The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION RELATIVE TO TAXATION BY THE TOWN OF RUSSELL OF THE DAM AND OTHER STRUCTURES OF THE COBBLE MOUNTAIN DEVELOPMENT.

State House, Boston, December 6, 1933.

To the Clerk of the Senate, State House, Boston, Mass.

This report is filed in compliance with the provisions of chapter 11 of the Resolves of 1933, which is as follows:

Chapter 11.

Resolve providing for an Investigation relative to the Taxation of Certain Property owned by the City of Springfield in the Town of Russell and used both for Water Supply and for the Generation of Electricity in Connection with the Cobble Mountain Development, so called.

Resolved, That the commissioner of corporations and taxation, the chairman of the commission supervising the department of public utilities, and the chief engineer in the department of public works, are hereby constituted a special commission, without additional compensation, and are authorized and directed to investigate and report relative to the taxation by the town of Russell of the dam and other structures of the Cobble mountain development, so called, owned by the city of Springfield in said town, and particularly to inquire into the subject matter of current senate document seventy-three and current house document five hundred and thirty-nine, relative to such taxation. The special commission shall inquire into all phases of the use of said dam and other structures both for water supply and for power purposes, including their size and extent in respect to the development of a water supply, and shall collect all
available information concerning the question of such taxation. The special commission shall hold hearings at which all parties interested may appear, may require by summons the attendance and testimony of witnesses and the production of books and papers, and shall report to the general court the results of its investigations and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the senate on or before the first Wednesday in December in the current year. [Approved May 5, 1933.

The members of the Commission, being advised of the requirement placed upon them by the receipt of the printed copy of chapter 11 of the Resolves of 1933, organized with Henry F. Long, Commissioner of Corporations and Taxation, as chairman of the Cobble Mountain Commission, consisting, in addition to the chairman, of Henry C. Attwill, chairman of the commission supervising the Department of Public Utilities, and Arthur W. Dean, chief engineer in the Department of Public Works.

The Commission as so organized held a public hearing, to which all parties interested were requested to appear, in the Mahogany Room of the Municipal Building at Springfield, Mass., at 9.30 in the forenoon on September 25, 1933, which hearing was adjourned for the convenience of the parties interested to a room on the second floor of the Court House in Springfield. At this hearing the town of Russell, through its counsel, John S. Begley, Esq., was heard as to the town’s contention in respect to their position in the subject matter of the resolve. The city of Springfield was heard through its attorney, George F. Leary, Esq. In addition to the presentation of an outline of the position of the town of Russell and the city of Springfield, there was introduced into evidence various publications, reports, maps, blue prints and the like as an aid to the Commission in reaching its conclusions. The public hearing was closed and adjournment had to the site of the Cobble Mountain Development, where particular attention was given by the Commission to a study of the dam which occupies a key position in the argument presented by the town of Russell to substantiate its claim
for consideration of a larger compensation through taxes or otherwise from the city of Springfield. In addition to viewing the property, both as to the reservoir for water supply purposes and the subsequent development of power in connection with the water supply, and the hearing of further oral testimony and statements relative to the position of Russell and Springfield and their respective claims, the Commission adjourned this hearing to such time as the representatives of the city of Springfield and the town of Russell, having put in all of the evidence, desired to argue their relative positions.

In compliance with the wishes of the town of Russell and the city of Springfield, a public hearing was held in a room on the second floor of the Court House in Springfield at 2:45 in the afternoon on November 2, 1933, at which time by permission of the Commission there was testimony from Mr. Elbert E. Lochridge, chief engineer of the Springfield Water Board for twenty-nine years, and Mr. Chester M. Everett of New York, who was associated with Mr. Allen Hazen of New York in an advisory capacity for the city of Springfield at the time the Cobble Mountain project was being developed. In addition, there was testimony from Mr. Raymond Snow and Mr. Leland G. Carleton, both of the Springfield Water Board, and from Mr. Eugene D. Parks, chairman of the Board of Selectmen of the town of Russell. The public hearing was adjourned until November 6, 1933, when a further hearing at 10:30 in the forenoon was held in the office of the chairman of the Commission supervising the Department of Public Utilities at the State House, Boston, at which time final arguments were made. This, the last public hearing, was adjourned, and with permission briefs were subsequently filed. At later meetings of the Commission the evidence offered and briefs presented were considered.

