THE WEATHERFORD MUNICIPAL LIGHT AND POWER PLANT

APPROVED:

[Signatures]

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THE WEATHERFORD MUNICIPAL LIGHT AND POWER PLANT

THESIS

Presented to the Graduate Council of the North Texas State Teachers College in Partial Fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

by

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Weatherford, Texas
August, 1940
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CHAPTER I

INTRODUCTION

This thesis is a study of the Weatherford Municipal Light and Power Plant. Since this plant has only recently begun operation, the subject has been approached in several different ways. An attempt has been made to trace the history of electric service in Weatherford, Texas, and to reveal why this present, and previous, service has culminated in a municipally owned system. From the chronological development through the fifty-two years of the history of this service, the more recent establishment and construction of the plant and distribution system is given in the period from the bond election to finance the project, in 1937, to the open house held for visitors in the new building, in the early summer of 1940. The foundation of this historical development was granting a franchise ordinance in 1896 for a period of fifty years. Since the franchise is still in force, the city was forced to purchase, condemn, or enter competition with the existing plant.

When the city became dissatisfied with services of the Public Utility Company, it attempted to purchase the plant. The price for the purchase could not be agreed upon, because the utilities company really did not want to sell its plant. The city might have entered condemnation charges, but since
the present company had purchased the plant about 1928 at a cost of approximately $400,000.00, when as a matter of fact it was worth only about $55,000.00 at the time of purchase, the city was afraid that the value might be based upon purchase price rather than the actual value. It therefore decided to build its own plant and risk competition with the established plant.

The right of the city of Weatherford to set the rates for electric service is not only defined as legal, but the short history of rate setting is traced to the present rate schedule. The present rates, as developed from 1929, are compared with those of other cities to see how favorable the rates are to the consumers in Weatherford.

Throughout the study conclusions have been drawn from an unbiased viewpoint of one who is interested in municipal corporation ownership of utilities that render a public service. It is in this same perspective that the writer has attempted to predict the future for the Weatherford plant.

For the sake of the reader unfamiliar with the smaller municipalities of Texas, it might be well to say that Weatherford, the county seat of Parker County, is a town of about 5,300 inhabitants, located twenty-six miles west of the city of Fort Worth, and fourteen miles east of the health resort of Mineral Wells.

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1Texas Almanac, A. H. Belo Corporation, 1939, p. 446.
To provide for cultural improvement the city is now in the process of constructing a municipal library to be operated by the staff and administration of Weatherford Junior College, a Methodist institution located in the southeastern part of the city. But the municipal light plant, sponsored by forward-looking, public spirited citizens, marks a great step in its historical development toward raising the material standards of living.

This outlook on the part of the city has made this study one of extreme enjoyment. However, in tracing the history, it was found that the city records were by no means complete as to the city functions, or its contracts with the private service company. The three volumes of the ordinance books and the six volumes of the minutes of the City Council and City Commission were studied with care to get as complete a history as possible from the time the city numbered 3,369 people in 1890,² until the demand for electricity had increased almost twofold in 1939 when the city numbered 5,300. The files in the City Hall were also searched, adding little to the information gathered. These records were made available through the courtesy of Conrad Russell, Mayor, and C. E. Canafax, City Secretary. George McCall, City Attorney, proved of great value not only in rendering aid in obtaining information, but also in giving his valuable

time in discussing the problem with the writer. The writer is also indebted to Nolan Queen, Attorney-at-Law, Weatherford, Texas, for the use of his law library in the pursuit of the legal questions involved.

With these sources of information available, the Weatherford situation was approached as thoroughly as possible; but in drawing conclusions and making predictions, the writer felt it necessary to contact four other cities with regard to municipal ownership in electrical service, and the experiences these cities had had in competition with private companies, but only three replied to the letters sent them. Of these, the reply from Garland was so favorable, yet lacking in actual detail, that a trip was made to Garland to study the experiences the Garland municipal plant has had in competition with the Texas Power and Light Company. L. A. Powell, a member of the City Commission for many years, and J. R. Stultz, City Secretary, were interviewed, and gave much valuable information.

No reflection is meant in this study on any individual corporation or organization. Library study has given the writer a basis for discussing private utilities, while actual delving into the state statutes, court decisions, minutes and ordinance books of the city, along with the city records, presents the municipal problems as they now stand.

The waterworks and water problem occasionally are
presented because in the historical evidence and financial accounts of the city records, the accounts are not kept separate.

In the criticisms presented, the only purpose is a comparison of the example herein studied with the standards recognized by authorities.
CHAPTER II

THE HISTORY OF ELECTRIC SERVICE BY PRIVATE COMPANIES
IN THE CITY OF WEATHERFORD

The development of electric light and power is a comparatively new industry commercially. The scope of improvement and application ranges from the first attempts one hundred years ago to its rapid development in the last fifty years. The present systems grew out of the discoveries of a number of men. In 1800 Volta discovered the electric battery. Davy demonstrated the arc light in 1809 which he had discovered in 1802, and had attempted to perfect for seven years. The year of 1821 marks the year for the discovery of magnetic rotation by Faraday. The dynamo was constructed by Pixii in 1832. Daniell introduced primary cells as a source for electric energy in 1836, and was followed by the same discovery by Grove a year later.¹

Only a few years had to pass before these inventions began to have some commercial application, for by 1840 arc lights were in limited use in public halls, theaters, and a few open spaces. It was this same arc light that served as the impetus for the development of central power stations. The type of generation was too expensive for general commercial use; but with the development of the electric dynamo

¹G. Lloyd Wilson, James M. Herring, and Roland B. Eutsler, Public Utility Industries, p. 84.
in 1863 and further improvements in 1870, many arc lighting systems developed. When the alternating current dynamos were installed in the central stations and furnished current for all needs, the arc lighting dynamos rapidly disappeared.2

Edison's introduction of an incandescent light in 1879 overcame the earlier difficulties of the platinum filament light, and his light, when installed in 1882, caused even more rapid growth of the industry. Since then, however, the tungsten filament lamp, in giving over ten times the amount of light as the former lamp, has given rise to service reaching everyone.3

Municipal corporations were hesitant to finance the erection of plants and systems to try out this new means of light and power, for in most cases it would have meant a bonded indebtedness, and the cities were unwilling to take the risk. On the other hand the early development of light and power systems was left to private capital which did not have the same reasons to fear failure. The first appearance of municipalities in this field of endeavor dates back to 1881, but it was many years before the municipal systems and their growth were comparable with that of the private individuals and companies.4

Around 1889 the cities changed this attitude and many

2Ibid., p. 85.  
3Ibid.  
began to erect their own systems.\textsuperscript{5} Table 1 shows that in 1900 there were 710 municipal systems, while in 1902 there were 815 systems, a gain of 105 systems in two years.\textsuperscript{6} For 1905 the table shows 988 plants or a gain of 173. These rapid increases continued until 1922 when a less rapid decrease is evident. The decrease of the private systems, however, is more rapid.

\begin{table}
\centering
\caption{The Number of Municipal, Private and Total Electric Systems in the United States at Intermittent Periods from 1881 to 1932 Inclusive and the Ratio of the Municipal Systems to the Total\textsuperscript{*}}

\begin{tabular}{|c|c|c|c|c|}
\hline
Year & Municipal Systems & Private Systems & Total Systems & Per Cent of the Municipal Systems to the Total \\
\hline
1881 & 1 & 7 & 8 & 12.5 \\
1885 & 16 & 151 & 167 & 9.5 \\
1890 & 137 & 872 & 1009 & 13.5 \\
1895 & 386 & 1690 & 2076 & 13.5 \\
1900 & 710 & 2514 & 3224 & 22.0 \\
1905 & 988 & 3076 & 4064 & 24.3 \\
1912 & 1567 & 3659 & 5221 & 30.0 \\
1917 & 2518 & 4224 & 6542 & 35.4 \\
1922 & 2531 & 3775 & 6356 & 40.6 \\
1927 & 2129 & 2137 & 4356 & 50.7 \\
1932 & 1802 & 1616 & 3418 & 52.7 \\
\hline
\end{tabular}

\textsuperscript{*}This table was taken from J. V. Garland and Charles T. Phillips, \textit{The Crisis in the Electric Utilities}, p. 126.

It is seen that in 1922 the municipal systems were 40.6 per cent of the whole while in 1932 the municipal systems were 52.7 per cent of the whole.

\textsuperscript{5}Ibid. \hspace{1cm} \textsuperscript{6}Ibid.
From the outlook of electric service throughout the United States, it is hard to conceive of decreases in the total of systems. The decreases of municipal plants are explainable in three ways. One is the fact that in 1922 eighty-four per cent of the municipal plants were in towns of under 5,000 population where the total production was not large enough to be produced cheaply; second, there was a small number of the municipalities consolidating their power stations into one centralization and retaining their distribution systems and buying power from the private companies at the city limits; and third, the rapid development of the holding companies willing to pay high prices for municipal distribution systems in order to get control and discourage the municipal operation.

The decline of private companies has been one primarily of consolidation and mergers; and whenever new systems were built or purchased, they usually were included in a system already operating.

Since 1932 an increased renewal of interest has become evident. This development is by no means localized, since evidence is shown over the United States of systems underway and completed at the present time. There is little doubt

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7 Ralph L. Dewey, op. cit., p. 54.
9 Ibid., p. 128. 10 Ibid., p. 127 11 Ibid., p. 129.
that since the Supreme Court of the United States ruled
in the Duke Power Company case that the United States government could make loans to counties and municipalities for the purpose of building plants, these plants have increased rapidly.\textsuperscript{12}

The City of Weatherford, Texas, was among those cities that waited many years before attempting municipal ownership of an electric utility, but was among the early group to attempt this service through a private organization, and only then because the electric service was an outgrowth of the city's desire for an adequate water supply. The early history of a group organized as the Weatherford Water, Light and Ice Company points out that the primary purpose of the organization was to secure water for the city, for on May 16, 1894, the City Council passed a resolution that the city was interested in a waterworks.\textsuperscript{13} There is nothing to indicate what inspired this resolution except that on July 9, 1894, the City Council requested the mayor to call a meeting of the citizens in order to discuss ways and means of acquiring a waterworks for fire protection.\textsuperscript{14} At this time the water supply was so inadequate that the city could not even test the recently purchased fire engine upon its arrival. In fact the council had to provide for cisterns to be dug to make the test.\textsuperscript{15} The city worried along under this arrangement


\textsuperscript{13}Minutes, City Council, City of Weatherford, Texas, I, 42.

