service of this character, the amount to be paid for any given period of service is definitely known beforehand. Hence the case is one of payment in advance of a definite rate as distinguished from the presentation of some form of guaranty to secure the payment of a bill the exact amount of which can not be known until the end of the normal service period.

As direct payment may be required, no form of guaranty is necessary or permissible. Promptly after the effective date of the order herein, all water, gas, electric and telephone utilities shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service.

I suggest the following rule as Rule 8:

Rule 8..

A water, gas, electric or telephone utility delivering

unmetered service at flat rates may, under uniform, non-discriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

9.

Minimum notice before utility may discontinue unmetered service.

A consumer should have a reasonable opportunity to pay his bills for unmetered service before the utility may discontinue service by reason of the failure of the consumer to make the advance payment.

Particular care should be taken not to injure irrigation consumers.

I suggest the following rule as Rule 9:

Rule 9.

A water, gas, electric or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least 15 calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least 4 calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least 7 calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least 30 calendar days after written notice of intention so to do.

10.

Return of deposits after one year or on closing.

In Reasonableness of Rules of Easton Gas Works and Eastern Pennsylvania Power Company of New Jersey, decided on February 20, 1914, the Board of Public Utility Commissioners of New Jersey said in part:

> "The issue may fairly be raised, however, whether after adequate demonstration on the part of the consumer of his financial reliability, a public utility avowedly according credit to reliable consumers may not be justly required to refund an advance deposit, or apply the same in liquidation of bills due. There seems little warrant in equity for the indefinite retention of such deposits, even though interest thereon be allowed. It savors altogether too much of a forced loan."

Frequent inquiries have been made of this Commission concerning the period of time during which a utility may retain a deposit which it has demanded to guarantee payment for metered service. The suggestion is constantly made that after all bills have been promptly paid over a period of time, such as a year, the consumer's credit should be deemed established and the deposit returned to him. Attention is also drawn to the frequent difficulty of finding consumers after a period of years, for the purpose of returning a deposit.

A consumer making a deposit covering service at one location shall have continuing credit therefor if he transfers his service to another location before the deposit is returned to him.

I suggest the following rule as Rule 10:

Rule 10.

After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

11.

Interest on Deposits.

That a utility should pay interest on cash deposits held by it to secure the payment of bills for metered or measured service seems clear and is admitted by the utilities with substantial unanimity. An interest rate of six per cent per annum seems reasonable.

I suggest the following rule as Rule 11:

Rule 11.

Interest at the rate of six per cent per annum must be paid by each water, gas, electric or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided, that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

12.

Contracts.

Water, gas, electric and telephone utilities frequently demand that an applicant sign a contract before service will be delivered. I do not now refer to extensions in unincorporated territory, where unusual conditions frequently obtain. Under the rules herein prescribed, the necessity for such contracts is not apparent. The consumer is bound by the utility's lawful rates, rules and regulations on file with this Commission. No contract is necessary to insure their applicability to him. The utility will secure ample protection under the rules herein established in the matter of payment for its service and for the cost of disconnections and reconnections. The initial installation is added to capital account and is considered when rates are established. It is difficult to find any other reason for compelling an applicant for service to sign such contract other than to hold him for a term beyond that for which he would desire to be held if he were a free agent - a motive to which this Commission can not give its sanction.

Accordingly I recommend that henceforth an applicant for service from a water, gas, electric or telephone utility be not required to sign a contract as a condition precedent to service; provided that it is not intended herein to pass on the question of contracts in connection with extensions in unincorporated territory which matter is left open for consideration in subsequent proceedings. Utilities of these classes shall continue to have the right to require applicants to sign reasonable applications for service, so that their records may contain the necessary data with reference to all consumers.

I suggest the following rule as Rule 12:

Rule 12.

Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided, that such utility may require that reasonable written application for service be made.

II.

SERVICE CONNECTIONS.

This branch of the inquiry will be considered under the following outline:

13. Service connection charges.
14. Charges for disconnecting and reconnecting services theretofore installed.

13.

Service Connection Charges.

Many complaints have been made to this Commission concerning the imposition by utilities of so-called "service connection" charges. The term "service connection", as here used, does not refer to extensions of mains, but is limited to installation of service from a public street, highway, alley, lane or road to property abutting thereon. The "service connection" includes water and gas pipes, electric and telephone wires, water, and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances.

