Decision No. 3144

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Decision No._____

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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CITY OF ALAMEDA, a Municipal Corporation, Complainant, vs. PEOPLES WATER COMPANY, a Corporation, Defendant.	Case No. 617.

A. F. St Sure, City Attorney, for complainant.
A. G. Tasheira for defendant.

DEVLIN, Commissioner.

O P I N I O N

This action was commenced by City of Alameda, a municipal corporation, filing a complaint with this Commission alleging, among other things, the corporate existence of the municipality, complainant; that defendant is a corporation duly organized and existing under the laws of the State of California and doing business in this State; that for a long time prior to the filing of complaint, defendant has been and now is "engaged in the business of supplying water for domestic, industrial and municipal purposes, including the purpose of fire protection, to the City of Alameda and to the citizens thereof and residents therein and to certain other municipalities within the County of Alameda, State of California. That defendant is the only public utility furnishing water for any purpose in the City of Alameda". At the hearing, under leave, complainant amended its complaint by further alleging "that defendant has on hand an adequate supply

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of water for the purposes herein mentioned".

In paragraph IV of the complaint, complainant alleges that during the period referred to in paragraph III thereof (the period during which defendant was so engaged in such business) defendant installed and maintained certain fire hydrants with connecting pipes and mains in and upon the streets of the City of Alameda and has furnished and supplied to complainant, for a valuable consideration, through said hydrants and through its pipes and mains connecting therewith water for the purpose of protection against fire and for the flushing of gutters and sewers and for the watering of streets.

Paragraph V of said complaint alleges that the City of Alameda is a community having a population of about 25,000, which population is steadily increasing. That in said City new frame dwelling houses have been and are being erected at the average rate of about 300 in each year; that by far the larger part of the new dwelling houses have been constructed and are being constructed upon tracts of land previously unoccupied by any buildings and with respect to which no service of water has been required prior to the erection of such dwelling houses. Complainant alleges that although often requested by complainant, defendant has refused and does now refuse to lay and install mains, pipes and hydrants and to supply and furnish water for purposes of protection against fire in these districts or portions of the City of Alameda in said complaint particularly set forth; alleging further that such requests of complainant have been in all particulars identical with the prayer of said complaint.

Complainant, in paragraph VII of its complaint, alleges that in a portion of the City of Alameda bounded by Central Avenue, Burbank Street, Portola Avenue and Eighth Street, there are 52 frame buildings having street frontages, which said buildings are occupied by approximately 260 persons; that defendant has

installed a 4-inch water main on Central Avenue and that in order to provide adequate fire protection for this portion of the City it is necessary that a 4-inch water main be laid from said main southerly on Burbank Street, westerly on Portola Avenue and Northerly on Eighth Street connecting with said main on Central Avenue, and that certain hydrants connecting with said main be installed at points designated in said paragraph VII.

At the hearing, complainant stated that since the complaint was filed the defendant has complied with all demands of complainant contained and alleged in paragraph VII. There is, therefore no issue concerning these allegations.

Paragraph VIII of the complaint alleges in substance that in the portion of said City of Alameda bounded by Garfield Avenue, High Street, Liberty Avenue and Fernside Boulevard, there are 151 frame buildings having street frontages, which said buildings are occupied by approximately 750 persons. That in order to provide adequate fire protection for the portion of said City in this paragraph referred to, it is necessary that a 6-inch water main be laid in Garfield Avenue and in Liberty Street from High Street to Fernside Boulevard, and that a 4-inch water main be laid in Fernside Boulevard connecting therewith, and that fire hydrants connecting therewith be installed as follows:

1 hydrant 500 feet easterly of High Street;
1 hydrant at the intersection of Garfield Avenue and Fernside Boulevard;
1 hydrant at the intersection of Liberty Avenue and Fernside Boulevard;

and also that a 6-inch water main be laid in Central Avenue from High Street to Fernside Boulevard and that fire hydrants connecting therewith be installed as follows:

1 hydrant 500 feet from High Street;
1 hydrant at the intersection of Central Avenue and Fernside Boulevard,

all as shown on map filed with the complaint.