\textsuperscript{14}Ibid., p. 54.

\textsuperscript{15}Ibid., p. 66.
until October, 1887, when it appeared that some action was at last being taken, for on October 6 of the same year the mayor appointed a special committee on waterworks to confer with the water company.\(^{16}\) A few days later Henry Warren, Captain, appeared before the council and presented an ordinance relative to a franchise and contract between the city and the company. The ordinance as passed provided for the rental of the first thirty fire hydrants at $75.00 per hydrant.\(^{17}\)

Henry Warren was the leading organizer for the Weatherford Water, Light and Ice Company which included H. W. Kindel, P. Lavigne, Boyd Porter, A. F. Starr, S. Newmeugin, D. R. Coleman, and D. C. Haynes. These were the men who signed the application for a charter filed with the Secretary of State, September 30, 1887. The charter itself was filed October 8, 1887, with the names of Henry Warren, A. F. Starr, R. W. Kindel, S. Newmeugin, and D. C. Haynes as the first board of directors.\(^{18}\)

Although this group of men was organized in answer to the demand for water, it was not long before the company decided to broaden its operations into the electric service field. The company was granted permission on March 21, 1888, by City Ordinance, to erect an arc and incandescent light and

\(^{16}\)Ibid., p. 290.  
\(^{17}\)Ibid., p. 291.  
power plant. The Weatherford Water, Light and Ice Company bought its machinery in the latter part of 1888 and made the installation in the early part of 1889.

When the company made the purchase of the electric machinery, its representatives did not hesitate in approaching the city government with regard to street lights. The city was agreeable, and the mayor requested the Finance Committee to confer with the company in this regard on December 6, 1888. The committee acted upon this request and on December 13 the recommendation that the city accept the light company's proposition for fifteen, thirty-two candle-power street lights at $4.35 per month was duly accepted and adopted.

Although no actual record of the first operation of the plant is known, the company evidently serviced the city through the month of February, 1889, for the first bill from the Weatherford Water, Light and Ice Company was presented on March 7, 1889 for $187.90, for light service rendered. This bill was referred to the Finance Committee and paid on April 4.

The rates and service were to prove far from satisfactory, for on June 12, 1890, the City Council expressed

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20 B. F. Cherry, op. cit., p. 7.
22 Ibid., p. 390.
23 Ibid., p. 402.
24 Ibid., p. 405.
its dissatisfaction with the light service and held up paying a light bill of $176.55 until a new contract could be entered into with the company.\textsuperscript{25} The new contract provided for fifteen, thirty-two candle-power street lights to be operated until twelve midnight, and three sixteen candle-power lights for the mayor’s office for $36.00; other lights were to be furnished for $2.25 for each thirty-two candle-power or proportion thereof, depending upon the candle-power strength of the light.\textsuperscript{26} This contract was evidently satisfactory, for it was renewed on September 1, 1892.\textsuperscript{27}

The first evidence of difficulty that the Weatherford Water, Light and Ice Company was having during this period shows on the city records dated February 6, 1890. At this time the company had not complied with a contract entered into on February 1, 1889, whereby it had agreed to erect a telephone system between the engine house and the pumping station of the waterworks department if the city would agree to accept ten more fire hydrants at sixty dollars per hydrant.\textsuperscript{28} The city had fulfilled its contract, and the Waterworks Committee was instructed to contact the company about fulfilling its side of it.\textsuperscript{29} There is no recorded evidence that the telephone system was ever constructed.

\textsuperscript{25}\textit{Ibid.}, p. 482. \hspace{2cm} \textsuperscript{26}\textit{Ibid.}, p. 488.
\textsuperscript{27}\textit{Ibid.}, p. 612. \hspace{2cm} \textsuperscript{28}\textit{Ibid.}, p. 398
\textsuperscript{29}\textit{Ibid.}, p. 452.
This difficulty was only the beginning, for the waterworks was to prove the destruction of the early organization. The operation of the plant was not successful for many years, and the only reason both the electric and water departments were not successful was the failure of the experiment of the engineer in charge of digging the first well. Whereas he had practically guaranteed a daily production of from 200,000 to 300,000 gallons of water each twenty-four hours, the well never produced more than 30,000 gallons of water per twenty-four hours. Not only had many thousands of dollars been expended for this well, but it was always necessary to continue spending in search of an adequate supply.\textsuperscript{30}

The inadequacy of the supply of water and the low pressure as a result thereof proved of growing concern to the city officials. In a meeting of the City Council December 1, 1892, the Waterworks Committee reported that the company was having difficulty in maintaining water pressure strong enough to service the fire hydrants.\textsuperscript{31} In July of the next year, 1893, the mayor had a call meeting of the City Council for the purpose of discussing the waterworks problem since the Weatherford Water, Light, and Ice Company was unable to complete its

\textsuperscript{30} B. F. Cherry, \textit{op. cit.}, p. 9.
\textsuperscript{31} \textit{Minutes, City Council}, Vol.I, p. 624.
contract for the maintenance of water. It was decided to place the matter into the hands of the citizens of Weatherford to let them act as they saw fit. 32 No mention of this action or the action of the mass meeting was made in the meeting of August 5, when the Waterworks Committee reported that the manager of the company refused to make any concessions of price. R. W. Kindle represented the company and asked that the council sit tight for a trade was pending whereby the waterworks would be leased for five years with a guaranteed daily capacity of 200,000 gallons. 33

This downfall of the waterworks department was preceded by the discontinuance of the electric service. After September 12, 1893, there is no entry in the Monthly Accounts in regard to a bill to be paid, signifying that the light service must have been discontinued about that time. 34 The electric plant had never operated very extensively, covering only the business district, the residence district around the plant, and between the plant and the town. 35

The actual destruction of operation of this first organization began after the company received a copy of the following resolution from the City Council on or about December 11, 1893:

Resolved by the City Council of the City of Weatherford:

That the Weatherford Water, Light, and Ice Company with whom this city has a contract to furnish the people thereof with a sufficient supply of good water has failed

32 Ibid., p. 645. 33 Ibid., p. 647.
34 Ibid., p. 648.
to do so, that during the summer just passed the water
supply was not only inadequate but impure and the supply
is still inadequate.

That said company contracted to furnish the city
with six arc lights of 2,000 candle-power each. That said
company has failed to do this, as the lights furnished
have been almost worthless. Therefore this city will
not pay contract price for water and lights since the
service has not been such as was contracted for. 36

This resolution evidently broke the spirit of the
company because as a result the company published a notice
that the plant would shut down completely on January 1, 1894.
The City Council immediately offered the company a proposi-
tion whereby the city would pay $5.00 per day extra of con-
tract if arrangements could be made whereby the plant could
operate its waterworks thirty days or more. However, if the
city failed to act upon the matter in its meeting on January 4,
1894, the city would pay to the company $10.00 per day for
each day up to and through January 4. 37 This contract was
continued on January 4, 1894 at $150.00 per month extra of
contract, 38 and continued at the same price for February; 39
on March 1, it was continued for $100.00 extra of contract
while the city searched frantically for another water
supply. 40 The city notified the company to discontinue
its service after July 1, 1894, and attempted to contact
a group to dig an artesian well. 41 This attempt failed

38 Ibid., p. 656. 39 Ibid., p. 659.
40 Ibid., p. 661. 41 Ibid., Vol. II, p. 6.
for on December 4, 1894, the mayor commented upon the fact that the city was without water.\(^{42}\) Since the light plant had been shut down many months earlier, the plant was not operating in any of its departments.

The end of the first organization of the Weatherford Water, Light, and Ice Company had arrived. The manager of the company attempted to save it through added capital, but when the bondholders refused to sink any more funds into securing a new water supply, the plant was placed into the hands of a receiver, and sold by Bob Collier, Constable, from the courthouse steps in Weatherford, Texas, on the first Tuesday in August, 1895. The entire plant and holdings were sold for $25,000.00 to E. J. Dunn, M. H. Arnott, and Jasper B. Rathbone of Elmira, New York.\(^{43}\) This organization wasted no time, for on August 22, they applied for a contract with the city concerning a supply of water.\(^{44}\) This franchise and contract ordinance was adopted on September 11, 1895, and provided for efficient service to be rendered to twenty-five fire hydrants rented at $60.00 each, fifteen more at $50.00 per hydrant, and any additional at $40.00 per hydrant, payments to be semiannually.\(^{45}\)

\(^{42}\)Ibid., p. 21.

\(^{43}\)B. F. Cherry, op. cit., p. 16.

\(^{44}\)Minutes, City Council, II, 54.

\(^{45}\)Ordinances, City of Weatherford, 1916, p. 85.
Although this contract was for the length of the twenty-five year franchise, on January 2, 1896, it was provided that the city would enter into contracts from time to time but would always enter into some contract with the company until the expiration of its franchise. The existing franchise was repealed, however, in favor of a franchising ordinance, including this provision, passed on February 6, 1896, and also providing for the erection of an arc and incandescent light and power plant. The caption of this ordinance and the sections concerning the contracting provisions, of light and power read as follows:

AN ORDINANCE Authorizing the City of Weatherford Water, Light and Ice Company and its Successors to Construct, Operate and Maintain Water Works for Public and Domestic Purposes, and for Furnishing Hydrants to the City and Supplying the Same with Water for the Purposes of Fire Protection and also to Erect, Construct, Maintain and Operate an Arc and Incandescent Electric Light and Power Plant in the City of Weatherford.

Be it ordained by the City Council of the City of Weatherford, Texas:

Section 6 - The said City of Weatherford Water, Light and Ice Company obligates itself, its successors and assigns to enter into a contract with said City of Weatherford, during the whole term of this franchise, whenever required, to furnish sufficient fire protection and locate hydrants of modern and improved design with nozzle fitter to connect hose coupling of the size used by the fire department at the price not to exceed the price per annum of $75.00 per hydrant or the first 30 hydrants, and $50.00 for any amount of additional hydrants that may hereafter be ordered and located by the City Council, and to comply with all the requirements of the rating bureau of Fire Insurance Co., so as to insure ample fire protection and lowest rates of insurance that can be obtained for the city.

Section 9 - That the City of Weatherford Water, Light and Ice Company its successors or assigns are hereby granted the right to erect, construct, maintain and operate an arc and incandescent electric light and power plant in the City of Weatherford, Parker County, Texas, and for the purposes the right to erect poles, wires, cross arms, brackets and fixtures in across and over the public streets, alleys and public grounds of the City of Weatherford, Texas.