The chief complaint has been directed to the service connection charges of water utilities. This matter was carefully

considered by this Commission in City of Glendale v. Title Guarantee and Trust Company (2 Opinions and Orders of Railroad Commission of California 989), in which case this Commission, at page 991, said:

> "That it is the duty of a water company to supply service connections up to the property line and meters, where meters are used, without direct expense to the consumer, seems clear both on principle and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company."

The same principle, namely, that it is the duty of water utilities to install at their own expense meters and service connections from the mains to the curb line or property line of the consumer has been consistently applied by this Commission in decisions subsequent to the Glendale case.

The Wisconsin Railroad Commission has reached the same conclusion. In City of Janesville v. Janesville Water Company, 7 W.R.C.R. 628, the Wisconsin Commission, at page 681, says:

> "The question as to who should own meters appears to be settled. The only point to be decided here is whether or not services are a part of the facilities which the utility is expected to furnish. The logical conclusion seems to be that the utility should install and own services to the curb line. The utility, and not the consumer, has the right to occupy the streets, and all pipes laid in the streets should be the property of the utility, and we believe should be put in by the utility. The business of the utility is to deliver its product to the premises of the consumer. If the utility should own the mains through which water is carried to various sections of the city, it seems equally true that it should own all parts of the distribution system as far as the consumer's premises. The service pipe from main to curb is as much a part of the utility's distribution system as is the main itself. Both parts of the equipment have the same purpose: the delivery of water to consumer's premises.
>
> "It is not believed that the utility should be required to install and own such portions of the service as are on private property. True, the utility very often owns meters, which are installed on consumer's premises, but such installation is done as a matter of convenience to the utility. As the purpose of the

utility is to deliver water to the premises of the consumers, if other conditions were equal, the logical place for the meter would be at the property line. Piping inside the curb line stands in very much the same relation to the utility as does the piping and plumbing in buildings, and should be a part of the property of consumers."

The courts, with substantial unanimity, have reached the same conclusion:

Spring Valley Water Works v. City and County of San Francisco, 82 Cal. 286, 316.

Title Guarantee and Trust Co. v. Railroad Commission, 168 Cal. 295, 299, 302.

Hatch v. Consumers Company. 17 Idaho 204, 104 Pac. 670.

Consumers Company v. Hatch, 224 U.S. 148.

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

Bothwell v. Consumers Company, 13 Idaho 568, 92 Pac. 533.

City of Montgomery v. McDade, 180 Ala. 156, 60 So. 798.

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

International Water Co. v. City of El Paso, 51 Tex. Civ. App. 321, 112 S.W. 816.

Cleveland v. Malden Water Co., 69 Wash. 541, 125 Pac. 769.

State ex rel Hogden v. Hoquiam Water Co.,70 Wash.682, 127 Pac.304.

No reason occurs why the same principle should not be applicable to gas and electric utilities. The following cases hold that it is the duty of gas utilities to pay for the meters and in effect that the consumer cannot be called upon to pay for the apparatus used to measure gas any more than for the machinery used in its manufacture:

Montgomery L.& P.Co., v. Watts, 165 Ala.373, 26 L.R.A.N.S. 1109.

Louisville Gas Company v. Dulaney & Alexander, 100 Ky. 405, 36 L.R.A. 125.

City of Buffalo v. Buffalo Gas Company, 80 N.Y.S. 1093.

The same logic applies to gas pipes to the property or curb line, to electric wires to the first point of support on the consumer's premises, to telephone wires to the place of consumption of the service, and to electric transformers and meters and telephone instruments, and appurtenances.

Electric wires from the property or curb line to the first point of support and telephone wires to the place of consumption of the service are generally so short and inexpensive that these utilities do not require the consumer to pay for them, although they are in part on his property. The utility, however, if it desires to do so, may fairly insist that the consumer pay for pipes laid or poles set on the consumer's property for the purpose of serving him.

Promoters and other persons occasionally ask utilities to make service connections in advance of actual use of the service, for the purpose of enhancing the salability of their lots. It is obviously unfair to the utility and to its existing customers to compel the utility to make at its own expense service installations which may remain idle over long periods of time. Hence, subject to appeal to this Commission, a utility may refuse to make a service connection at its own expense unless it is satisfied that the service will actually be used in the reasonably immediate future.

