

**Public Utilities, Discontinuance Of—Railroad Companies
—Public Service Commission, Authority Of, Over.**

A railroad company cannot discontinue the operation of light and water utilities without obtaining the permission of the Public Service Commission.

November 11, 1919.

Montana Public Service Commission,
Building.

Gentlemen:

I have your letter written some time ago, in which you request an opinion upon the proposition of whether or not the Oregon Short Line Railroad Company can discontinue its business of supplying water and electric light to Lima, Montana.

As I understand it, the Oregon Short Line Railroad Company at Lima, Montana, is generating electricity for its own purposes and in addition for a number of years has supplied the inhabitants in and about Lima with electricity for domestic and town purposes. It, further, has been supplying the inhabitants of the town of Lima generally with water for domestic purposes. Recently, the railroad company has intimated that it intends to discontinue furnishing to the public both the commodity of electricity and water. The question now arises whether or not the railroad company can do so without permission of your commission.

I have examined this question from the standpoint of the Public Utilities Act, it being Chapter 52 of the Laws of 1913, and from the standpoint of Public Utilities Acts passed by other states and interpreted by the courts of the several states. I have not found any decisions holding that a public service utility may not discontinue the supplying of a commodity in any event. I have, however, found decisions of the courts of a number of states to the effect that the public service commissions of said states have the control and supervision of all public utilities designated by the acts even to the extent of requiring such utilities to increase their capacity and furnish reasonable service and also to prevent such utilities from discontinuing service without an order of the public service commission. It is generally held that regulation of public utilities by public service commissions is an enforcement of the police power which the state has in the protection of the people in their welfare, health and convenience.

Section 3 of the Public Utilities Act defines the term "public utility" and includes "every corporation both public and private, company, indi-

vidual, association of individuals, etc., that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service whether within the limits of municipalities, towns and villages or elsewhere; * * * and the public service commission is hereby invested with full power of supervision, regulation and control of such utilities, etc.”

The railroad company for some time past and at the present time has furnished water and light to all persons within reasonable range desiring said commodities and applying for the same. Under the words of the Act and consideration of the situation, it must be held that the railroad company has been and is operating a public utility within the meaning of said Act.

In 1911, the Supreme Court of Wisconsin had for consideration the case of *Cawker v. Meyer*, 147 Wis. 320, 133 N. W. 157. The facts in this case were as follows: The plaintiff had erected a large building in the city of Milwaukee, which was devoted to offices leased to the general public. This building was equipped with a heating and lighting plant. It was found that the plant generated more heat and light than was required by the building. The owners, therefore, made a contract with three adjoining property owners to heat and light their buildings from the plant. In 1907, the State of Wisconsin passed an act known as Chapter 499, Laws of 1907, creating a public service commission and empowering said commission to regulate public utilities. The words of said Act, so far as is here material, read as follows: “The term public utility shall mean and embrace every corporation, etc., * * * delivering or furnishing heat, light, etc., to or for the public.” The Act required the public service commission to compel persons within the scope thereof to furnish and file reports. The owners of said plant in this case refused to file or furnish such reports, claiming that they did not operate a public utility within the scope of said Act. The case reached the Supreme Court of Wisconsin where it was held that the owners of the plant were not required to furnish the reports as their plant was not one coming within the scope of the Act. The decision, of course, was based upon the words in their Act providing “delivering or furnishing of heat, light, etc., to or for the public.”

The definition found in the current dictionary of the word “public” was adopted, which defines the word: “Of or belonging to the people at large; relating to or affecting the whole people of a state, nation or community at large; not limited to any particular class of a community.” (Century Dictionary.)

By comparing the Wisconsin Act with the Montana Act, a difference in the wording will be discerned from both the standpoint of the Act and the facts involved. The Montana Act defines a public utility as a plant “furnishing for or to other persons.” The Wisconsin Act defines it as “one furnishing to or for the public.” In the Wisconsin Act the plant in question furnished the commodity only to three other buildings in the city of Milwaukee at a time when there were utilities engaged in that

particular business and ample to supply the persons in question. At Lima, we have the situation of the railroad company being the only utility furnishing the commodities and said utility has been furnishing such commodities for a considerable length of time to the public generally. I make the comparison between the Wisconsin case and the Montana case simply to point out the scope of the Montana law and to more clearly show the surrounding circumstances.

The Supreme Court of Wisconsin in its opinion further held as follows: "Every case will depend upon its own peculiar circumstances and must be tested by the statute in the light of such facts and circumstances. The law should receive a construction that will effectuate its true purposes however difficult that may be."

It is generally held that the question of remuneration and inconvenience to the public utility is not the only one to be taken into consideration by a public service commission. The question of health, convenience and consequences to the public generally is just as vital as is the question of remuneration and convenience to the utility. *Munn v. Ill.*, 94 U. S. 113, 24 L. Ed. 77; *Selectman etc. v. Citizens' Elect. Ry. Co. (Mass.)* 85 N. E. 419; *State v. Postal Telegraph Co. (Kans.)* 150 Pac. 544; *State v. Mo. Pac. Ry. Co. (Kans.)* 92 Pac. 615.

It is further generally held by the courts of the several states and the public service commissions that a public utility can not discontinue its service without first obtaining permission from the public service commission in charge of such matters. It is held that a lack of remuneration does not justify a utility in discontinuing its service. If its remuneration is not sufficient, it must apply to the commission for increased rates. In fact, the courts held that the public utility must do everything within its power to successfully operate its plant and give the public an adequate service before a commission would be justified in permitting such utility to discontinue service. *Re Tidewater and W. R. Co.*, P. U. R. 1917-E, 798; *Pans v. Central Ill. Public Service Com.*, P. U. R. 1916-B, 177; *In re. Munce Electric Light Co.*, P. U. R. 1918-B, 194; *State v. Mo. Pac. Ry. (Kans.)* 92 Pac. 615.

Under the circumstances as you have presented them to me, I am of the opinion your commission can compel the Oregon Short Line Railroad Company to continue the service it is now furnishing to the inhabitants of the town of Lima and even compel it to increase its capacity if necessary.

Respectfully,

S. C. FORD,

Attorney General.