Section 10 - Said poles, wires, etc., shall be set under the direction of the City Council; and in such manner as not necessarily to interfere with the use of said streets, alleys and public grounds of said city nor with any services or gutters or water mains now in course of construction already completed or to be completed in the future.

Section 11 - Said poles shall be moved and reset at the expense of the City of Weatherford Water, Light and Ice Company whenever it will become necessary, and so ordered by the City Council.

Section 12 - The City of Weatherford Water, Light and Ice Company its successors or assigns shall at all times save the City of Weatherford harmless from any and all damage that may arise out of the construction or operation of said plant, either to persons or individual property.

Section 13 - This ordinance shall take effect and be in force from and after its passage by the City Council of Weatherford and shall continue in force and effect during a period of fifty years from the date of its passage.

Section 14 - This franchise shall be forfeited should the water service be discontinued, or the poles and wires for electric lights be abandoned for a term of 12 months.

Section 15 - Nothing herein shall be deemed or construed as giving the City of Weatherford Water, Light and Ice Company any exclusive privilege, and the City Council reserves the right to grant either privilege to any person or persons, company or companies.

Section 16 - A failure on the part of the City of Weatherford Water, Light and Ice Company to formally file with the City Secretary a written acceptance of the provisions of this ordinance within ten days from after the date of its passage, shall work a forfeiture of this franchise.

Approved February 6, 1916
Geo. P. Levy, Mayor
Attest: J. E. Hodges, Secretary

47Ordinances, City of Weatherford, 1916, p. 81.
The ordinance is placed here as historical evidence because of the importance of the franchise today, and the important part it will play in 1946 when it expires.

It might be interesting to interrupt and note here that by 1916, the city had adopted in its charter an article placing a limit upon the length of time of future franchises:

... No franchise shall ever be granted by the City Commission other than an indeterminate franchise or a franchise for a period of years not exceeding twenty, except in cases where an election is held, as above provided, to determine whether or not a franchise shall be granted and no franchise granted as the result of an election shall ever be for a period of time exceeding forty years.48

From 1896 to 1918 it must have been realized that a fifty-year franchise was a lengthy one for a City Commission to authorize. Now if a concern desires one over twenty years up to forty years, or under ten, they place themselves at the disposal of public opinion at the polls, if the City Commission so wills.

The first reference to lighting under this franchise occurs in a communication, not given in the records, from the manager of the plant of May 7, 1896;49 and the first bill for lights was one for $3.00 for lights in the mayor’s office which appeared in the records in October, 1896.50 One month later two lights were placed in the band room.51

48. Charter, City of Weatherford, 1918, Article II, Section 20.
50. Ibid., p. 103.
51. Ibid., p. 105.
But the demand for more lights was greatly stimulated when the city sought free mail delivery from the United States government. The Federal government required that a city desiring this free mail delivery had to have an adequate lighting system in order to place at least one light over each public mail box on the streets. On September 4, 1898 the City Council resolved to contract for enough lights to satisfy the requirements of the United States Postal Service.\(^{52}\) These lights were placed in service around July 6, 1899.\(^{53}\)

For a period of about two years after the extra street lights were inaugurated the city had appeared satisfied with its lights, but by July 5, 1901 dissatisfaction again appeared; in fact, the city threatened cancellation of its light contract unless the City of Weatherford Water, Light, and Ice Company made a more satisfactory arrangement.\(^{54}\) This contract was finally revoked after August 2, and only the service for the council chamber and Fire Station was continued.\(^{55}\)

The difficulties the plant was having continued on the increase to such an extent that on December 19, 1902, A. P. Bovier, manager of the company at that time, appeared before the council and offered it an opportunity to purchase the plant for \$60,000.00, \$40,000.00 to be paid in cash for two-thirds interest and the option to operate it for eighty-three

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\(^{52}\)Ibid., p. 183.  
\(^{53}\)Ibid., p. 227.  
\(^{54}\)Ibid., p. 344.  
\(^{55}\)Ibid., p. 366.
and one-third dollars per month, and pay the remaining $20,000.00 out of the receipts of the plant. Since A. P. Bovier claimed that the entire value of the company's holdings was $95,000.00, the city agreed to consider the proposition but hired an engineer to make an evaluation.\footnote{\textit{Ibid.}, p. 482.}

The engineer valued the plant at only $36,900.00.\footnote{\textit{Ibid.}, p. 485.} The City of Weatherford Water, Light and Ice Company refused the city's offer of $42,500.00 which was a small increase over what it felt the plant to be worth.\footnote{\textit{Ibid.}, p. 491.} This seems to have ended all negotiations at that time. However, the city had another opportunity to buy the plant sometime between 1922 and 1924. When the mayor and City Commission were approached outside the official meetings, they attempted to contact a few leading citizens to get the general reactions of the public toward the matter. The reaction was unfavorable, and the matter was dropped. The total sale price was to have been approximately the same as that offered in 1902.\footnote{Statement from Nolan Queen, Mayor, 1920-1924, personal interview.}

The cause for the company's desire to sell in 1902 was twofold. One was the difficulty the company was having at that time, and the other was the fact that on March 7, 1901 the city had voted a $45,000.00 waterworks bond issue.\footnote{Minutes, City Council, Vol. II, p. 325.}

At that time the city had attempted to use its funds for an adequate source of water, but the engineer hired had never
got the results expected; friction in the City Council over this same question also greatly handicapped the success of the municipal waterworks. At any rate the people of the city by majority vote cancelled the waterworks bonds and converted the bond issue into a $25,000.00 issue for a sewerage system.

After this failure of the sale of the plant in 1902, and the failure of the city project for a waterworks, there is evidence that the city and the company began ironing out the difficulties as well as possible. The city had revoked its light contract with the company in 1901 except for necessary lights, but the fact that on April 7, 1907 the city contrasted for twenty more one-glare lights to be placed over the city at $3.00 per light is proof that since 1901, or sometime after its contract cancellation, the lights in the city and on the city streets had been steadily increased.

The renewed interest of the city in strengthening the lighting facilities within the city operated without friction with the company until 1911. In the early part of that year the City of Weatherford Water, Light, and Ice Company had a difficult time keeping its contract with the city because of the weakness of the electric power. Plant improvements

61 Ibid., Vol. II.  
63 Ibid., p. 154.  
64 Ibid., p. 366.
were steadily being made and it was not long until the operations of the company were on such a basis that dissatisfaction with the service seldom occurred until 1919, when the city was forced to pass an ordinance requiring the company to make such repairs as necessary to produce even and consistent service throughout the city.\textsuperscript{65} The necessity for this ordinance can be attributed to the fact that in 1920 the City of Weatherford had a population of 6,203, the largest population in the history of the city.\textsuperscript{66}

Little is known of the operations of the company from 1920 to 1928, but the fact that the records of this period fail to mention the company, except in a general business way, is proof that there was little evident dissatisfaction. However, in 1928 negotiations were being made for a sale of the City of Weatherford Water, Light and Ice Company holdings to the Texas Public Utilities Corporation. In 1912 the plant had been sold entirely to three men of Wilkes-Barre, Pennsylvania: E. A. Sweeney, N. J. Graeger, and J. L. Dunn.\textsuperscript{67} The electric plant was operating at considerable profit, but by 1928 the water system had again become too antiquated, too unwieldy to bring in much income. Since the plant had not immediately yielded the income expected and these men had got their capital out of it, they did not hesitate to sell.

\textsuperscript{65}Ibid., IV, 176.

\textsuperscript{66}Fifteenth Census of the United States, I, 1080.

\textsuperscript{67}B. F. Cherry, \textit{op. cit.}, p. 58.
The rumored price was for around $400,000.00, and the transaction was completed on or about May 14, 1929. The Texas Public Utilities had operated the plant the latter part of 1928.

In October of 1928 the City Commission notified the Texas Public Utilities Corporation of their dissatisfaction with the rates. This is the first evidence that appears of any thought of the populace since 1920 about the operations of the plant, but the change in ownership may have instigated the thought that something could be done with regard to the rates. The corporation answered that its company would be glad to make the reduction, with the understanding that the city would issue them an additional fifty-year franchise. This of course was refused, and the company's attention was called to the City Charter on Franchises.68

It was in this same period that the first discussion of a municipally owned plant got enough attention for public consideration. This dormant idea gained in momentum and it was in 1937 that the first basic steps were taken for the establishment of a municipally owned light plant. This will be discussed in the next chapter.

A recapitulation of this early history of electric service draws attention to the fact that prior to 1911 the City of Weatherford Water, Light and Ice Company spent a

68 Charter, City of Weatherford, 1918, Article II, Section 20.
period of years in attempted improvement of service, and a constant change in managers, largely attributed to the condition of the water supply. In January, 1911, the owners of the company turned the business over to a capable manager, who immediately began shaping up the affairs of the company. This manager, B. F. Cherry, remained in this capacity through the change to the Texas Public Utilities Corporation, and only recently has retired because of age and failing health.

CHAPTER III

THE ESTABLISHMENT OF A MUNICIPAL LIGHT AND POWER PLANT

IN THE CITY OF WEATHERFORD, TEXAS

As has been shown in the previous chapter, present dissatisfaction with the service in Weatherford dates back to 1920 with more direct opposition becoming evident in 1928. Then in the early part of 1937 the matter came to a head with a public meeting of the City Commission, with all the citizens interested in a municipal water and light plant present.\(^1\) The opinion of this public meeting was so favorable that the group voted and passed on a resolution asking the City Commission to enter into a contract with an engineering firm, Albert C. Moore and Company, San Antonio, Texas, specializing in municipal electric power and waterworks, to appraise the distribution system of the Texas Public Utilities Corporation with the idea of purchase, and also to appraise the cost of erecting a system.\(^2\) This contract was later amended but remained in force.\(^3\)

The city contacted the Texas Public Utilities Corporation and asked them to name a price on their system as there was no desire on the part of the city to compete with the

\(^1\)Minutes, City Commission, VI, 172.  \(^2\)Ibid.  
\(^3\)Ibid., pp. 225-226.
company. The company returned with the statement that they had never realized any profit on their utilities in the past, but would sell to the city their waterworks system for $160,000 if the city would renew their electric franchise twenty years. They argued that since they were in the power business, they wished to retain the power and light service for future profit. In other words, the light system was not for sale.