It is not intended to pass herein on the question of municipal ordinances requiring the installation of service connections ahead of paving. That matter is left open for subsequent consideration.

While not formally passing on the question, I desire to draw the attention of water, gas and electric utilities to the question whether it would not be well for them to purchase from their consumers such meters, regulators and transformers as are now the property of the consumers.

I suggest the following rule as Rule 13:

Rule 13.

A water, gas, electric or telephone utility which operates upon, under or along any public street, highway, alley, lane or road

shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane or road or to such point on the consumer's premises as the utility may agree upon. The term "service connection", as herein used, shall include water and gas pipes, electric and telephone wires, water, gas and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

14.

Charges for disconnecting and reconnecting services theretofore installed.

The cost of making an initial service installation is a proper capital account charge and hence should not be considered as an operating charge or as in any manner assessable against the individual consumer.

After an initial service installation has been made, however, it may become desirable or necessary to disconnect and thereafter to reconnect the service.

It is frequently provided that if service is disconnected by reason of failure of the consumer to comply with the utility's reasonable rules and regulations, the consumer shall pay a specified fee to cover the labor of disconnecting and reconnecting. It is not fair that the utility, or the consumers who comply with the utility's reasonable rules and regulations, should be compelled to bear this expense and such rule is entirely proper, provided the amount of the fee bears a reasonable relation to the actual average cost of making the disconnection and the reconnection. City of Janesville v. Janesville Water Co., 7 W.R.C.R. 628, 683.

The problem becomes more difficult when a consumer asks

that his service be disconnected and thereafter the same consumer or another consumer takes service at the same premises. The cost of making this disconnection and reconnection is properly an operating expense. It is possible to meet this expense in one of three methods: (1) the cost may be charged directly to the new or the resuming consumer; (2) the cost may be distributed over the periodic payments in such manner that it is returned to the utility within a designated time; or (3) the cost may be merged in the general operating expenses.

The problem is particularly important in California at many localities which are largely season resorts, where the disconnections and reconnections are frequent and the period of service to each individual consumer is relatively short. In such cases, it would seem unreasonable to require the relatively few permanent consumers in the particular locality or the more permanent population in some other locality served by the same utility, to pay increased rates by reason of the expense of disconnecting and reconnecting the services of the seasonal or transient consumers. On the other hand, in permanent communities in which there are relatively few cases of disconnections and reconnections, the utility may desire to regard such costs, particularly if they are low, as part of its general operating expenses, without the necessity of a special fee or other arrangement with the new or the resuming consumer.

It is not feasible to establish a single, uniform practice on this point. The establishment of reasonable rules and regulations for each community or type of consumers to cover this subject must be left in the first instance to the utility, subject to review by this Commission.

As the cost of disconnection and reconnection will thus be provided for, utilities will no longer be permitted to make the so-called "cancellation charges."

I suggest the following rule as Rule 14 .

Rule 14.

Under reasonable, non-discriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be (1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancellation charges" of water, gas, electric and telephone utilities are hereby abolished.

III.

EXTENSIONS.

The subject of extensions will be considered under the following heads:

15. Extensions within municipalities.
16. Extensions outside of municipalities.
17. Ownership of extensions.

15.

Extensions within municipalities.

This Commission's powers in the matter of directing public utilities to make extensions are specified in Section 36 of the Public Utilities Act, reading as follows:

"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. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

While the section apparently contemplates separate hearings on the facts of individual cases if the utility and the applicant have been unable to agree, a consideration of the principles involved may serve to clarify the situation for all parties and to reduce materially the number of cases of this character which are continually coming before this Commission.

Wyman, in his work on Public Service Corporations,

expresses his views on this subject in Sections 281 and 797, as follows:

"Sec. 281. Obligation to the community.

It is obvious that the problems raised in this topic have not been disposed of as yet. It is plain that the existing facilities must in many instances be further developed in readiness to give service to those beyond the present lines, since what has really been undertaken is the proper service of the whole community dependent upon the established company. This at least involves the well-settled central territory within which service is plainly demanded, whether mains have been laid in all the streets or not. Certainly all premises situated within the network of the existing mains and within convenient connecting distance of their lines should be served. All of these premises come within the sphere of influence, already established, differing slightly from premises abutting. But the law will soon require, if it does not already, that the existing mains must be gradually extended as the growth of population in the community which the corporation has undertaken to serve demands the expansion.