After consideration of the evidence introduced at the hearings and the information obtained upon the view, together with facts obtained from independent study and investigation, the Commission submits the following results of its investigation.
It appears clearly from the resolve that the Commission is confined "to investigate and report relative to the taxation by the town of Russell of the dam and other structures of the Cobble mountain development," and in connection therewith to particularly "inquire into the subject matter of . . . senate document seventy-three . . . house document five hundred and thirty-nine," filed with the General Court for 1933, and in connection therewith to "inquire into all phases of the use of said dam and other structures both for water supply and for power purposes.

The legislative history culminating in chapter 11, Resolves of 1933, finds its beginning in chapter 317 of the Acts of 1906, chapter 607 of the Acts of 1912, followed by chapter 163 of the Acts of 1918, and chapter 267 of the Acts of 1928. The Commission understood that it was the contention of the town of Russell that that municipality was not properly apprised of the intention of the city of Springfield to use the water development for the generation of power, and because of this neglected to protect any rights which that municipality might have in a water supply development to be used in part for power purposes. The Commission finds that in section 2 of chapter 607 of the Acts of 1912, which amended chapter 317 of the Acts of 1906, the Legislature empowered "The city of Springfield" to "generate power for its own use in the development of its water system and" to "generate power for, and transmit power to, any persons or corporations whose waters, power rights or property have been or may be affected by the taking of the waters of Westfield Little river under the authority of said chapter three hundred and seventeen, . . ."

By chapter 163 of the Special Acts of 1918 the Legislature enlarged the authority of the city in respect to the generation, transmission and sale of electricity, and provided that the city might generate and transmit and sell electricity "to any city, town or corporation within the counties of Hampden or Hampshire lawfully engaged or authorized to engage therein in the transmission or
sale of electricity or in the operation of a railroad, street
railway or electric railroad, or to any person or corpora-
tion in any town in either of said counties in which there
is no electric lighting plant engaged in the distribution
and sale of electricity, or to any person or corporation
in any city or town in either of said counties in which
there is such an electric lighting plant, provided that the
city, town or corporation operating such plant shall con-
sent thereto."

It was also provided in said act that "nothing herein
contained shall be construed as authorizing the taxation
of dams, reservoirs and other structures used and appro-
priated for any other purpose than the generation of
electricity." The act of 1912 also contained a like pro-
vision.

It was conceded by the representatives of the town of
Russell that the town authorities had full knowledge of
the passage of chapter 607 of the Acts of 1912 and chap-
ter 163 of the Special Acts of 1918, and, so far as appears,
there was no objection upon the part of the town of
Russell to the passage of those acts. Chapter 267 of the
Acts of 1928 increased the amount that the city of Spring-
field might borrow in developing the project, authorized
the acquisition of certain land used as a cemetery, and
authorized the leasing by the city of the exclusive right to
occupy, use and operate all or any part of the buildings,
machinery, equipment and appurtenances erected or
otherwise acquired by said city for the generation of
electricity. The position of the town of Russell, as it
was left under the provisions of chapter 163 of the Acts
of 1918, was in no way changed by the act, except that
the value of the property to be taxed by the town of
Russell, under the provisions of section 5 of said chapter
163, was fixed at $3,000. It is not suggested that this
$3,000 of valuation is inadequate for the property located
in Russell used for the generation or transmission of elec-
tricity unless the dam is to be considered a part of that
property to be taxed.

The Commission is of opinion and so finds that by
legislative enactment and through common knowledge the town of Russell was apprised of the proposed Cobble Mountain Development and the intention to generate and sell electricity in connection therewith, and that dams and reservoirs not used solely for the generating of electricity were not to be the subject of taxation.