Paragraph IX of the complaint alleges that all of the portions of said City of Alameda fronting on the streets or portions of streets in said paragraph IX referred to are closely built up and more or less densely populated, and that in order to afford protection against fire in said districts it is necessary that pipes, mains and fire hydrants be installed along and at certain places and points sixteen in number, which places and points are designated from (a) to (p), inclusive.

At the hearing it was stated by complainant that subdivision (d) of paragraph IX, which alleges the necessity of a 6-inch main in Bay Street from San Antonio Avenue to the southerly end of said street with a hydrant 600 feet southerly from San Antonio Avenue and also a hydrant at the southerly end of said street, has been partially satisfied inasmuch as the defendant has installed a 4-inch main with hydrants.

A 4-inch main has also been installed with hydrant at the place and point designated in subdivision (k) of said paragraph IX, although the complaint asks for a 6-inch main at this place.

Paragraph X of the complaint alleges that in the streets or portions of streets of said City of Alameda in said Paragraph X referred to, water mains have already been installed and are now maintained by defendant, and that in order to afford adequate protection against fire in the districts of said City fronting upon said streets or portions of streets, it is necessary that the fire hydrants be installed at each of the points or locations set forth in said paragraph X, comprising 14 in number.

At the hearing complainant stated that hydrants had since the filing of the complaint been installed at all of the 14 points designated in said paragraph X.

Complainant in its prayer asks that defendant be ordered and directed, first, to lay and install water pipes, water mains and fire hydrants in said City of Alameda in each and every location in said complaint set forth; and, second, to supply to complainant for a reasonable compensation through and by means of said water pipes, water mains and fire hydrants, when so laid and installed, all water requisite for protection against fire in the several districts referred to in said complaint under an adequate head or pressure.

The defendant, after due service of a copy of the complaint, filed written objections to said complaint pointing out the following alleged defects therein, namely, that the matters complained of in said complaint and the relief prayed for therein are matters not within the jurisdiction of this Commission to be heard or passed upon by this Commission, and that said complaint does not establish a prima facie or any case to be heard by this Commission, and that it is not within the power or authority of this Commission to grant the relief prayed for.

Thereafter, pursuant to direction from this Commission, defendant filed its answer wherein it alleged that the complaint herein is substantially in effect a complaint against defendant for not having laid and for not maintaining mains of sufficient size to furnish adequate fire protection to complainant. That said complaint nowhere alleges that the supply of water furnished by said defendant to said complainant or the inhabitants thereof is insufficient for domestic purposes.

Defendant also denies that it is under any liability, duty or obligation by reason of the law or otherwise to lay and maintain pipes in the City of Alameda for the purpose of furnishing fire protection to said City or to the inhabitants thereof; and in that behalf defendant alleges that the sole duty and obligation resting upon defendant as a public service corporation

and owing by it to the said City of Alameda and to the inhabitants thereof is to furnish a sufficient supply of water for domestic purposes and for no other purpose.

The case was set down for hearing for January 14, 1916. When the matter was called for hearing discussion arose between counsel for the respective parties as to the scope that the hearing should take at this time, it being agreed that if the Commission should conclude that it had no jurisdiction to order the extensions of mains and installation of hydrants for fire protection purposes that it would be idle to have estimates made by engineers and the other attendant work which would be involved.. With this end in view it was stipulated that with the exception of certain evidence which is hereinafter referred to as having been introduced at said hearing, that such hearing be restricted to presentation of the legal questions involved touching the jurisdiction of the Commission in the premises; it being further stipulated that when adjournment of said hearing should be had that it would be with the express understanding that if the Commission should decide that it had no jurisdiction, that final submission of the entire matter would be considered as of the date of adjournment of said hearing of January 14th; if, on the other hand, the Commission, after consideration of the evidence introduced at said hearing and the arguments of counsel, should be of the opinion that it had jurisdiction in the premises that then the matter should be set down for adjourned hearing for the purpose of receiving such additional evidence as might be introduced by the parties and by the Commission.

In my opinion, for the reasons hereinafter stated, this Commission has no jurisdiction to grant the relief prayed for in the complaint, and under the stipulation referred to the matter was finally submitted on said 14th day of January, 1916.