"Sec. 797. Facilities which the service requires.

In most of the public employments of the modern type what is undertaken is not merely the devoting of particular equipment to public use but rather the rendering of a certain service to the community with which it professes to deal. Thus a modern railroad plainly undertakes general transportation along its route; and since it has professed this general service it must see to it that it has sufficient equipment to handle the business which it has in effect invited by this general profession. The term adequate facilities is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the extent of the demand for transportation, and the cost of furnishing the additional accommodations asked for. All this is particularly true of the municipal services--such as waterworks, gas plants, electric plants, andtelephone systems. There are sufficient authorities, most of which have been discussed elsewhere, to the effect that their obligation to give service is not confined to the original pipes which have been laid, or wires which have been strung. Such companies are held to undertake the service of their communities; and they must, to speak in general, be prepared to extend this system throughout their district to meet the reasonable demands of the growing community."

This subject was carefully considered by the Supreme Court of the United States in Russell v. Sebastian, 233 U. S. 195, decided on April 6, 1914. In this case, the Supreme Court held that the service of a public utility holding a general franchise within a municipality is a community service and that the utility is under the implied obligation to serve the entire community.

In the Russell case, the Supreme Court decided that the Economic Gas Company which, under the constitutional franchise granted by section 19 of Article XI of the Constitution of California prior to its amendment on October 10, 1911, had already constructed a gas distributing system in certain of the streets of the city of Los Angeles for the purpose of supplying gas to the inhabitants of said city, had a right to extend its system through all the streets of the municipality and that the constitutional franchise was not limited to laying gas mains in the streets already occupied by the company on October 10, 1911. In other words, the Economic Gas Company had a constitutional franchise to construct its gas distributing system upon any and all streets within the city of Los Angeles. After reaching this conclusion, Mr. Justice Hughes indicates that a utility which has a franchise to construct its system on all the streets of a municipality is under an obligation to supply service to the entire community of such municipality. He states on page 208 of the Reporter:

> "The service, as has been said, was a community service. Incident to the undertaking in response to the State's offer was the obligation to provide facilities that were reasonably adequate. (Citing cases.) It would not be said that either a water company or a gas company, establishing its service under the constitutional grant, could stop its mains at its pleasure and withhold its supply by refusing to extend its distributing conduits so as to meet the reasonable requirements of the community. But this duty and the right to serve, embracing the right under the granted privilege to install the means of service, were correlative."

The most recent decision which discusses the obligation of a public utility to extend its mains is Lukrawka v. Spring Valley Water Company, decided by the Supreme Court of California on February 13, 1915, and reported in Volume 49, California Decisions, page 177. In this case, it appears that Spring Valley Water Company has a constitutional franchise to construct its water system in the City and County of San Francisco to supply the municipality and its inhabitants with water. Complainants sought a writ of mandamus to compel the water company to extend its mains to supply water to complainants in the Richmond District in San Francisco. The

Superior Court rendered judgment in favor of the water company. This judgment was reversed by the Supreme Court.

Justice Lorigan, after referring to Wyman's views and the Russell case, supra, concludes on page 187 that the water company undertook a community service, as follows:

> "We are of the opinion therefore for the reasons given and under the authorities we have referred to that when the respondent accepted the franchise offered by the state and undertook to supply the municipality of San Francisco and its inhabitants with water, it assumed a public duty to be discharged for the public benefit: a community service commensurate with the offer of the franchise which involved the duty of providing a service system which would be reasonably adequate to meet the wants of the municipality not only at the time it began its service, but likewise to keep pace with the growth of the municipality, and to gradually extend its system as the reasonable wants of the growing community might require, and as it appears from the petition in this case that respondent is in a position to discharge this duty toward petitioners by a reasonable extension of its mains it should have done so on their demand and having refused may be compelled to do it."

Justice Lorigan then states a necessary qualification to the foregoing rule as follows:

> "In reaching this conclusion it is of course to be borne in mind that the right of an inhabitant of the municipality or the inhabitants of a particular portion of it to compel the service to them by the water company through the extension of its system, is not an absolute and unqualified right. The fact that the water company has undertaken to serve the entire municipality and that it would be of advantage to an inhabitant thereof, or a number of them to have the water system extended to supply them would not of itself be sufficient to require or compel the company to make the extension. The duty which the water company has undertaken is of a public nature and to meet a public necessity for the supplying of water to the community. The obligation of the company is not to supply each or any number of inhabitants of the municipality on demand as an absolute right on their part but it has only assumed and become charged with the public duty of furnishing it where there is a reasonable demand for it and a reasonable extension of the service can be made to meet the demand. The right to require the service and the duty of furnishing it by an extension of the water system is to be determined from a consideration of the reasonableness of the demand therefor."

