

**Public Utility—Light and Water By Railroad Company  
—Public Service Commission, Powers Of.**

Public Service Commission has no authority to compel a railroad company to render a public service in the nature of light, which it has voluntarily assumed.

Sept. 8, 1919.

Montana Public Service Commission,  
Building.

Gentlemen:

I have your letter of August 1st, requesting an opinion upon the proposition of whether or not the Oregon Short Line Railroad Company in supplying water and electric light at Lima, operates a public utility, and whether or not the railroad may be compelled by your Commission to continue furnishing water and light, and even increasing its plant for this purpose.

The Act creating the Public Service Commission and defining a public utility contemplates a utility which holds itself out to the public for the purpose of furnishing the commodity which it controls and offers. This question has been decided by various courts, a leading case upon it being *Cawker vs. Meyer et al.*, 147 Wis. 320, 133 N. W. 157.

The facts in the case which you present, as I understand them, are as follows: The Oregon Short Line Railroad Company has an electric lighting plant in the town of Lima, Montana, constructed primarily for its own use. It also has water tank facilities at this station, primarily constructed and operated for its own use. It appears that for a number of years it has had a surplus of electricity and water which it furnished to the residents of Lima at a given rate, and the residents of Lima were mostly people in the employ of the railroad company. The railroad company has stated, and it appears to be a fact, that it distributed the commodity not so much from a commercial standpoint as to accommodate the people living in Lima. Due to the drought in Montana the present year, and due to the fact that the railroad has extended its own capacity and requires more water and electricity for its own use, it is considering the advisability of stopping further distribution of water and electricity. Your question is whether or not the Public Service Commission has power to compel the railroad company to continue as heretofore. The controlling factor in this case which I deem to be conclusive, is that the railroad company is incorporated for the purpose of owning, controlling and operating a railroad and such franchise or franchises as are incident to railroad business. To furnish water and electricity to the public is not incident to railroad operation, and in doing so the railroad has violated the provisions of its charter; that is to say, it has gone beyond the powers granted to it by its charter giving it a corporate existence under the laws of our state. Its own stockholders could prevent the company from further continuing to distribute water and electric light. The Attorney General, under such circumstances, might bring an action dissolving its corporate charter upon the ground that it is violating such charter. Under these circumstances, the Public Service Commission has no power to compel the railroad com-

pany to render a service which, by its own charter and under the laws, it has no right to render. From an economic standpoint as it exists at Lima, the matter of furnishing water and light to the residents of that town may be a very meritorious thing for the railroad to do. The better method for the citizens of that town to adopt would be one of co-operation with the railroad, under the circumstances as they exist.

Respectfully,

S. C. FORD,

Attorney General.