It was the contention of the town of Russell that the Cobble Mountain dam was constructed much higher than was needed for water supply purposes, and that the additional height was made necessary only because there was desire on the part of the city of Springfield to sell the water for power, and should to the extent that the dam was increased in height for this purpose, as they claim, be made the subject of tax as a structure not used exclusively for a public purpose.

The city of Springfield made a contract through its Board of Water Commissioners, under date of June 21, 1928, with the Turners Falls Power and Electric Company wherein it was provided that the power company should have "... the exclusive right to occupy, use and operate the buildings, machinery, equipment and appurtenances hereinafter described, together with the right to draw and use for such operation water from the reservoir hereinafter described, and also the right to erect upon the land of the city certain additional buildings, machinery, equipment and appurtenances for the generation of electricity from the waters of said streams, and to draw and use water for such operation, and also the right to erect, maintain, use and operate transmission lines upon said land of the city, all in the manner and upon the terms and conditions hereinafter set forth, which terms and conditions include the reservation to the city of the absolute prior right to withdraw and use at all times all water now or hereafter required by it for the supply of water to itself and its inhabitants and to other municipalities and the inhabitants thereof, ... ."

The contract was approved by the Department of Public Utilities under date of August 1, 1928, that Department's docket number being D. P. U. 3289. An
amendment to this contract was approved by the Department of Public Utilities. The contract sets forth fully the rights and privileges which are reserved to the city and the benefits which the power company is to receive under it, and is to run "... for the full term of thirty (30) years, beginning on the day when all of the work to be done by the city as provided in Article 1 has been in good faith substantially completed, and the Cobble Mountain Reservoir filled with water to the level of 920 feet or at such later time as may be provided in the conditions of Article 18. ..." The contract further provides that "the city may develop and use the power from the excess water not taken by the city which may be drawn from the pump at the outlet of the intake reservoir. ..." The contract provides that the city can draw in any calendar year an average of 30,000,000 gallons per day, but in the event of an amount in excess of that being drawn there is a proviso that "there shall be a readjustment as hereinafter provided of the amount payable in subsequent calendar years by the company."

It appeared to the Commission that the contract with the power company contemplated an excess of water which could without injury to the water supply of the city of Springfield be used in the development of power for the period of the contract, although as indicated the contract was so drafted as to permit the use of all the water for water supply purposes if the need should come, and a consequent readjustment of the rentals to be paid by the power company. The Commission is of opinion that the contract was entered into by the city of Springfield with the full understanding that its terms should give the first claim to the city of Springfield for water supply purposes, but with an anticipation of more water available than would be actually needed it provided for the use of the excess water for power purposes. The inquiry directed itself as to whether in fact the city of Springfield had constructed a dam totally disproportionate to its present needs or needs within a reasonably immediate future. The dam was constructed to a height
of 945 feet. It was shown through official records that up to the time it was determined to undertake the project the population of the district to be supplied through the Cobble Mountain Development had tended to double itself in each twenty-year period. The Commission understood from the evidence that a dam to the height of 919 feet would be required to supply the existing population approximating 200,000. On the basis of past experience it was reasonable to expect that the population at the end of a thirty-year period would be increased to the extent of requiring a water supply ample for 500,000 people. It appeared that the cost of constructing a dam 919 feet in height which would be needed in order to supply 200,000 people with water would approximate the sum of $1,360,000, and that the cost of constructing a dam 945 feet would be approximately $2,200,000, and that this height would provide a supply for 500,000 people. To construct a dam 945 feet in height by adding as the population increased and demanded more water would approximate a cost of $3,200,000, or $1,000,000 more than was actually found to be the cost by constructing it in the beginning. The expense to the city of Springfield of its entire Cobble Mountain Development in constructing a dam by successive additions as the water needs increased would, it is believed by the Commission, be in excess of the cost actually found, approximating $5,534,000.