That the reasonableness of a particular extension must be determined upon the facts of the case was held by Justice Lorigan on page 185 as follows:

> "Whether it does or not is to be determined by a consideration of the facts in each particular case and, among other things, by a consideration of the duties of the company, the rights of its stockholders, the supply of water which the company may control for distribution, the facilities for mak-

ing extensions to a locality beyond its present point of service, the rights of existing customers, the wants and necessities of the locality demanding it, and how far the right of the community as a whole may be affected by the demanded extension. We refer to this matter of reasonableness of demand to be considered in determining the right to require the extension of service on account of the general language used in the authorities cited in sustaining the implied obligation of a public service corporation under its charter to supply all the inhabitants of a municipality with water. While this is the obligation it undertakes, the right of the inhabitants of the municipality to have it discharged is, as we have said, not an absolute but a relative one which may be enforced only when conditions are such that there exists a reasonable demand for the fulfillment of the obligation. In the case at bar the facts charged in the petition show that there is such a reasonable demand for such an extension and as there is a liability on the respondent under such circumstances to comply with it, it may be compelled to do so."

A number of decisions in other states also establish the general duty of a utility holding a general franchise, to serve the entire community.

In Phelan v. Boone Gas Company, 147 Iowa 626, 125 NW. 208, the Court says on page 209 of the Reporter:

"By accepting from the city the franchise to lay pipes and mains in the streets and alleys and through them furnish the inhabitants and the public with fuel, illuminating, and power gas, the company assumed a public duty. That duty was to supply gas at reasonable rates to all the inhabitants of the city, and to charge each the same price and furnish on the same terms as it did to every other for like service under the same or similar conditions."

In Bothwell v. Consumers Company, 13 Idaho 568, 92 Pac. 533, at page 534, the Court says:

"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. It owes this duty to every one so long as it has water to sell, whether he is on the line of its main or at a great distance therefrom."

In Pocatello Water Co. vs. Standley, 7 Idaho 155, 61 Pac. 518, the Court at page 518 says:

"Under the said franchise the respondent has been granted the right to lay its mains and pipes over, along and under the streets, alleys and highways of said city for the purpose of supplying said city and its inhabitants with a sufficiency of pure water. It had the authority to lay all of the mains and pipes in said streets and alleys necessary to accomplish the purposes for which said franchise was granted. It is obliged to lay its mains and pipes in said streets and alleys, and to deliver water to the consumers at its franchise limits, and to the line of the premises

of the consumer, if such premises border on said franchise limits."

In Monahan v. Pacific Gas and Electric Company, 5 Opinions and Orders of Railroad Commission of California 298, this Commission considered this general question. One of the issues presented in that case was the utility's duty to extend its electric distributing system within the city of San Jose. After referring to the rule of the Russell case, this Commission, at page 302, said:

"It applies to all classes of utilities which receive a franchise authorizing them to use all the streets of a city, such as the constitutional franchise which has been granted by the state itself to all electric, gas and water companies which started construction in this state in the streets of any city prior to October 10, 1911. Each of these classes of utilities, as well as any other utility which has heretofore secured or may hereafter secure a franchise authorizing it to use all the streets of any of our California cities, is under the correlative duty of giving service to all the inhabitants of the city. While it is possible that it may be necessary in some of our cities having wide territorial extent, to modify this general rule in some respects, the present case is clearly one for the application of the general rule. I accordingly recommend that the order in this case contain a provision to the effect that the electric company shall, at its own cost, make extensions to serve all persons desiring electric service in the city of San Jose and in the other incorporated cities in the San Jose district over which this Commission has jurisdiction in this respect. The rate in this case will be established on the theory that the service is community-wide, and extensions which may be unprofitable in themselves will be taken care of in the rate so established."

