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DEC 22 1913

PORS OFF.

Seattle, Wash. December 1, 1913.

Hon. Geo. F. Cotterill,
Mayor of The City of Seattle,
City Hall,
C i t y .

Dear Sir:

The Legal Department, obedient to charter and custom, herewith transmits its statement of the business transacted therein from the 10th day of December, 1912, to the 1st day of December, 1913, together with some recommendations.

PUBLIC UTILITIES ACT.

Over a year ago, the Seattle Lighting Company filed a new schedule of rates with the Public Service Commission of the state in which it proposed to increase the twenty-five cent minimum for gas to a fifty cent minimum. The City duly objected to such increase and a hearing thereon was held before the Commission. The Commission expressly found that neither the City nor the Company "produced any convincing evidence tending to show either the reasonableness or the unreasonableness of the twenty-five cent or the fifty cent minimum". The only other evidence before the Commission was that of its own engineer, who reported that about forty-three cents would be a reasonable minimum. The Commission thereupon dismissed the case upon the sole ground that the City "has failed to prove the unreasonableness of the minimum charge challenged". The City then removed the case to the Superior Court of this city where Judge Albertson reversed the Commission and sustained the contention of the City. From such final decree, the Company appeal-

ed to the Supreme Court. This court reversed the lower court and holds that the courts of the state have no right to interfere with the discretion of the State Commission and that the burden of proving the unreasonableness of any such rate is upon the City, and, in the absence of such or other proof, any increased rate filed by a public service corporation with the Commission automatically goes into effect.

It is obvious that the effect of this decision is very far reaching and of first importance. The City contends that the law imposes upon the Commission the clear and undoubted duty to expressly find that every rate or charge of any kind made or received by any such company is "just, fair and reasonable" before it has either the right or the authority to enter a final order, regardless of whether or not a complaint or protest may be filed by the City or anybody else.

The people created this Commission and the law under which it operates for the express purpose of correcting certain evils and mischiefs then existing, and to prevent their repetition or abuses of any kind growing out of the business of any public service company, and that the Commission, "of its own motion", would conserve the interests and general welfare of the people.

It is a fact that the Commission entered its final order permitting the fifty cent minimum without any evidence upon which to base it. The Supreme Court of the United States, as recently as last February, discussing the right of the Interstate Commerce Commission to enter an order similar to this one, among other things, said:

"A finding without evidence is arbitrary and baseless,
* * * and is beyond the power of the Commission. An
order based thereon is contrary to law, * * *."

This Commission has no more right to act in an arbitrary

or capricious manner, without evidence, than any other public body or branch of government. It is familiar law that no official or public body has a right to so act and that the courts have a right to interfere or prevent such action.

We are preparing a petition for a rehearing before the full bench and shall prosecute the same with great vigor.

The "strap hanging" case was argued before the Supreme Court some time ago and the court informed us that it could not agree and the case was, therefore, re-argued before the full bench last October and we have not yet received a decision. The contention of the City is that prior to any action by the Public Service Commission relating to the business of public service corporations, the City has the right to act in and regulate such matters.

Among other things, this law of 1911 provides a maximum fare of not more than five cents for a ride in the city and that any officer or agent of any railway company who violates this provision is liable to criminal prosecution. In the case of State v. Crawford, 32 W. D. 183, the Supreme Court holds that this part of the law is absolutely void.

The City petitioned the State Commission to compel the electric company to extend its line on Fourth Avenue South to Holgate Street. Hearing was had thereon and, based upon an opinion from the Attorney General, the Commission dismissed the complaint on the sole ground that, under said Act of 1911; it has no jurisdiction or power over the matter of street car extensions. We shall take an appeal from the order of the Commission to the Courts. We also have a criminal case now pending in the court in which the City seeks to compel a street car extension on East

Union Street. I recommend also that the City Council pass another proper ordinance seeking to compel an extension on the West Woodland line upon which we may base a civil action. We desire to go into court in a case where the facts to justify an extension are the most favorable. We will then press all three of these cases to final argument in the Supreme Court in the coming may term so that we may secure decisions thereon before the meeting of the coming Legislature.