At the hearing it was expressly admitted by counsel for complainant that the supply of water for domestic purposes is sufficient and that there is no complaint at all as to domestic services.

Complainant introduced in evidence copy of Ordinance No. 254, as same appears at page 312 of Ordinance Book No. 1, Town of Alameda. Said Ordinance reads as follows:

> "The People of the Town of Alameda do ordain as follows:-
>
> "Section 1. The right is hereby granted to R. R. Thompson and his assigns to lay down and maintain in all or any of the streets of the Town of Alameda for the term of fifty years, pipes and conduits and connections therewith for the purpose of supplying the town and its inhabitants with water; provided, that such pipes, conduits and connections shall be laid down and maintained under such regulations as the municipal authorities of said town shall from time to time prescribe. And provided that this grant is made upon condition that the said town shall have the right to regulate the charges for water furnished to said town and its inhabitants in accordance with the constitution or the State. And provided also that said Thompson or his assigns shall furnish and connect with said pipes, such reasonable number of hydrants and fire plugs, and at such places as may be prescribed from time to time by the Corporate authorities of said town, and provided further, that if said Thompson or his assigns shall refuse or neglect to furnish and connect such hydrants and fire plugs within a reasonable time after being duly notified so to do, then all rights, privileges and franchises hereby granted shall cease and be forfeited."

Evidence of the fact that said Ordinance was passed by the Board of Trustees of the Town of Alameda at the regular meeting of said Board, held on the 27th day of April, 1880, was also introduced.

It was admitted that the City of Alameda, complainant, was incorporated under a freeholders' charter in 1907 and is the successor of the Town of Alameda incorporated by special act of the Legislature approved February 21, 1878, and as such has succeeded to all the property and rights of the Town of Alameda.

It was also admitted that the defendant has acquired all the property of the former individuals or companies supplying said City of Alameda with water, which admission included the properties of said R. R. Thompson named in said Ordinance No. 254; and that the defendant, by mesne conveyances, became the assignee of whatever franchises or interest in franchises said Thompson had in the City of Alameda. Defendant in so stipulating, however, contended that it is not operating under said Thompson franchise but under the so-called constitutional franchise (Sec. 19, Art.XI, Constitution of 1879). It was admitted that defendant had on hand adequate supply of water for all the purposes contained in the allegations of the complaint made by amendment at the time of the hearing, in the following language:

> "That the defendant has on hand an adequate supply of water for all the purposes herein mentioned."

except in so far as such allegation would include an allegation that defendant had on hand an adequate supply of water for fire protection, and to this part or such allegation defendant asked and was granted leave to amend its answer by denying same.

With the record containing evidence, admissions and stipulations as above set forth, counsel for the parties addressed themselves to the legal questions involved. Counsel for complainant urged, first, that the so-called Thompson franchise was the franchise under which defendant is now operating in the City of Alameda; that it constitutes a contract between the defendant and the City of Alameda, and becomes the measure of the obligations of the defendant to the City of Alameda and the inhabitants thereof; second, that even in the absence of such franchise, and even if the Thompson franchise were not operative and that defendant is and at the time of taking over the properties of Thompson water system it was operating under a constitutional franchise, that the obligation of making the extensions and erecting the

hydrants and doing the other things prayed for in the complaint still remains.

Defendant, on the other hand, contends that even though the Thompson franchise were assigned with other properties formerly owned by Thompson, and the defendant, by mesne conveyances, became the owner thereof, that the Thompson franchise was of no value and that the act of the Board of Trustees of the Town of Alameda in enacting the ordinance granting same was void; that the defendant entered the City of Alameda as a public water utility under the so-called constitutional franchise, citing in support of its position the case of Russell vs. Sebastian, 233 U.S. 205.

In this contention defendant seems to have ample support. In 1880, the year that said franchise was granted to Thompson and at which time Thompson commenced his operations of the water system at Alameda, that part of Section 19 of Article XI of the Constitution which relates to the question under discussion read as follows:

> "In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, or other officers in control thereof, and under such general regulations as the municipality may prescribe for damage and indemnity for damage, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas light or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof."