A price of $160,000, even with a discount for cash, seemed an extortionate one to pay for the waterworks with the old pipe and ancient system in operation, and the city was reluctant to extend the electric franchise or make a renewal.

The engineer in charge of appraisal estimated the electric distribution system with its old wiring and cables worth generously $55,000 and set up for the system entirely new at $90,000. The $55,000 was refused by the Texas Public Utilities Corporation.

When the City Commission realized that its efforts were failing for a reasonable purchase, the officials decided to vote bonds for the erection of its own system, but they retained the plan of purchase if it could be at all possible. Due notice of the bond election was given, and the bonds were voted upon November 12, 1937. The returns showed that the power and light bonds carried by a substantial majority.

4Statement from George McCall, City Attorney, Personal Interview.
TABLE 2

RESULTS OF THE BOND ELECTIONS FOR CONSTRUCTION OF THE MUNICIPAL LIGHT AND POWER PLANT AND DISTRIBUTION SYSTEM, AND A WATERWORKS PLANT AND SYSTEM, WEATHERFORD, TEXAS, NOVEMBER 12, 1937

<table>
<thead>
<tr>
<th>Light and Power Bonds&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Waterworks Bonds&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>Against</td>
</tr>
<tr>
<td>474</td>
<td>229</td>
</tr>
</tbody>
</table>

<sup>a</sup>Figures taken from Minutes, City Commission, VI, 269.-
<sup>b</sup>Ibid.

The power and light question had evidently created more interest than the waterworks bonds for the votes were slightly greater.

The bond election was immediately contested in the 43rd District Court in Parker County, Texas in Case No. 9505, filed December 21, 1937. This suit was an injunction suit to restrain the City of Weatherford from issuing the $250,000 electric bonds and the $350,000 waterworks bonds. The case was filed in the name of Texas Public Utilities Corporation and B. F. Cherry as a citizen of Weatherford. The suit questioned primarily the legality of the election in the qualification of the voters and asked that the ballot boxes be opened and the votes again counted on the basis of the legal voters, striking out those deemed disqualified by the appellant's lawyers. The Texas Public Utilities Corporation questioned the legality of the municipality voting bonds to enter into competition with the private corporation.<sup>6</sup>

<sup>6</sup>Plaintiff's Original Petition, 43rd District Court, Parker County, Texas, Filed December 21, 1937.
The judgment of the court was in favor of the appellants on the grounds that the illegal votes cast were too few in number to warrant a change in the election returns; and since this was an established fact, there was no need in opening the ballot boxes. The question of the illegality of the city entering into competition with a private corporation did not receive much discussion in the judgment, for it is clearly recognized that a municipality has such a right.

In introducing its suit the Texas Public Utilities Company traced the history of its service in Weatherford and claimed that their expenditures and service granted them a property right.

Said franchise and all the rights and privileges thereunder was sold and assigned by the City of Weatherford Water, Light and Ice Company to Texas Public Utilities Corporation on or about May 14, 1929, and since the acquisition of said franchise by contestant, Texas Public Utilities Corporation, contestant has expended a sum of money in excess of $450,000.00 in acquiring, constructing and extending an adequate service, consisting in part of the drilling of wells, construction of water mains, the construction and reconstruction of poles, wires, towers and other machinery and equipment (including its facilities outside the city but used in connection with the furnishing of service in said city), for the purpose of acquiring, generating, distributing and selling to the City of Weatherford and the inhabitants thereof an adequate and sufficient water system and supply and electric power and energy to meet the needs and requirements of the City of Weatherford and its inhabitants.

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7 Court Judgment, 43rd District Court, Parker County, Texas.
8 For further details see Chapter IV.
Contestant, Texas Public Utilities Corporation, has
since the acquisition of said franchise and the as-
sumption of the obligations thereof at all times fully
and faithfully performed all of said obligations and
said franchise is at the time of the institution of
this suit and at all times mentioned in this petition
a valid, legal and subsisting property right. 9

For further claims the company stressed its taxable
property and the annual tax paid to the city of $5,734.00.
It is of interest to note that prior to 1938, the city had
paid to the Texas Public Utilities Corporation a yearly
subsidy of $2,880.00 for the rental of eighty fire hydrants. 10
This subsidy payment plus monthly charges never totaled less
than $5,000.00, except in 1939. The city had paid to the
company, annually, only a few dollars less than it had in
turn received for taxes from the Texas Public Utilities Cor-
poration. 11

With regard to the competitive phase of the suit, where-
in the actual basic desire on the part of the company was to
prevent, the contestant claimed:

Contestants allege that unless the relief hereina-
after prayed for is granted the contestees, the City of
Weatherford will attempt to issue the bonds purportedly
authorized by the purported vote of the citizens of
Weatherford hereinafter referred to and will undertake
to enter into a contract or contracts for the purpose
of purchasing and constructing machinery and equipment
for the purpose of erecting and constructing a water
system and an electric light and power system in com-
petition with the contestant, Texas Public Utilities
Corporation.

9 Plaintiff's Original Petition.
10 C. E. Canafax, City Secretary, Personal Interview.
11 See Chapter V.
Contestant, Texas Public Utilities Corporation, would respectfully show to the court that pursuant to the franchise hereinabove referred to, it now enjoys all of the business of furnishing and supplying to the City of Weatherford and the inhabitants thereof water and electric current and energy and that if the City of Weatherford is permitted to engage in one, either or both of said businesses in competition with contestant, contestant will lose and the City of Weatherford will gain approximately 740 water customers and 887 electric customers now receiving such services from contestant, Texas Public Utilities Corporation, and that said competition will decrease the gross revenues and income from the services now being furnished by contestant to the extent of approximately $68,000.00 annually, and will result in depriving contestant of approximately sixty per cent (60%) of its business and revenues. Contestant would further show to the court that illegal competition will decrease the net revenues from the services now being furnished by contestant to the extent of approximately $13,200.00 annually. Such intended and illegal competition on the part of the City of Weatherford and contestee will thus irreparably damage and injure contestant in the exercise of its valid, legal and subsisting property rights as herein alleged.12

Since the only loophole for the Texas Public Utilities Corporation to contest lay in the election itself, to prevent the construction of the competitive plant, the corporation held that the list of fully qualified voters, as furnished by the City Tax Collector, contained only 483 names of qualified voters. They attempted to disqualify 210 of these and left only 273 as fully qualified voters. Twenty-nine were disqualified because of failure to pay state and county poll taxes; twenty-seven did not appear on the tax roll; 154 did not render real estate to the City of Weatherford.

The Texas Public Utilities Corporation claimed that

12 Plaintiff's Original Petition
these 154 were not legal voters because they were not duly declared. Their claim was given in the following statements:

The contestant further alleged that the city commission and election trustees met in informal session to determine the qualified voters ... that said officials had before them in said meeting a purported but incorrect list of those who had paid both state and county and city poll taxes. The election judges were instructed to and did in fact request the city tax assessor and collector to indicate upon said list those whose names appeared upon the assessment rolls of the city as owning property subject to tax and this without reference as to whether or not they had duly rendered said property for taxation to the City of Weatherford and without reference to whether or not they had rendered real or personal property, and as a result of said check and said determination it was decided by said officials, and said election judges were so instructed, that anyone who had paid a state and county poll tax and a city poll tax or who was exempt on account of age from paying either of said poll taxes would be entitled to vote at said election, provided his or her name appeared upon the city tax rolls and regardless of whether or not he or she had duly rendered property to the City of Weatherford for taxes. That said instructions were erroneous and contrary to and in violation of the laws and constitution of the State of Texas with respect to the qualifications of voters in an election upon an issue such as here presented, in that the Constitution of the State of Texas provides in Article VI, Section 5a: ... 13

The company was attempting to leave no possible point in the actions of the city out that would further their cause or enhance their chances at a favorable decision. A claim was made that because of the action of the election judges and City Commission many voters were prevented from voting:

Because of the confusion and uncertainty and conflict between the applicable statutes and constitutional

13 Plaintiff's First Amended Original Petition, Filed May 12, 1938.
provisions and the purported qualified voters list as furnished to the election judges, and the erroneous and unlawful instructions issued to said election judges, a large number of otherwise qualified voters were prevented from voting at such election and the confusion and uncertainty resulting therefrom renders said election null and void.\textsuperscript{14}

There seems to have been little basis for this claim, but with this basis, the contestants urged that the ballot boxes be opened, and the votes of the qualified electors counted by the court. The judge ruled that the boxes would not be opened as it could in no way alter the election decision.

The City of Weatherford's defense included evidence that the corporation had no legal right of exclusive operation and therefore the city, as well as a private company, could enter into competition with it. On the question actually around which the case was concerned, the city made exceptions and objections to all points, and further claimed that only qualified voters had rendered their desires in the election:

In reply to the allegations in said petition, these contestees allege that all electors voting in said election who did not have a poll tax either to the state and county or to the city were exempt therefrom under the Laws of the State of Texas; that the 160 electors voting in said election who did not render real estate to the City of Weatherford were the owners of real estate and that if said rendition was not made and signed by said elector the said property was duly rendered by the duly authorized agent of said elector and with the knowledge and consent of each of said electors and that said elector was liable for the payment of the taxes and therefore entitled to vote. In this connection, contestees further

\textsuperscript{14} Ibid.
allege, however, that the election involved herein did not place a lien on real estate located in the City of Weatherford for the reason that the said bonds so voted were purely revenue bonds, and that the said bonds and the interest due thereon is to be paid from the revenues derived from the operation of the power plant and the water plant and that the said bonds were such as is provided for in Article 2955 (a) of the Revised Statutes; that under said article all qualified electors who owned taxable property in the City of Weatherford regardless of whether same was real or personal, were entitled to vote, provided the same had been rendered by said elector or with his knowledge and consent and, in this connection, would further allege that the owner of personal property duly rendered is entitled to vote provided said elector was otherwise qualified.15

In the judgment of the court concerning the election, as rendered by J. E. Carter, Judge, it was said:

The court further finds that said election was duly and legally held with the exception of a few illegal votes and that there is not enough illegal votes in said election to change or probably change the result thereof; that by reason thereof, the said contestants are not entitled to reopen the election box and recount said ballots and are not entitled to the injunction as prayed for and that the contestants have failed to discharge their burden of proof to show that said election was illegal or invalid in any way or manner or such an extent as to probably change the results thereof and that the relief as prayed for should be denied.16

Possibly for an opportunity of seeking a chance of error the contestant requested a "Finding of Fact and Conclusion to Law"17 in which J. E. Carter observed that the custom in Weatherford was for the City Secretary to render property without the property being personally rendered and signed

15 Contestee's First Amended Original Answer,Filed May 13, 1938.
16 Judgment, Filed May 23, 1938.
17 Finding of Fact and Conclusion to Law, Filed May 28, 1938.
by the individual. The individual under the circumstances is still liable for the taxes accounted to him. Real property is not the only taxable basis for personal property rendition places him upon the tax rolls. If he is otherwise qualified, then the citizen is a qualified voter. The court recognized thirty votes as being illegal, but also recognized that this small number of votes did not sway the returns and as a result did not warrant opening the ballot boxes.