The City petitioned the State Commission for an order to restore upon the street cars the sale of tickets. A hearing was held thereon and the case hotly contested and the Commission sustained the contention of the City and entered its order requiring the restoration of the sale of such tickets on the cars. The Company has again taken this matter into court and will continue to fight to the last ditch.

Pursuant to resolution of the Council, this department has petitioned the State Commission; (1) to make a physical valuation of all the properties of the Seattle Lighting Company used in the making and sale of gas within the city; and (2) to inquire into the reasonableness of the rates, practices and customs of said company.

Pursuant to another resolution of the Council, this department has also petitioned the State Commission; (1) to make a physical valuation of all the properties used by the Puget Sound Traction, Light & Power Company in the operation of its street car systems within the city; and (2) will later petition the Commission to inquire into the reasonableness of the rates of said company.

The evidence of the latter company in the car ticket hearing showed that its properties within the city are valued at about twenty-four million dollars, and, including its properties in Bellingham and in the vicinity of Seattle, at about sixty-two million.

The evidence of the gas company will probably show the value of its properties somewhere from twelve to twenty million dollars. These figures and other facts clearly show the far reaching importance and magnitude of the issues involved; in fact, all the foregoing matters are of prime importance to our people and city.

It is a notorious fact that the public service corporations of this state and some students of the subject are doing all they can to bring all municipally owned utilities under the sole control and power of the State Commission and to strip cities of every vestige of such control, at least in regulating the rates thereof. A prophetic gift of a high order is not required to easily foresee that the rates now enjoyed by the people and given to them by municipally owned utilities will be increased if the right to regulate such rates is ever lodged with the State Commission. In the meantime, these companies, some times openly and sometimes covertly, make their assaults against city owned utilities and seek to cripple and hamper them as much as possible. It behooves all the friends of city owned utilities to buckle on their armour and constantly fight against the vicious theory which would place them under the sole control of the State Commission.

GENERAL MATTERS.

(1) - Changes in City Charter:

A serious study of municipal government for many years and my practical experience with our own in all its aspects for several years have lead me to very firm conviction as to the wisdom of certain changes in our city charter. These changes are not recommended now, for the reason that the people may desire to adopt the Commission or some other plan of government. Inasmuch as the people at the coming municipal election will vote on such form of government, we feel that it is our duty to withhold such recommendations at this time. We believe that the chance to vote upon the Commission form of government should be real and the popular will thereon expressed entirely untrammelled and unobstructed by side issues. That such recommendations would tend to divert the popular mind and produce confusion is obvious. In the event, however, that the people shall not adopt such form of government, we will then feel free after the election to transmit such recommendations.

(2) - Minimum Wage Amendment:

We had hoped that the Supreme Court would pass on the validity of this amendment in a case before it but the decision turned on another point. Several abuses have grown up in connection with the enforcement of this charter provision. It is very

hard to secure competent evidence for the obvious reason that the men who are employed are fearful of losing their jobs if they testify and if they are not employed they are shifting about from city to city.

(3) - Police Court:

About two years ago, in my report, I pointed out the wisdom of hearing girls who were arrested at the chambers of the judge, thereby cutting off the chance for the curious and vulgar to hear and see. This suggestion has been followed out with highly satisfactory results. In the same report, I recommended a municipal farm and I am glad to note that the present state of the public mind seems to favor such a place and system.

The work of the police court has materially increased during the past year. The City Attorney has tried about 13,200 cases, or an increase of about 47%, and the fines are about \$60,700., or an increase of about 23% over last year. This increase is due to many causes, among which is the general depression. So far as advised, the work of this court and the City Attorney under existing conditions has been very satisfactory. The stream of humanity which wearily pours its way through this court affords a very fruitful source of study for the real student of sociology, and for the study of causes and remedies for many of our social conditions.