It would certainly seem clear from this language that the Constitution conferred upon Thompson the right to lay his water pipes in the streets of the City of Alameda subject only to such restrictions as are imposed by the Constitution and legislature. This is the interpretation placed upon this section of the Constitution by the Supreme Court of this State in several cases.

In People vs. Stephens, 62 Cal. 209, the above section of the Constitution was construed by the Court to be a direct grant from the people to the persons therein designated of the right to lay pipes in the streets of a city for the purposes specified, without waiting for legislative authority or being subject to any restrictions from that branch of the government.

The case of Pereria vs. Wallace, 129 Cal. 397, - a case wherein it was held that the Act of 1897, providing for the sale of franchises, in so far as it attempted to provide a method of sale of franchies for the purpose of supplying municipalities with light or water, was unconstitutional - declared that franchises for the purpose of supplying municipalities with light or water were subject only to the regulations and conditions imposed by the Constitution.

In re Johnston, 137 Cal. 115, the Court in a habeas corpus proceeding discharged petitioner Johnston on the ground that an ordinance of the City of Pasadena, passed December 17, 1901, was unconstitutional. The ordinance made it unlawful for a person, firm or corporation to lay down any pipe, conduit or connection therewith in any public street in said city for the purpose of supplying the city or its inhabitants with fresh water or gas used exclusively for illumination, or with other illuminating light, without first obtaining, in the manner prescribed in the ordinance, a permit from the superintendent of streets. The ordinance also provided the manner in which said permit should be obtained, and the petitioner, Johnston, applied for such permit but the superintendent of streets refused to grant same. Thereafter, Johnston, acting for the Valley Gas and Fuel Company, whose employe he was, after notice given of the time he would commence work, commenced using the streets for the purposes theretofore named. He was thereupon arrested and charged with the crime of misdemeanor in violating said ordinance. The Court, after quoting Section 19 of Article XI of the Constitution, said:

"The only limitations upon the privilege (that of using the streets for the purpose of laying the gas pipes referred to) are those contained in the language in which it is granted, viz. that the work shall be done 'under the direction of the superintendent of streets or other officer in control thereof' and 'under such regulations as the municipality may prescribe for damage and indemnity for damage. Upon a compliance with these conditions any individual or company duly incorporated for such purpose is given the privilege of using the public streets and thoroughfares thereof and of laying down pipes, and conduits therein so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas light or other illuminating light, or with fresh water for domestic and all other purposes.'"

....

".....The designation of 'damage and indemnity for damage' as the subject upon which the municipality may prescribe regulations in regard to laying the pipes is a limitation upon its authority over the matter and a prohibition from prescribing regulations upon any other subject connected with the exercise of the privilege. When the sovereign authority of the state either in its constitution or through its legislature has created a right and has expressed and defined the conditions under which it may be enjoyed it is not within the province of such municipality where such right is sought to be exercised or enjoyed to impose additional burdens or terms as a condition to its exercise."

In the case of Town of St. Helena vs. Ewer, 26 Cal. App. Rep. 191, the Court held that a municipal corporation has no authority to require the grantee of a franchise for supplying a municipality with water to pay any part of the gross proceeds of the franchise as a condition to its enjoyment; holding further that by Section 19 of Article XI it was intended that there should be no restriction upon competition in supplying municipalities with such necessities. Other cases to the same effect are City of South Pasadena vs. Los Angeles, etc., Co., 109 Cal. 315; Clark vs. Los Angeles, 160 Cal. 30; Hanford vs. Hanford Gas Company, 169 Cal. 749.

There is, however, very serious doubt as to whether or not the Thompson franchise itself obligated the grantee or his assigns to make extensions of mains or to increase the size thereof for fire or other municipal purposes. That part of the Thompson franchise which relates to the question of furnish-

ing water for fire purposes reads as follows:

> "And provided also that said Thompson or his assigns shall furnish and connect with said pipes such reasonable number of hydrants and fire plugs, and at such places as may be prescribed from time to time by the corporate authorities of said town, and provided further, that if said Thompson or his assigns shall refuse or neglect to furnish and connect such hydrants and fire plugs within a reasonable time after being duly notified so to do, then all rights, privileges and franchises hereby granted shall cease and be forfeited."