It is of interest to note that although the Texas Public Utilities Corporation was not making any money on its electric plant or water works system, as claimed to the City Commission, when the corporation brought their interest into court, they attempted to show that the competition would make them a loss of approximately $68,000.00 gross and approximately $13,200.00 net, per annum. Of course in some businesses $13,200.00 annually may not be enough revenue for attention, but in the case of the City of Weatherford that is enough monetary return to retire the bonds on their municipal plant. As stated in the Original Petition, this $68,000.00 gross and $13,200.00 net is yet only sixty per cent of the total business in Weatherford. The Texas Public Utilities Corporation must expect to retain forty per cent of the city business in competition.

18 See Electric Bond Retirement in Appendix.
Since this argument was to contest or bring attention to the damage to private property if the city entered competition, attention should be focused on the old franchise of the City of Weatherford Water, Light, and Ice Company, under which the Texas Public Utilities Corporation admittedly is operating by virtue of the purchase of the company and its franchise in 1929. The old franchise read that no one should have the exclusive right to operate in the City of Weatherford, that privilege being determined by the will of the City Council. Therefore, it would be only fair to say that when the Texas Public Utilities Corporation purchased the old plant, they realized that they did not possess an exclusive right.\(^{19}\)

Further attention might be brought out, concerning this injunction suit, on the attack brought against the City Commission in purportedly negligently declaring electors in the bond election. This constituted an attack against their efficiency but made no reflection on the election judges.

The Texas Public Utilities Corporation did not stop their litigation in the District Court, for on November 25, 1939, it was argued in the Court of Civil Appeals in Fort Worth. Again they met defeat, even to having their Motion for Rehearing denied, January 27, 1939. The Texas Public Utilities Corporation applied in the Court of Civil Appeals on the District Court's

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\(^{19}\) See Franchise, Section 15, p. 19 of Thesis.
decision concerning the qualification of the voters and the court's refusal to open the ballot boxes. 20

The decision of the District Court was upheld upon the question of qualification of the voters on the basis that the statutes provide for the City Tax Collector to render property when the owner does not. Likewise the ruling on the ballot boxes was upheld, for it was stated that ballots are secret and should be guarded jealously unless it was absolutely necessary. In this case it was not absolutely necessary for enough data was available to prove that there were sufficient qualified votes to make the election legal.

Thus has ended the preliminary and only legal action taken by the privately owned utility company against the city up to date.

The bond election was held in November, 1937, and the injunction suit was filed on December 21, 1937, finally being released from the courts in January, 1939. During this time neither the city nor the utility company was silent, for the city was attempting to get the utility company to set a reasonable price on their properties with the chief issue being the distribution system; in return the utilities were offering counter proposals that would allow them to continue with their monopoly. The city sought to buy the properties for two reasons: the city was at that time seeking a Works Progress Administration grant, and the Works Progress Administration required

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an attempt on the part of the city to purchase; and it was
at no time in the minds of the city government to erect a
duplicating system except as a last resort.\textsuperscript{21} Repeatedly
the city warned the utilities company that the time was im-
mediately in the future when it would be too late for the
city to consider buying, for unless agreement was reached,
the city was continuing its plans for construction. In
August, 1939, still a final attempt was made without re-
sult. During this time it was also intimated that when the
franchise expired on February 6, 1946, the utility company
would be requested to take up its poles and leave the city.
There was no question on the part of the city as to its de-
sire to pay proportionately more for the electric distribu-
tion system, then operating, than its worth. However, in re-
gard to the water system, there was always the possibility
that the waterworks system was not worthy of consideration
because of the condition it was in; but the city would have
made reparations if only because the system had rendered serv-
ice for many years.\textsuperscript{22}

The Texas Public Utilities Corporation admitted that it
realized that the time would come when the city could not
turn back on its construction of the plant; but it promised
conference on a sale price. A sale price satisfactory to both
parties was never reached.\textsuperscript{23}

\textsuperscript{21} Statement from George McCall, City Attorney, personal
interview.

\textsuperscript{22} Ibid.

\textsuperscript{23} Ibid.
One of the counter proposals made to the City Commission by the Texas Public Utilities Corporation was made in a meeting with J. B. Thomas, Robert Hanger, Attorney, both of Fort Worth, and B. F. Cherry, local manager of Texas Public Utilities Corporation, all representing Texas Public Utilities Corporation, with George A. McCall, Attorney, legally representing the City of Weatherford. When the City Commission requested the proposition in writing, the following was submitted:24

TExAS PUBLIC UTILITIES CORPORATION

B. F. Cherry
District Manager

TO THE HONORABLE MAYOR AND
CITY COMMISSION OF THE
CITY OF WEATHERFORD

Gentlemen:
In an effort to compose all matters between the
Company and your city, and at your suggestion, we hand
you the following memorandum:

If you will:
1. Grant to Texas Public Utilities Corporation and
assigns, a twenty-year electric franchise in satisfactory
form, and also a separate twenty-year water franchise;
2. Rescind and abandon by appropriate action the
issuance of any revenue bonds or warrants for the purpose
of constructing or otherwise acquiring a municipally owned
and operated light and power plant or water plant;

We will:
1. Pay to the City of Weatherford the sum of $10,000.00
either in cash or at your option spread over a 20 year
period, plus a reasonable sum to cover engineering costs
and fees and preliminary expense incurred by the City in
connection with this project;
2. Reduce the annual rental paid by the City for fire
hydrants by approximately $1,800.00 per year;
3. Add to the present water supply facilities addi-
tional capacity to supply the demands of Weatherford; add
the necessary filtering and water treatment therewith to
insure a safe and potable supply; install facilities to
provide pressure to the high part of town where there is
complaint about pressure conditions; and install new mains
and additional mains in the residential areas to provide
better pressure and extended area service.

24Minutes, City Commission, VI, 316.
4. In the event that hydro-electric power is produced from Possum Kingdom Dam and can be purchased by the Company and delivered at the City gates of Weatherford at a saving in cost over the then existing method of supply, then in such event we will pass to the customers in Weatherford, in the forms of rate reductions, their proportionate part of and such saving.

In the event you should so elect we will in lieu of the $10,000.00 lump sum set out in 1. above and the $1,800.00 per year set out in 2. above, install the electric rates we discussed with you this morning, which at 40 kwh per month residential consumption, were about 25% below the average bill of all municipal plants in Texas for 40 kwh.

Or as an alternative we will make a lesser reduction in electric rates and at the same time make annual payments but necessarily smaller than those referred to in No. 1. and No. 2. above.

We will be glad to discuss this proposition with you further at your convenience and keep it open for a reasonable length of time, since we believe it will be to the interest of the water and electric patrons and of ourselves to have this matter decided at the earliest possible date.

Very truly,

J. E. Thomas

On June 4, 1938, the City Commission unanimously rejected the proposition.\(^{25}\) A glance at the proposition will tell why. Even though the utility evidently offered an attractive proposition in comparison to the past, the future would only nominally be affected. For example in Section 1 of the proposition, $10,000.00 was offered as an inducement for granting a twenty-year franchise while in Section 2 the annual rental of fire hydrants was to be reduced from $2,330.00\(^{26}\) to approximately $1,080.00. Yet over a twenty-year period the city would still pay to the company $21,600.00, or more than twice

\(^{25}\) Ibid.

\(^{26}\) Statement from George McCall, Personal Interview.
as much as the inducement offered for extending the franchise. In Section 3 of the letter, the offer is made to extend and improve the water system, but nothing was mentioned about the fire plugs or their improvement. The fire insurance rates in Weatherford are reasonable on the basis of the capable volunteer fire department and the fact that fires are rare. There has been no evidence of arson in many years. However, the city has been repeatedly warned of the inefficiency of the old style fire plugs.\(^{27}\)

Another argument against the possible acceptance of the proposition could have included the subject of rates. In lieu of the payment of $10,000.00 the Texas Public Utilities Corporation would reduce the rates of the first forty kilowatt-hours per month in residential consumption to approximately twenty-five per cent below the average bill of all municipal plants in Texas for forty kilowatt-hours. This would be a substantial reduction if it were twenty-five per cent below the average cost per kilowatt-hour of municipal plants, or even a twenty-five per cent reduction below the existing average for Weatherford; this was not mentioned. With these arguments in mind, the City Commission acted both wisely and well in refusing the proposition.

After the final opportunity for a reasonable price waned, the city began the actual plans for erecting the electric plant and system a short time after August 1, 1939. The

\(^{27}\)Ibid.
revenue bonds had already been sold; and when the plans for the construction of the electric light and power plant, and distribution system were accepted, bids were received and passed upon. Fairbanks, Morse, and Company of Dallas and Chicago, received the contract for the power building and all machinery for the sum of $129,833.09 on September 14, 1939, while Eugene Nash Electric Company, Fort Worth, got the electrical distribution system and residential lighting system contract for the amount of $88,912.73 on September 15. Both companies received their authority to begin work on or about September 23.

Callahan and Jackson, Dallas, a bonding house, acted as the fiscal agent for the city and experienced no difficulty in disposing of the bonds. Utility companies have been known to contest approval of similar bonds, but these were approved and sold without any litigation, possibly due to the efficiency of the bonding house. Nor, as in the case of many cities, did Weatherford experience difficulty in disposition of the bonds. The past record of the city in meeting all obligations, and assurance that the city would do so, contributed to the favorableness of the bonds.

The plant has a running capacity of 1350 horsepower, capable of producing 900 kilowatt-hours at any given time.