The treatment and attitude of the City toward at least one-fourth of all the persons who come before this court is crude, wrong and unwise. The City Attorney informs me that over one-fourth of such persons should not be sentenced to jail at all but should be accorded other proper treatment and placed in some sort of environment which is well calculated to encourage and develop the right sort of character.

x A careful study of universal history will show that mankind is constantly dealing with effects and, in a quack-like way, prescribing mere palliatives and quack remedies without any effort or design to cut out, root and branch, the causes which produce the conditions. A luminous example of the truth of this statement is found in Seattle's handling of the persons above referred to. We make no study or analysis of the causes and provide no proper place looking to the reformation of these people, but permit the causes producing them to abide and keep grinding away in the old and barbarous fashion. We have constantly coming before this court persons addicted to the excessive use of liquor and chronic users of cocaine, morphine and opium, and who are placed in the city jail nearly two-thirds of every year. They are arrested, tried and placed there for eight months or more of every year. They are consigned to such life for periods varying from thirty to ninety days; many of them are arrested several times during the year. There is very little in our present system conducive to their reform. It is primary among social students that redemption of surroundings is a necessary condition of redeeming these persons. If you would improve these men, you must improve their environment. They should also be subjected to medical, as well as judicial treatment because they are diseased. Seattle boards these men without any material return from them, either in the way of self-support or better character. A municipal lodging house and also a municipal farm should be established which would materially aid in minimizing such evils and aid in making these persons valuable citizens and turning them back into the loins of society.

(4) - Weights and Measures:

The decision of the Supreme Court in the case of Seattle v. Goldsmith, 73 Wash. 54, judged by the issues involved and the principle settled therein, is of first importance to the City and its people. Among other things, Ordinance No. 26018 requires that "the true net weight or measure of the commodity" shall be imprinted upon the package or other thing containing the commodity offered for sale. Salt and raisins were packed in California and the net weight stamped thereon at such time but lost weight by evaporation and the true weight at the time of sale to the consumer was less than that printed thereon at the time of packing. Defendant was arrested and contended that the ordinance is void and unreasonable, all of which was overruled by the court. The decision is clear cut on all points in favor of the City and will have far reaching effects in the practical enforcement of the ordinance. Said case is considered one of the foremost and leading cases on this subject in the United States.

(5) - Condemnation and other work:

The following report shows that the City now has pending in the courts about fifty condemnation suits, a half dozen of which involve parties varying from five hundred to two thousand three hundred parties and involving from four hundred to eighteen hundred distinct descriptions of land. In addition to the magnitude and volume of such work now pending, we also have about sixty condemnation ordinances in effect, upon which suits have not yet been begun.

Leary Avenue improvement has been pending for some time, due to the fact that two appeals have been taken to the Supreme

Court, the first having been taken by property owners and the second by the City because the lower court placed upon the General Fund \$100,000., in our opinion, contrary to law. We expect a decision thereon soon.

The Empire Way case is now being served. This improvement is perhaps the longest in the history of the City, being about nine miles in length and involving about 2300 parties and 1800 separate descriptions of land and will necessitate the return of about 1800 verdicts.

The most important improvements directly affecting the West Seattle district are the Fauntleroy and West Wait, both of which are completed so far as this department is concerned.

The Rainier Avenue case, being over eight miles long and involving about 3500 parties, has been completed with the exception of the portion relating to the street railway holdings, which is now being tried. Some delay has been experienced in the prosecution of this improvement by reason of the many legal and other difficulties involved.

On account of the vast amount of other work in the Superior Courts of this county and of this class of work, a good deal of delay has been caused, due to the fact that we have been unable to get the courts to hear our cases.

All of the proposed legislation seeking to correct the evils and wrongs of our eminent domain system was consigned to the waste basket by the last Legislature.