It will be noted that there is no requirement for or referencen to extensions of mains, or increase in size thereof for fire protection or other municipal purposes.

As previously appears, it was admitted by complainant that the hydrants asked for in the complaint had been erected since the complaint was filed. It is quite obvious, therefore, that the defendant admits its obligation to provide hydrants on its mains as they now exist or as they may be required for supplying water for domestic purposes; and it was in fact conceded by counsel for defendant that this Commission has authority to direct defendant to install hydrants on existing mains where those hydrants are necessary for the ordinary uses of hydrants--the ordinary uses of hydrants being beyond the mere purpose of fire protection--provided the Commission considers that it is a reasonable extension of the service.

It would seem, therefore, that with the installation of the hydrants asked for in the complaint, and the defendant conceding the right of the Commission, under the circumstances referred to, to require the installation of hydrants for municipal purposes on existing main or mains which may in future be laid for domestic purposes, that the question now presented is narrowed to the jurisdiction of the Commission to require the

extension of mains or the increase in size thereof for fire protection solely.

The case of Lewis vs. Peoples Water Company (Opinions and Orders of the Railroad Commission of California, Vol. 3, p. 416), which opinion was rendered by Commissioner Thelen, and treats very exhaustively this question, was frequently cited and referred to by both parties. It would serve no good purpose to here again review the authorities or to repeat the reasons assigned by Commissioner Thelen for his decision in that case to the effect that the Commission has no jurisdiction on the complaint of an individual to order a water company to increase the size of its mains solely for the purpose of furnishing water for fire protection purposes. Suffice it to say that in that decision Commissioner Thelen quotes from the cases of Spring Valley Water Works vs. City and County of San Francisco, 52 Cal. 111; San Diego Water Company vs. City of San Diego, 59 Cal. 517; Spring Valley Water Works vs. San Francisco, 61 Cal. 3; Town of Ukiah vs. Ukiah Water & Improvement Company, 142 Cal. 173, and the later case of Niehaus Bros. Co. vs. Contra Costa Water Co., 159 Cal. 305, and other cases decided by the Supreme Court of California and other states in support of the rule declared in the Lewis case.

Counsel for complainant, would, however, differentiate between the facts under which the decision in the Lewis case was rendered and the facts in the present case, pointing out the restrictive language employed by Commissioner Thelen in the Lewis case in the concluding paragraph of that decision, as follows:

"While in reaching a conclusion in this case it has been necessary to examine the authorities at some length, it should be distinctly understood that the only point decided is that this Commission has no authority to compel the Peoples Water Company to increase the size of its pipes on Prospect Avenue, Berkeley, from two to six inches under the circumstances revealed in the pleadings, for the sole purpose of furnishing additional fire protection to the plaintiff."

Complainant urged that by the employment of such language the Commission intentionally refrained from holding that a complaint of a municipality would not lie against a water utility for the extension of its mains exclusively for fire purposes.

The language employed by Commissioner Thelen in the Lewis case was very appropriately limited to the facts then before the Commission, but certainly throughout that opinion and in the decision there was nothing indicating that the fact that an action is brought by a municipality would induce a greater obligation being imposed upon a water utility in the matter of fire protection than in an action brought by an individual; and to my mind there is no reason for a different rule.

Counsel for complainant stated that he relied upon the cases of Town of Ukiah vs. Ukiah Water & Improvement Co.; Russell vs. Sebastian; Lukarawka vs. Spring Valley Water Co.;169 Cal. 318; the Niehaus case and Section 549 of the Civil Code. In my opinion there is nothing in any of the cases relied upon by complainant in support of its position, the most of which cases were reviewed very carefully in the Lewis case.

Section 549 of the Civil Code which employs, in so far as it relates to the questions herein involved, the same language as did Section 4 of the Act of 1858, dealing with the same subject, reads as follows:

> "All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The Board of Supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state."

The case of Spring Valley Water Works vs. San Francisco, supra, held that Section 1 of Article XIV of the present Constitution had repealed Section 4 of the Act of 1858 in so far as this section made it the duty of a water company to supply water to municipalities for municipal uses free of charge.