28 Minutes, City Commission, VI, 483-488.
29 Ibid., pp. 493-500.
30 Ibid., p. 507.
31 Weatherford Democrat, June 21, 1940, Section 3.
Three 450 horsepower engines have been placed in the plant with a possibility of the demand not exceeding 600 kilowatt-hours at any one time for several years, allowing one engine to remain in reserve. At the night period of low consumption one engine may be capable of taking care of the load. At any time when consumption may begin to exceed the capacity of the plant, sufficient surplus space has been reserved for additions as they may be needed in the future.\textsuperscript{32}

Open house for the plant was held on Friday, June 21, 1940, with servicing of the city street lights beginning a few days prior. The street lighting system is composed of 182 of the latest street lighting fixtures.\textsuperscript{33} Residential service will begin as the distribution system is completed, in sections. The town was canvassed for customers; each customer who agreed to join the municipal system signed two cards: one authorizing the city to place a meter and begin servicing; the other authorizing the Texas Public Utilities Corporation to take their meter out and discontinue service.\textsuperscript{34} There seems to be little doubt that the majority of the population will join the city system.

The outlook for the municipal plant on the surface is exceedingly favorable. Enough customers are already signed up to warrant the construction; a certain amount of revenue already guaranteed; and the expiration without renewal of

\textsuperscript{32}Ibid. \hspace{1cm} \textsuperscript{33}Ibid. \hspace{1cm} \textsuperscript{34}See example of cards in Appendix.
the Texas Public Utilities' franchise in 1946. As for customers there is a possibility that many citizens, who are not signed, will sign after the plant begins actual operation in the residential districts of the city. The city and city schools will continue to purchase their electricity, but now from the municipal plant, at prevailing rates to insure a certain amount of revenue for safety purposes. The free service, in any capacity, will not begin until the plant is paid for. In 1946 when the Texas Public Utilities Corporation franchise expires, the city plans to take over completely the electric service of Weatherford. 35

There is no question of the favorableness of the revenue, but as far as the Texas Public Utilities Corporation is concerned, there is still room for discussion. There are six years yet to go before the city may feel safe, and many more may pass before the city has exclusive operation. The answer lies only in the time element of waiting and watching the activities as the days go by between now and the franchise expiration date, or even later if the Texas Public Utilities Corporation chooses to attempt to fight it out in the courts. When the Texas Public Utilities Corporation leaves, the picture will be clear without anything on the horizon to alter the outlook for the municipal plant.

If there is any weakness in the set up of the operation

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35 Statement from Conrad Russell, Mayor, personal interview.
of the municipal light plant, therein may lie a contributing factor for friction. There is all the evidence that the city plant will prevail, but to believe that there will be no friction in the next few years would be too optimistic. The plant is beginning operation so its establishment presents no problem, since the only court action has been the injunction suit over the issuance of the bonds. The only friction point at the present time, then, is the operative set up.

The set up is centered in a tentative Board of Control made up of business men who have long followed the municipal plant enthusiastically, and men whose integrity is unexcelled. This board gets its authority from the City Commission but is not under its control in any way. While serving as the tentative board, this group of four will serve without compensation. When it becomes a permanent board, and it may when, by a vote of the people, it becomes a part of the City Charter, it may, if the city sees fit, receive small compensation for any personal expenses used in plant business. All appointments for the personnel rests in this body. The manager of the plant and distribution system, and office is appointed by the board and is responsible to them. He is responsible for the Chief Accountant, the Chief Electrician, and the Power Plant Superintendent. The Chief Accountant is responsible to the manager for the municipal plant office force and clerical and bookkeeping work; the Chief
Electrician is responsible for the distribution system personnel and line maintenance and repair; the Power Plant Superintendent's responsibility is the plant's personnel and its operation and maintenance.\textsuperscript{36}

\begin{center}
\begin{tikzpicture}[level distance=1.5cm, sibling distance=1.5cm, align=center]
  \node {CITY COMMISSION}
    child {node {BOARD OF CONTROL}
      child {node {Electric Utilities Manager}
        child {node {Chief Electrician}
          child {node {Chief Accountant}}
          child {node {Power Plant Superintendent}}
        }
        child {node {Line Personnel, Maintenance and Repair}
          child {node {Office Force, Clerical and Bookkeeping Work}}
          child {node {Plant Personnel and Operation and Maintenance}}
        }
      }
    }

\end{tikzpicture}
\end{center}

\textsuperscript{36} Denotes appointive control
\textsuperscript{36} Denotes direct control and responsibility for activities

Fig. 1--The appointive and administrative control of the Weatherford Municipal Light and Power Plant.

Theoretically, the set up is ideal, but there is one weakness in the plan as it was put into use. Ray Smith, an authority on municipal operation of public utilities has

\textsuperscript{36} \textit{Daily Herald}, Weatherford, Texas, March 15, 1940.
warned, "The danger of having political interference in the management is one of the greatest hazards in the operation of an electrical utility." This plan in use in Weatherford is one also given by Smith as one avoiding city politics, but whether this is true in Weatherford may be questioned. In making their choice for manager the Board of Control chose a man who possibly did as much if not more for the establishment of the city plant than any other one person, Conrad Russell, Mayor. In his strength as mayor of the City of Weatherford, however, may lie the one weakness in the selection under the theoretically ideal system. For in choosing the mayor and making him the manager, the Board of Control did the one thing under the set up that could have placed it in politics. Whether or not the administration of the municipal plant will become involved in politics is to be seen. Nor is it known that the people will become involved in a manner to endanger the existence of the plant as a public enterprise, but whatever the prediction is, it must be remembered that the weakness exists. The qualifications of Conrad Russell are not herein questioned and the future may be one without political interference, but the condition being there should have influenced the Board of Control's making its selection entirely out of the scope of the personnel of the city government. The board should have considered paying a sufficiently large salary to attract an experienced, registered

37 Ray Smith, "Establishing Municipal Utilities," American City, LIII (February, 1933), 36.
electrical, water and civil engineer and placed him over all city-owned utilities, not only to direct the policies of the office but generally to oversee the physical properties through the chiefs under him. For emphasis, let it be said that lack of political friction may not warrant this criticism, but the burden of proof will lie in the history of the next few years.

In predicting the future for the utility plant it has been intimated that all would be well if the municipal plant were not entering competition with the Texas Public Utilities Corporation but had exclusive control. It has been shown that the city made every possible attempt to purchase the distribution system of the corporation. The city evidently followed the steps recommended by pioneers in the field, for Smith has also said:

The electrical distribution system owned by the private electrical company, and now in use, should be appraised by the engineer and a reasonable offer made for its purchase. Should the city and the utility company be unable to agree on a fair price, then the city has the right to condemn and take possession in the manner provided in the state statutes, or to construct a new system. Every effort should be made to purchase the existing distribution system. Even though the franchise may have expired, the company will continue to serve, and it may take considerable time and expense to get proper court decisions which will require it to remove the poles and wires.38

After making every attempt to purchase the distribution system of Texas Public Utilities Corporation, there was yet one way open for the City of Weatherford to take,
other than the one the city government chose, the path of condemnation or eminent domain. According to the Revised Statutes of Texas Law, Weatherford could have condemned, and with compensation set by the court taken over the Texas Public Utilities Corporation properties in the city, and the fear of competition would have been relieved.

From the General Law it has been construed:

Delegation of Power by Legislature - The constitutional authority of the Legislature to create municipalities with power of local self-government carries with it the right to delegate to them authority to enact local laws and regulations incident to the exercise of such local government functions. Except as limited by the federal and state constitutions, the Legislature may confer upon a municipality any power that it sees fit to give in respect of matters of local self government and police regulation on matters of local concern. It may delegate to municipal corporations power of taxation, power of eminent domain, and police power. Nor may any court pass upon the wisdom of valid statutory or charter provisions conferring powers upon municipalities.39

For the delegation of these powers by the legislatures to "Home Rule Cities," it is found that:

' 'Home Rule Cities' have been awarded all the powers conferred upon cities of less than five thousand inhabitants by a statute identical in its terms. Under this authority a home rule city may condemn property that has already been appropriated to a public use. . . . In addition home rule cities are also authorized to condemn any property necessary in connection with the operation of gas systems, electric lighting plants, telephones, street railways, sewerage plants, fertilizing plants, abattoirs, municipal railway terminals, docks, wharves, ferries, ferry landings, loading and unloading devices and shipping facilities, 'or any other public service or public utility.' They may also condemn the property of any person, firm or corporation conducting any such business.40

40 Ibid., XVI, 606.
In looking to the statutes for Texas Jurisprudence authority, it is set down as an enumerated power in Title 28, Article 1175, Sections 13, 15, and 33 that the city under a Home Rule Charter has the power for the following:

Section 13 - To buy, own, construct within or without the city limits and to maintain and operate a system or systems of gas, or electric lighting plant, telephone, street railways, sewerage plants, fertilizing plants, abattoirs, municipal railway terminals, docks, wharves, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purpose or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, right of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. Any city shall have the power to condemn the property of any person, firm, or corporation, now conducting any such business and for the purpose of operating and maintaining any such public utilities and for the purpose of distributing such service throughout the city or any portion thereof, provided that any city may adopt by its charter any such rules and regulations as it may deem advisable for the acquiring and operation of any such utilities.

Section 15 - To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary; to take any private property within or without the city limits for any of the following purposes: ... water and electric light systems. ... The power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purpose.

Section 33 - Whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said security shall apply alone to said properties so pledged;
and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.\textsuperscript{41}

So much for the statutes in tracing down the power and right of condemnation, the next development should be in the Weatherford City Charter; the City Charter concerning condemnation reads:

Section 7 - Acquisition of Property - The City of Weatherford shall have the power and authority to acquire and hold by purchase, gift, devise, deed, condemnation or otherwise, any character of property, including any charitable or trust fund.

Section 11 - Right of Eminent Domain - Said city shall have the right of eminent domain and the power to appropriate private property for public purposes whenever the governing body deems it necessary; and to take any private property, within or without the city limits, for any of the following purposes; to wit: city halls, fire stations, police stations, jails, calaboose, fire alarm systems, libraries, hospitals, sanatoriums, auditoriums, market houses, reformatories, abattoirs, streets, alleys, parks, highways, playgrounds, sewer systems, storm sewers, sewage disposal plants, filtering beds and emptying grounds for sewer systems, drainage, water supply sources, wells, water and electric light and power systems, street car systems, cemeteries, crematories, prison farms, pest houses, and to acquire lands, within or without the city, for any other municipal purpose that may be deemed advisable.