We have pending in the courts cases of damages to property due to slides and other causes, outside of condemnation suits, involving the gigantic sum of nearly \$600,000.; and in addition thereto, claims filed against the City involving several thousands of dollars for such damages upon which suits have not yet been initiated.

OTHER GENERAL SUBJECTS.

On December 10, 1912, the date of the last annual report, the following suits were pending and undisposed of in this department:

Condemnation suits, original proceedings	49
Condemnation suits, supplementary proceedings,	29
Damages for personal injuries,	29
Damages to property,	45
Damages other than damages to property and personal injuries,	4
Actions to set aside and restrain collections of assessments,	5
Appeals from assessments levied by City Council	10
Injunction suits,	40
Mandamus proceedings,	9
Miscellaneous proceedings,	49
Suits to quiet title,	10
Suits to recover over against contractors, owners of property or franchises on account of personal injury judgments paid by city,	4

TOTAL - - - - 283

Since December 10, 1912, the following suits and proceedings have been commenced in which the city was a party in interest:

Condemnation suits, original proceedings,	27
Condemnation suits, Supplementary proceedings,	20
Damages for personal injuries,	32
Damages to property,	56
Damages other than damages to property and personal injuries,	5
Actions to set aside and restrain collection of assessments,	9
Appeals from assessments levied by City Council	10
Injunction suits,	19

Carried Forward - - 178

Brought Forward - - - - -	178
Mandamus proceedings,	13
Miscellaneous suits,	41
Suits to quiet title,	6
Suits to recover over against contractors, owners of property or franchises on account of per- sonal injury judgments paid by the City	<u>1</u>
TOTAL - - - - -	239
Actions pending on November 30, 1913	<u>283</u>
Total actions pending during period of this report	522

The following is a statement of actions ended since December 10, 1912, and those still pending on November 30, 1913:

	<u>Ended</u>	<u>Still Pending</u>
Condemnation suits, original proceed- ings,	26	50
Condemnation proceedings, supple- mentary proceedings,	35	14
Damages for personal injuries	28	33
Damages to property,	34	67
Damages other than damages to prop- erty and personal injuries	4	5
Actions to set aside and restrain collection of assessments,	4	10
Appeals from assessments levied by City Council	15	5
Injunction suits	45	14
Mandamus proceedings,	15	7
Miscellaneous proceedings,	49	41
Suits to quiet title	10	6
Suits to recover over against con- tractors, owners of property or franchises on account of person- al injury judgments paid by City,	0	5
TOTAL - - - - -	<u>265</u>	<u>257</u>

PERSONAL INJURY CLAIMS.

	<u>Number</u>	<u>Amount Involved</u>
Claims for personal injuries pending December 10, 1912,	206	\$622,224.42
Claims for personal injuries filed from December 10, 1912, to Nov. 30, 1913,	<u>88</u>	<u>476,060.27</u>
TOTAL - - - -	294	\$1,098,284.69
Claims for personal injuries disposed of from Dec. 10, 1912 to Nov. 30, 1913	84	238,327.52
Total personal injury claims pending December 30, 1913,	210	859,957.17

PERSONAL INJURY ACTIONS.

Pending December 10, 1912,	29	\$138,894.50
Commenced since December 10, 1912,	<u>32</u>	<u>238,432.93</u>
	61	\$377,327.43
Tried and concluded to December 1, 1913,	<u>28</u>	<u>151,177.00</u>
Actions pending Nov. 30, 1913,	33	\$226,150.43

Of the 28 cases tried since December 10, 1912, fourteen cases involving \$78,632.00 resulted in decisions favorable to the City, and in the remaining cases, judgments were given against the City amounting to \$15,301.00. The City resisted successfully 90% of the amount sued for in the personal injury cases tried.