Of course, there will be cases in which an extension at the utility's expense even within a municipality in which the utility has a general franchise would not be just or reasonable either to the utility or the existing consumers. Some of our California cities cover such vast areas of territory and others whose area is smaller nevertheless contain unsettled portions so far removed from the present more thickly populated districts that it can not be expected that extensions must uniformly be made at the utility's expense. Again, as was said by Commissioner Edgerton in Clark v. Hermosa Beach Water Company, 2 Opinions and Orders of Railroad Commission of California 149, at page 152, referring to the effect of certain extensions on rates:

"If a utility were operating in a valley and was providing water by gravity flow to people in the valley and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service of the mountain top."

While other illustrations might be given to show that there are cases in municipalities in which it would not be reasonable to compel a utility, even though it holds a general franchise, to make extensions at its cost, it seems reasonable to hold as a general proposition that prima facie a utility whose franchise in a municipality is community wide is under the correlative duty of rendering community wide service and of constructing at its expense the extensions necessary thereto. If in any case the utility considers it unreasonable to make the extension at its sole cost, the matter may be taken up informally with the Commission or determined formally as provided by Section 36 of the Public Utilities Act.

The duty of gas and electric utilities to render service at their cost was heretofore limited by Section 629 of the Civil Code of California to a distance of 100 feet from any main, or direct or primary wire, of the utility. However, this section has been repealed by Section 86 of the revised Public Utilities Act, effective August 8, 1915. It is a reasonable inference that the purpose of the repeal of this section was to leave this Commission free to prescribe reasonable rules and regulations, even though the result might be the construction of extensions at the utility's sole cost, even beyond 100 feet.

I suggest the following rule as Rule 15:

Rule 15.

A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets

of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided, that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by Section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

16.

Extensions outside of municipalities.

It is not feasible at this time to establish a general rule defining free limits for extensions outside of municipalities. The Commission naturally desires the utility to be as liberal as possible in the construction of extensions, but regard must also be had to the utility's financial condition and the rights of existing consumers. If the parties can not agree, they may submit the matter informally to the Commission or formally as provided by Section 36 of the Public Utilities Act.

The Commission has frequently drawn attention to the fact that it is unreasonable for utilities to urge that each extension constructed at their cost must be profitable in itself. Such a policy would lead to grave results in thwarting the development of this state and cannot be permitted by this Commission.

The Commission's attention has recently been drawn to a number of cases in which utilities which have a monopoly in certain territory have refused to make extensions in cases in which they would have made them had there been competition and under circumstances under which they actually do make extensions in other territory in which competition exists. If this attitude persists, it will become the matter of very serious consideration from the Commission. If a utility adopts such a policy in any part of the territory served by it, it must expect this fact to be taken into consideration if another utility of like kind asks authority to enter the territory under consideration or any other portion of the territory served by the exist-

ing utility.

I suggest the following rule as Rule 16:

Rule 16.

A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided, that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by Section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

17.

Ownership of extensions.

The utility should own all the facilities which it uses to serve the public. Endless difficulties and annoyances arise under any other rule. If an applicant for service makes payment in connection with an extension, this payment should be regarded as a loan, to be returned under reasonable conditions. The title to the extension should become vested in the utility.

It can not be said that any one method of returning such loan is in itself the only reasonable rule. At times, such loans are returned piecemeal as additional services are installed; or piecemeal by crediting periodically stated portions of the consumer's bills; or in a lump sum when the entire periodic revenue from the extension totals a designated sum. The utilities should in the first instance adopt such rule or regulation as they consider reasonable under the general principle herein established, subject, of course, to review by this Commission.

I suggest the following rule as Rule 17:

Rule 17.

In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, non-discriminatory rules and regulations. Interest shall be paid on such loans at the rate of six per cent per annum.

IV.

MODIFICATION OF RULES.

18.

Nothing in any of the foregoing rules should be construed as depriving the utility of the right to establish and enforce uniform, non-discrinimatory rules more favorable to their patrons than the rules herein authorized. These rules are intended to establish what the utility may demand and not what it must require.

I submit the following rule as Rule 18:

Rule 18.

A water, gas, electric or telephone utility may establish uniform, non-discriminatory rules more favorable to its consumers than the rules herein established.

As with all general rules, cases will arise in which the application of some rule may, under the facts of some case or class of cases, work a hardship. In such event application may be made to the Commission for a modification of the rule.

It will hardly be necessary to direct that the utilities shall apply the foregoing rules without discrimination as to persons and that their own rules adopted hereunder shall be non-discriminatory. Likewise there should be no discrimination between localities, but different conditions in different localities may justify different rules and regulations on the part of the utility.