The Commission from the evidence finds as a fact that the expense to the city of Springfield of erecting the dam to its present height by successive operations to meet the needs of the growing population would have been greatly in excess of the expense of the one operation in constructing the dam to its present level which is sufficient in height to utilize the entire run-off in the watershed from which the reservoir development is to be supplied. The Commission finds that the dam was not built to an excessive height in view of the water supply it was then anticipated would be needed within the time for which good judgment prompts the construction of a
dam, and that the additional advantage of having during that period an ample quantity of water well purified by long storage in the basin is added reason for definite approval of the expenditure purely from the water supply point of view of the Cobble Mountain Development.

The Commission finds that the use of water for the development of power is purely incidental to the supplying of water to the water district, and in no way is to be considered as a determinant of tax contribution in excess of that already allowed by legislative enactment. The Commission finds as a fact that the site which has been developed for water supply purposes is essentially suited for water supply purposes, and the development of power from the water is purely incidental to the water supply.

The resolve requires that the Commission consider "the use of said dam . . . concerning the question of . . . taxation. . . ." The legislation permitting the Cobble Mountain Development followed established legislative practice in not permitting the taxation of dams used for water supply purposes. The legislative enactments, in addition to not departing from the general law, by specific reference prevented the taxation of the dam used to develop a water supply system for the city of Springfield. If the inquiry which the Legislature directs to this Commission is as to whether or not the general law should be abandoned and dams taxed, or that in this particular instance the dam should be taxed because in the course of the development of a water supply sufficient water was found for the creation of power, the Commission makes the following answer: The Commission finds that the dam in the Cobble Mountain Development is no more than reasonably adequate to insure a sufficient supply of water for the inhabitants it was designed to supply for the next thirty years, and that it is not by an implied use other than for public purposes such a structure as should be submitted to local taxation. The Commission believes that it has no authority under the resolve to suggest what general
laws might be passed in respect to appropriately compensating communities where land has been taken and dams and other structures erected for the purpose of developing water supplies. It is of opinion, however, that in the instant case the town of Russell does not present a situation in respect to the dam there constructed which would warrant a departure from the general law, but if there is to be a departure from the general law, then it is the opinion of the Commission that it should be general in character and not specific as to the instant case to operate to the benefit of the town of Russell.

The Commission was directed "to inquire into the subject matter of current senate document seventy-three and current house document five hundred and thirty-nine, relative to such taxation." Senate Document No. 73 has for its main purpose the increasing of the amount of valuation of property used for power purposes situated in the town of Russell from $3,000 to $500,000. The Commission is of opinion that there is no warrant for increasing the value of so much of the structures of the power part of the water development in the town of Russell to such a sum as $500,000, and believes that the proposal of this bill should be dismissed as not being a reasonable or proper subject for the Legislature to consider. House Document No. 539 provides for the assessment of dams and other structures devoted to power at fair cash value, the value of the part allocated to the development of electricity to be determined by the Department of Public Utilities.

It is the opinion of the Commission that this bill does not represent a fair request for the Legislature to enact a statute in compliance therewith, as in their opinion the dam which this bill seeks to be made subject of tax is not such a structure, nor is it devoted to other than a strictly public purpose, and for this reason the Commission cannot recommend consideration of the proposal as set forth in that bill.

The Commission makes no recommendation for legis-
lation, as in their opinion the Cobble Mountain Development is primarily for water supply purposes, and the development of power is purely incidental to the early days of water supply use and not sufficiently important to warrant the Legislature from departing from established practices other than to the extent that has already been done in arbitrarily setting a value for power structures upon which the communities affected can demand a return for governmental costs.

It is not the opinion of the Commission that the town of Russell is injured; that anything other than exact justice has already been done; that this is the time to change existing law in respect to the taxation of water supply developments.

Respectfully submitted,

HENRY F. LONG, Chairman,
Commissioner of Corporations and Taxation.

HENRY C. ATTWILL,
Chairman of the Commission Supervising the Department of Public Utilities.

ARTHUR W. DEAN,
Chief Engineer in the Department of Public Works.