DAMAGE TO PROPERTY

	<u>Number</u>	<u>Amount</u>
Suits pending December 10, 1912,	45	\$427,138.00
Commenced since December 10, 1912,	<u>56</u>	<u>477,570.00</u>
TOTAL covering period of this report	101	\$904,708.00
Tried and concluded to December 1, 1913,	<u>34</u>	<u>368,513.00</u>
Pending Nov. 30, 1913,	67	\$536,195.00

Of the thirty-four cases tried since December 10, 1912, ten cases involving \$139,145.00 resulted in decisions favorable to the City, and in the remaining cases, involving \$229,368.00, judgments were given against the City amounting to \$70,169.00. The City resisted successfully 81% of the amount sued for in the actions for damages to property.

The cases involving damages to property arise through the breaking of watermains, defective sewers, defective streets or sidewalks, changes of grade without Eminent Domain proceedings, slide cases resulting from street grades, and numerous other causes arising out of the extension of various local improvements.

Damages other than damages to property and personal injuries:

	<u>Number</u>	<u>Amount</u>
Pending December 10, 1912,	4	\$4,683.90
Commenced since December 10, 1912,	<u>5</u>	<u>\$7,863.38</u>
TOTAL - - - - -	9	\$12,547.28
Tried and concluded to November 30, 1913,	<u>4</u>	<u>4,018.65</u>
Pending November 30, 1913,	5	\$8,528.63

The four cases tried resulted in judgments against the city amounting to \$1,749.20.

EMINENT DOMAIN.

Since December 10, 1912, twenty-six actions to condemn land for street, park, and other municipal purposes have been tried and concluded. The principal actions tried are as follows:

Seaview Avenue
Queen Anne Boulevard Regrade
Lane Street
North Eighty-second Street
Alki Avenue
Elliott Avenue
West Wait Street
Fauntleroy Avenue
Rainier Avenue
Shilshole Avenue

TOTAL amount of verdicts rendered in con-
demnation suits tried from December
10, 1912 to November 30, 1913, \$985,533.67

Of these cases, judgments have not yet been entered in Rainier Avenue or Fauntleroy Avenue cases and the awards in the Lane Street were rejected by the City Council and the action dismissed.

The principal condemnation suits now pending in this department are Genessee Street, Beacon Avenue, Empire Way, Fairview Avenue North, Fairview Avenue Regrade, Western Avenue, Cedar River Watershed, and the condemnation of the Seattle, Renton & Southern Railway System for a municipal car line.

During the period of this report, 3,726 services were made in condemnation cases of which 2,980 personal services were made by this office at a total cost to the City of approximately \$1,500.00. Had these services been made by the sheriff of the County at the minimum cost of 80 cents per service, it would have cost the City \$2,384.00.

MISCELLANEOUS CASES.

Of 142 miscellaneous actions tried and concluded during the period of this report, 117 cases resulted in decisions favorable

to the City. These actions comprise Injunction, Mandamus, Assessment Roll Appeals, Quiet Title, and numerous other actions not involving a monetary recovery against the City.

There are now pending actions commenced by the City against the Great Northern Railway Company, et al, for \$450,000, damages to the Public Library, caused by the railway tunnel, and twelve actions against various street contractors for the recovery of money erroneously paid to them as interest upon bonds for local improvements.

On November 30, 1913, there were pending in the Supreme Court thirty-three appealed cases, two of which were taken to the United States Supreme Court.

POLICE COURT.

Cases disposed of from December 1, 1912,	
to November 30, 1913, - - - - -	13,234
Fines and forfeitures during said period - - - -	\$60,691.60

OPINIONS.

During the period of this report, 197 written opinions were rendered to the various departments of the City Government.

The volume, magnitude and importance of the work in this department are constantly increasing. Never before in the history of the City have we ^{had} so many questions of such large import as now confront the City. The work relating to public utility matters alone is of stupendous proportion and of prime importance to the people.

This report is only a resume of the work in the department and is not exhaustive in matters of detail but it covers the field sufficiently to show the scope, nature and amount of legal business. Viewed in the light of all the difficulties and conditions surrounding our work in and out of the courts, we,