It would seem that the Legislature in enacting the Act of 1858 and what was practically the reenactment thereof through Section 549 of the Civil Code, deliberately employed language to impose upon the water corporation a somewhat different obligation in so far as domestic use was concerned and the service to be provided "in case of fire or other great necessity." It will be observed that water corporations "must furnish pure fresh water to the inhabitants thereof for family uses so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means in case of fire or other great necessity, free of charge." Obviously it was intended by the Legislature to require the water utility to exhaust,

if necessary, its supply of water for family uses, but that such a strict obligation was not imposed so far as fire purposes were concerned, and for this reason and for the purpose of fixing a certain limitation upon the obligation of the utility to supply water for fire purposes the language "to the extent of their means" was employed. It would seem to me even in the absence of the rule declared by our Supreme Court and courts of other states whereby water companies, in the absence of contracts, are not held liable for adequate water supply for fire protection, that this language in Section 549 of our Civil Code would interpose itself as a limitation of the obligation. It seems further that a fair interpretation of the language "to the extent of their means" is that the utility having under the mandate of the statute provided water for family uses so long as the supply permits, that such supply for family uses even to the exhaustion thereof is the self-attaching limitation "to the extent of their means". In other words, it would seem that the utility's primary obligation is that of furnishing water for family uses, and that from such supply and within such limitations they are required to furnish water for fire protection.

That the view taken by complainant with regard to the liability of the water company in the absence of contract to provide adequate water for fire protection is not the view generally taken by municipalities is,

I think, evidenced by the fact that San Francisco, Oakland and other cities have constructed their own independent high pressure systems for fire protection and have not urged that the utilities supplying these communities with water are obliged, under the law, to provide pressure, mains and other instrumentalities to meet all demands for fire protection. It should, of course, be remembered that nothing in this opinion is to be construed as declaring that either a municipality or an individual consumer may not contract with a water utility for fire protection, and that then obligations beyond the statutory obligations hereinbefore referred to attach, such obligations to be measured by the terms of such contract. In my opinion no such contract as is contemplated is presented in this case, and the Thompson franchise ordinance even if granted the full strength contended for by complainant, does not by express terms or implication obligate either Thompson or his assigns to extend or enlarge mains solely for fire protection.

In the Lewis case, supra, Commissioner Thelen said:

> "Under the decision in the Niehaus case it seems clear to me that prior to the enactment of the Public Utilities Act there was no duty on the part of the defendant to increase the size of the pipe in Prospect Street, Berkeley, for fire protection purposes."

and after quoting Section 13 (b) and Section 42 of the Public Utilities Act, the Opinion proceeds:

"I can not find in these sections any intention to impose upon a water company any duty with reference to fire protection which did not exist before the enactment of the Public Utilities Act. In my opinion, the effect of these sections is not to add to the duty of a water company with reference to fire protection, but rather to declare that a water company shall perform its full duty to the public in all respects in which it is under obligation to the public and to provide that the Railroad Commission may enforce the performance of these duties. If it had been intended to impose upon a water company additional duties demanding the very large expenditures of money which would be required to rebuild their systems in such a way as to insure adequate fire protection, the legislature would certainly have expressed that intention in specific language clearly indicating its desire. In the absence of such language, I am of the opinion that the Public Utilities Act has not added to the existing duties of water companies with reference to fire protection."

In view of the rule declared by our Supreme Court in the cases hereinbefore cited, wherein it was uniformly held that in the absence of contract a public utility was not liable for loss of property by fire, and in view of the manifest fact that the Public Utilities Act did not alter or change the nature or degree of obligation previously imposed upon water utilities regarding fire protection, it appears to me that under the facts presented herein this Commission has no jurisdiction in the premises.

I recommend the following form of order:

O R D E R

A public hearing having been held in this matter at which time certain evidence was introduced and stipulations entered into between the respective parties and argument presented on the question as to whether or not this Commission has jurisdiction to entertain the above entitled proceeding, and the Commission finding that it has no jurisdiction in this matter,

IT IS HEREBY ORDERED that the above entitled proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of February, 1916.

Max Thelen

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.