The Commission has heretofore rendered a large number of decisions dealing in individual cases with various phases of the general subject matter of the present inquiry. The orders therein shall stand in so far as they are consistent with the rules herein established but shall yield to the order herein in so far as inconsistent therewith.

The rules herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric and telephone utilities. Rules and regulations now on file, and inconsistent with the rules herein established, should be revised and refiled within 60 days after the effective date of the Order herein.

In order to provide ample time for the printing of this decision and its transmission to all utilities affected, I recommend that it be made effective 60 days from date.

I submit the following form of Order;

O R D E R .

Each water, gas, electric and telephone utility doing business within this state having been served with notice of this proceeding, and opportunity having been accorded each such utility to appear and be heard, and evidence and argument having been received, and this case being now ready for decision,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The following rules and regulations are hereby found to be just and reasonable rules and regulations and are hereby established as rules and regulations to be obeyed and followed by all water, gas, electric and telephone utilities doing business within California:

I.

SERVICE CHARGES

A.

Metered Service

Rule 1.

A water, gas, electric or telephone utility may, under uniform, non-discriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

Rule 2.

If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided, that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities shall not exceed $2.50.

Rule 3.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to

the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by Rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in Rule 5 herein after notice of intention to discontinue service unless such demand is complied with.

Rule 4.

If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill and may require that the deposit be restored to its original amount; provided, that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in Rule 5 herein.

Rule 5.

A water, gas, electric or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least 15 calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least 4 calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least 7 calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least 30 calendar days after written notice of intention so to do.

Rule 6.

A water, gas, electric or telephone utility may not discontinue service by reason of non-payment of bills for metered or measured service theretofore delivered.

Rule 7.

A telephone utility may, under uniform, non-discriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

B.

Unmetered Service.

Rule 8.

A water, gas, electric or telephone utility delivering unmetered service at flat rates may, under uniform, non-discriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

Rule 9.

A water, gas, electric or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least 15 calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until

the expiration of at least 4 calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least 7 calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least 30 calendar days after written notice of intention so to do.

C.

Return of Deposits.

Rule 10.

After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

Rule 11.

Interest at the rate of six per cent per annum must be paid by each water, gas, electric or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided, that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

D.

Contracts.

Rule 12.

Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent

proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided, that such utility may require that reasonable written application for service be made.

II.

SERVICE CONNECTIONS.

Rule 13.

A water, gas, electric or telephone utility which operates upon, under or along any public street, highway, alley, lane or road shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane or road or to such point on the consumer's premises as the utility may agree upon. The term "service connection", as herein used, shall include water and gas pipes, electric and telephone wires, water, gas and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

Rule 14.

Under reasonable, non-discriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be

(1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancellation charges" of water, gas, electric and telephone utilities are hereby abolished.

III.

EXTENSIONS.

Rule 15.

A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided, that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by Section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

Rule 16.

A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided, that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by Section 36 of the Public Utilities Act, unless satisfactorily

adjusted by an informal application to the Commission.

Rule 17.

In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, non-discriminatory rules and regulations. Interest shall be paid on such loans at the rate of six per cent per annum.

IV.

MODIFICATION OF RULES

Rule 18.

A water, gas, electric or telephone utility may establish uniform, non-discriminatory rules more favorable to its consumers than the rules herein established.

2. The rules and regulations herein established shall take precedence over orders heretofore made by the Commission in other proceedings, in so far as said orders may be inconsistent with said rules and regulations.

3. The rules and regulations herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric and telephone utilities in so far as inconsistent therewith. Rules and regulations now on file and inconsistent with the rules and regulations herein established should be revised and refiled within 60 days from the effective date of this order.

4. Within 30 days after the effective date of this order, each water, gas, electric and telephone utility shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service and all deposits made to guarantee payment for unmetered or unmeasured service by patrons who have paid all their bills promptly during the twelve months prior to the effective date of the order herein.

5. If hardship results from the application to special facts of any rule or regulation herein prescribed, application may be made to the Railroad Commission for a modification.

6. This order shall become effective on October 11th, 1915.

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 August, 1915.

Max Thelen

H. H. Rowland

Alex Gordon

Frank R. Devlin

Commissioners.