Section 12 - Said city shall have the power to acquire by lease, purchase, or condemnation, the property of any person, firm, or corporation, now or hereafter conducting any such business, for the purpose of distributing such services within or without the city or any portion thereof.\textsuperscript{42}

The term "Eminent Domain" is almost synonymous with condemnation wherein it means "the superior right of property subsisting in a sovereignty, by which private property may in

\textsuperscript{41}Vernon's Annotated Revised Civil Statutes, Texas, Article 1175, Sections 13, 15, 33, 11, 683, 697.

\textsuperscript{42}Charter, City of Weatherford, 1918, Article 2.
certain cases be taken or its use controlled for the public benefit, without regard to the wishes of the owner."43

Authorities to cite under Texas Law are scarce, for there have been no test cases under the power of condemnation concerning electrical utilities. The Supreme Court of the United States upheld the power of condemnation when it said, "The necessity and expediency of taking property for public use is a legislative and not a judicial question, and requires no hearing, and is not the subject of judicial hearing. The legislature may confer on a municipality the authority to determine for itself the necessity of taking property for a public use."44

With this United States Supreme Court authority, a look can be taken at a Texas case, The City of Vernon, et al v. Montgomery. Condemnation was not the basis of the case but entered into the argument and decision. "The Vernon City Charter authorizing a city to issue bonds for erection of municipal electric light plant held not in conflict with Article authorizing issuance of bonds to acquire public utility by purchase, condemnation, or otherwise; such section contemplating acquisition of utility already in existence."45

The ruling of the Court of Civil Appeals of Texas in Amarillo was primarily establishing the power of the municipality to construct a duplicate system in competition and not

restricting it to purchase or condemnation. Therein lies
the authority for condemnation, for the ruling recognized
the fact that a city has the right of condemnation under
Texas Law but can choose to waive it if the preference is
to competition.

The City of Weatherford could have entered condemnation
proceedings against the Texas Public Utilities Corporation
with success under the statute and these authorities, but it
must be admitted that the case would have been more or less
a Texas test case from the scarcity of authorities. Condem-
nation would have cleared the competitive doubt from the fu-
ture of the plant and would have been insurance for the future.
It would have cleared in one litigation any future court ac-
tion between now and 1946 and the removal of Texas Public Util-
ities Corporation property during and after that time.

The city government hesitated for several reasons to
bring their power of condemnation into use. In the first
place there was a question on the effectiveness of the stat-
utes and their clarity. In the second place there was no de-
sire to make a test case out of the Weatherford situation be-
cause in these proceedings there was a lack of authorities,
or previous cases. In the third place the City Commission
did not wish to ask the bondholders to tie their money up in
the courts for an estimated period of three years with no re-
turn, for three years was the period foreseen that the Texas
Public Utilities Corporation could keep the case in the courts,
and fourth, there was the fear that the outcome of condemnation may not be in keeping with the actual value of the plant. 46

How wisely the commission acted in not testing their power of condemnation cannot be foretold, but it could have prevented any friction or continued friction until the Texas Public Utilities Corporation finally leaves the city in charge of the electric service. At least the matter would have been settled in one court proceeding, and the competitive angle would have been no more.

46 Statement from George McCall, personal interview.
CHAPTER IV

MUNICIPAL COMPETITION WITH PRIVATE COMPANIES
IN ELECTRIC SERVICE

When the City of Weatherford refused to take advantage of its right of condemnation against the Texas Public Utilities Corporation but held to the idea of constructing an electric light plant and distribution system of its own, it necessarily had to enter into competition with the private company. The advisability of competition has already been questioned in this study, and the writer thinks it would have been advisable for the city to have condemned the properties and taken advantage of its ability to operate exclusively. The city's reasons for not condemning the properties have foundation for the protection of the municipal project, if the utility company will limit itself to quiet competition. However, the history of the utility corporation machines, with the profit motive the guiding policy, in competition with municipal companies, shows that the cities have had a period of hardship and strife competing with the private company. In fact, the cities have had to stay on the alert to retain efficient service in the city plants and keep the municipal consumers satisfied.

The Statutes of the State of Texas governing the activities of public utilities have been given a thorough test in many cases throughout the courts. Whereas the cities have
been hesitant to test the laws because of expense to the taxpayer and the fact that the lawyers accessible to them were inexperienced in utility law, the utility companies have pursued a role of antagonism, and have questioned all laws that have had a tendency to destroy or damage in any way their electric business.

In establishing the right of a municipality to operate a municipal system, Section 14 of the Enumerated Powers in Article 1175 of the Revised Statutes has established the power of the cities:

To manufacture its own electricity, gas or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public on such terms as may be provided by the Charter.¹

This law provides for the operation of the plant, as well as contract or purchase, if so desired, but no mention is made of the competitive angle.

For the competitive right Texas Jurisprudence interprets as follows:

Unless forbidden by statute, an authorized acquisition and operation by a municipality of a utility may be accompanied by a purpose to prevent competition by another owner of such a utility; and the municipality may acquire the exclusive right to own, and operate such a utility for the benefit of the inhabitants, provided that it does not hereby impair the obligations of the franchise previously agreed. The fact that a municipality has a contract with a private corporation by which it is provided with an adequate supply of water, light or power does not deprive it of power to provide a system of its own. And since a city cannot

¹Vernon's Annotated Revised Civil Statutes, Texas, II, 694.
grant a private corporation an exclusive franchise it may construct its own plant and operate it in competition with a privately owned utility to which it has previously granted a franchise. An attempted limitation on this right in a charter is void. The courts will not interfere with the action of the municipality in this respect unless proof is made that it will prove disastrous and unreasonably expensive to the taxpayer.  

Some municipalities have been influenced in such a manner that their charters provide for an exclusive franchise to persons or corporations, and the inference would be that the sentence "An attempted limitation of this right is void," is to protect a city against such undue influence. The basis for this interpretation has as its authority the courts.

From the interpretation of the courts, it matters not whether the city has provided for competition or not, it still has the right, limited only when it may prove disastrous or expensive for the taxpayer. However, the City Charter of Weatherford, Texas makes the following provisions:

Section 12 - Ownership of Public Utility--said city shall have the power to buy, own or construct and to maintain and operate within or without the city limits, complete water system or systems, gas or electric lighting or power plant or plants, telephone or telegraph systems, street railways, sewer systems, sewage plants, fertilizing plants, abattoirs, municipal railway terminals, or any other public service utility, and to demand and receive compensation for services furnished by the city for private purposes or otherwise and to regulate, by ordinance, the collection of compensation for such service.

Section 14 - Manufacture or Purchase of Public Utility Products--said city shall have the authority to manufacture its own electricity, gas or anything else that may be needed or used by it or the public; to make contracts with any person, firm or corporation for the purchase of gas,

2Texas Jurisprudence, XXX, 360.
water, electricity or any other commodity or articles used by it or by the public, and to sell same to the public as may be determined by the governing authority.3

Section 15 of the Charter provided for the city to have exclusive right of operation within the city. This section, as applying to the present situation in Weatherford where the Texas Public Utilities, operating under franchise, would be declared void under the Statute, whereby it protects the impairment of a previous franchise obligation. However, under the right of the city to grant franchises, it gives the city the exclusive operating right upon the expiration of the present existing franchise in Weatherford.

Right to operate and Maintain Public Utility Acquired, Exclusive: In the event said city shall acquire by purchase, gift, demise, deed, condemnation or otherwise, any waterwork system, electric light or power system, gas system, street railway system, telephone system or any other public service utility to operate and maintain such public service utility, so acquired, shall be exclusive, for the purpose of serving the inhabitants of said city, the right to operate and maintain such public service utility, so acquired, shall be exclusive.4

The Court of Civil Appeals in Amarillo, Texas, in June, 1924, declared the Section of the Weatherford Charter unconstitutional in giving an opinion on the identical situation in the case of the City of Vernon et al v. Montgomery et al, when it said "Vernon City Charter giving city exclusive right to operate public service utility acquired by purchase, gift, etc., if construed as depriving franchise holder of right to

3Charter, City of Weatherford, Article II.
4Ibid., Section 15.
operate light and water system, would be unconstitutional as impairing obligation of contract. 5

This interpretation then does not refute the statement that after a franchise expires, the city may have exclusive operation by neglecting to act on its power to grant franchise.

The various courts have upheld municipal competition in electric service in their decisions throughout the years. A study reveals that in every case when the questions or underlying questions are concerned with competition between a municipality and private company in electric service, the courts have upheld the right of the competition between the two. In two quite recent cases the United States Supreme Court has even commented on the fact, directly, that such is the case. In 1934 the court rendered this opinion:

In conducting the business by state authority, the city is exercising a part of the sovereign power of the state which the constitution has not curtailed. The decisions of this court leave no doubt that a state, may, in the public interest, constitutionally engage in a business commonly carried on by private enterprise, levy a tax to support it, and compete with private interests engaged in a like activity. 6

By commenting on the decision rendered, the court established the fact that the decision here is a product of past cases and that there is no doubt as to the right of competition.

The United States Supreme Court has also upheld that the right of the municipalities is not curtailed even if the result

5City of Vernon et al v. Montgomery et al, 265 S.W. 188. (1925).
of the legal competition is to hinder or even destroy the business of the private company.

... in other words, these municipalities have the right under state law, to engage in the business in competition with petitioner, since it has been given no exclusive franchise. If its business be curtailed or destroyed by the operation of the municipalities, it will be by legal competition from which no legal wrong results. 7

Therefore the municipality may acquire all the business under competition, even if the company has a franchise, and the private company has no recourse to make the city liable.

These two cases quite firmly establish the right of municipalities to compete under the constitution of the United States. The Courts in the State of Texas just as firmly have established the same principles under the authority of the United States Supreme Court. As early as 1893 the courts were setting precedence for the right of municipal competition. On May 25, 1893, the Supreme Court of Texas clearly established the following points:

Even though a franchise has been granted, the city can nevertheless grant a similar franchise for the operation of a similar public utility to another corporation or can construct its own plant and operate it in competition with the company to which such franchise has been granted. . . .

... in virtue of the general laws it has the right to construct, own, maintain and operate its own light and water system, and, as in this case, to issue bonds for that purpose. . . .

... . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

The fact that a city is already supplied with water and light under an existing contract does not affect the right of the council to judge of the necessity for a new system . . . where a city has power to create a bonded

indebtedness for the construction and operation of a system to supply the city with water and light in the absence of a clear abuse of authority, the issue of such bonds will not be restrained because the system proposed is greater than the immediate needs of the city.\footnote{City of Austin v. Nall, 22 S.W. 668, 960 (1894).}

The Court of Civil Appeals in Dallas, May 13, 1911, returned this opinion:

That a city had granted a franchise to a corporation to furnish lights did not preclude it from granting a similar right to another corporation or from exercising the right itself.

There was no error, we think, in this action of the court. The facts set forth in the petition of the plaintiffs in error, who will hereinafter be referred to as plaintiffs, did not entitle them to the relief sought. That the city of Terrell had granted to plaintiffs a franchise to furnish the inhabitants thereof with light did not preclude the city on the theory that such action would impair the obligation of its contract with plaintiffs, or, in the view of such contract would be inequitable, from exercising the right itself.

... But the conclusion of the plaintiffs, to the effect that the city of Terrell has no express authority under the statutes of this state to manufacture, generate, or produce electricity for lights or heat and to sell and distribute the same to the inhabitants of said city, cannot be maintained.\footnote{Joy v. City of Terrell, 138 S.W. 214 (1912).}

The opinion of the Court of Civil Appeals in Waco, April 10, 1924, recognizes the fact that there is no controversy over the question:

As to the right of appellee to erect, construct, and own an electric light plant there can hardly be any controversy. It is provided by articles 770 and 771 of the R.S. that cities and towns may purchase, construct, and operate water, sewer, and gas and electric light systems, and shall have the power and right to sell water, gas, electric light or power, and sever privilege to any person or corporation, under such terms and conditions as may appear to be for the best interest of the town or city.
... It has been the uniform holding of our courts that the city has a right to erect, construct, and operate a light plant and to sell its surplus light and power to manufacturing concerns for individual use.\textsuperscript{10}

The Court of Civil Appeals in Amarillo on October 8 of the same year said:

Vernon City Council may issue bonds for construction of municipal electric light plant, though it may result in competition with plant already operating under city franchise.\textsuperscript{11}

In two cases the Federal Courts have upheld these decisions in the same manner: Fairbanks Morse & Co. v. Texas Power & Light Co.,\textsuperscript{12} and West Texas Utilities Company v. City of Spur.\textsuperscript{13}

There is little doubt that there may be many other decisions of cases on the same trend, for utility companies have attempted at every opportunity to get the courts to declare that municipal competition in electric service is illegal. The fact that the Texas Public Utilities did not question the right of competition as a main issue is evidence in itself that this right is fully recognized under the present statutes and in the courts. The Texas Public Utilities questioned the legality of competition in the injunction suit, but the court gave it little discussion.

\begin{footnotesize}
\begin{enumerate}
\item Bass vs. City of Clifton, 261 S.W. 795.\(\textsuperscript{19}\) (1924).
\item City of Vernon et al v. Montgomery et al, 265. S.W. 188.\(\textsuperscript{19}\) (1925).
\item Fairbanks Morse & Co. v. Texas Power & Light Co., 32 F (2d) 693, 696.\(\textsuperscript{19}\) (1929).
\item West Texas Utilities Company v. City of Spur, 38 F (2d) 466.\(\textsuperscript{19}\) (1930).
\end{enumerate}
\end{footnotesize}
In an attempt to predict the future for the Weatherford Municipal Light Plant in competition with the Texas Public Utilities Corporation, four cities were contacted to find out what practices the private utility companies had used in those communities.\textsuperscript{15} Three of these cities made replies. Of these, Brady, Texas, has never had competition within its city, but many attempts have been made by utilities to render service within the city limits.\textsuperscript{16}

The City Secretary of Garland, Texas, replied that the private utility companies would not hesitate to attempt to freeze the municipal plants out of business.\textsuperscript{17}

The reply from Spur, Texas, involved litigation with the West Texas Utilities Company over an ordinance passed by the city, requiring any company operating a public utilities plant in the city to do so under a franchise; the reply also involved the attempts of the private company to retain its business with the Spur plant by extremely low rates, and the reasons for the establishment of the plant and its pleasing success.\textsuperscript{18}

The experiences of Brady and Garland give foundation for many expectations for Weatherford. The battle front has calmed in Garland, and the Texas Power and Light Company has been able to retain approximately only five per cent of the business

\textsuperscript{15}See letters from these cities in Appendix.
\textsuperscript{16}See note from Brady, Texas, in Appendix.
\textsuperscript{17}See letter from Garland, Texas, in Appendix.
\textsuperscript{18}See letter from Spur, Texas, in Appendix.
in the city.\textsuperscript{19} The calm that now exists has not always prevailed, for the city has had a long and arduous task to accomplish success. Fortunately for the city, the city officials attempted to anticipate every move of the utilities company and be able to meet them. From Terrell, Texas, the Garland government learned of the double-throw switch; and when the Texas Power and Light Company convinced a few customers that they should retain the private companies' meters as well as the city's, the city officials immediately instructed the people to choose between the municipal plant or the private company as only one meter would be allowed.\textsuperscript{20}

The double-throw switch as used in these situations is the retention of two meters at each residence, or place of business: one belonging to the city, the other to the private company. The fear Garland had in this case was that when the city plant was servicing its share of the customers and the utility company its share, the company would stop its service and the city unconsciously would not be operating at a capacity to service the town when every residence and business was switched on to the city plant. The service would be so inferior that when the customer would switch back to the private utility's line, the engines of the corporation would be prepared to meet an increased demand, and the customer would be influenced to remain on the line to the discredit of the city.\textsuperscript{21}

\textsuperscript{19} Statement from J. R. Stultz, City Secretary, Garland, Texas, personal interview.

\textsuperscript{20} Statement from L. A. Powell, member City Commission, personal interview.

\textsuperscript{21} Ibid.
When Garland refused to allow this, the Texas Power and Light Company immediately took out all of its meters and put each of its customers on a flat rate. L. A. Powell of the City Commission was appointed to investigate several businesses. One example of the enormous rate cut made by the private company under flat rates was a combined residence, tourist camp and service station. It was found that for $11.00 this business was receiving the same service that formerly had cost $135.00. A meat market and grocery store, a combination business, was found to be paying $3.00 for a $50.00 or $60.00 bill, if the business had been metered. These same circumstances were prevalent over the city with the Texas Power and Light Company gaining much of the city's business. 22 A resident of Garland has said, "We could, at that time, run all lights, the electric range, refrigerator, fans, or any electrical appliance for twenty-four hours a day for $1.25 per month." 23 The company also offered the city, through an agent, $150,000 flat for the plant; after this was refused, an approach was made to see if the city would accept $250,000, but no definite offer was made. 24 The plant had a value of between $60,000 and $70,000. 25

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22 Ibid.

23 Statement from Ilma Weir, resident of Garland, Texas, personal interview.

24 Statement from J. R. Stultz, City Secretary, Garland, Texas, personal interview.

25 Statement from L. A. Powell, member City Commission, personal interview.
The city administration awoke one day to discover that the customers of the municipal plant in Garland were in an irate state. Whereas the average light bill for the few months previous for resident service was approximately $1.75, some bills amounted to around $18.00 and $20.00. When meters were checked, everything seemed in order. The individuals making up the city government were aghast and at a loss for an explanation. The conclusion was finally arrived at that the meters had been underread for an approximate six months, and the difference from those previous bills added to this, the last bill. There was nothing the city could do to appease the customers except collect the average bill for those months and remedy the source of difficulty. When the meter reader was fired, he immediately began actual service with the Texas Power and Light Company.26

Although the main difficulty the City of Spur has had with the West Texas Utilities Company has been with rates, it is interesting to see that the private company was eager to get imbedded in Spur many years prior to the erection of the municipal plant to such an extent that it paid $145,000.00 for a plant valued at $60,000.00. The $85,000.00 was paid for good will. The company naturally claimed that the high rates were a return on this $145,000.00, but as soon as competition became evident to the company, rates were reduced from fifteen cents to thirteen cents per kilowatt hour. When

26 Statement from L. A. Powell, member City Commission, personal interview.
the municipal light plant began operation in Spur, the rates of the private concern were immediately reduced to two and one-half cents per kilowatt hour. These were not universally applied as many business concerns were placed on flat rates. A cafe which heated, lighted, cooked and refrigerated by electricity with an average monthly consumption of 10,000 kilowatts was on a flat rate of $20.00. At two and one-half cents the bill would have been $250.00, a difference of $230.00 over the meter rate. A twenty-six room hotel had a flat rate of $40.00 per month for the summer months and $60.00 per month for the winter. Their approximate consumption for the winter for lighting, cooking, refrigeration, heating bath water, and water for all purposes, and heating the building was from 12,000 to 15,000 kilowatt hours per month. At the flat per kilowatt hour rate the bill would have been $300.00, a saving of $240.00 per month for 12,000 kilowatt hours. The rate difficulties are now remedied by act of the legislature. By these and other tactics the West Texas Utilities Company was able to secure a number of the city customers. Yet with these actions against it the city plant is operating successfully in competition.\textsuperscript{27}

The City of Weatherford need fear no legal cutting of rates for the size of Weatherford, and under its charter, the city has the legal right to set rates by the provisions in the statutes. Whether the ordinance placing daily fines on any

\textsuperscript{27} See letter from City of Spur in Appendix.
person or corporation or assigns charging rates other than those provided for by ordinances cannot be predicted, because the fines are heavy enough to prevent this offense or many repetitions of the offense.\textsuperscript{28}

It is indeed fortunate that this is the case for Weatherford. The cities are more or less limited to the confines of the City Limits, for even if they have a right to operate in the county, many do not avail themselves of this right. In these cases the rate wars are a handicap to cities paying off their bonds from plant revenue, while financial status of the utilities are not affected. The private corporations make up their rate loss in the city by raising rates in other communities to absorb the loss. Many states have time after time fought this practice with only moderate success.\textsuperscript{29}

From these experiences of Garland and Spur, a great success can be predicted for the Weatherford plant if the city officials will watch every movement on the part of the private utility company. The experiences of these cities may not warrant fear on the part of the City of Weatherford from the Texas Public Utilities Corporation, but if the Texas Power and Light Company and the West Texas Utilities Company are in any way representative of the vast group of centralized corporations, then Conrad Russell should be prepared for any attack that may be attempted.

\textsuperscript{28} Ordinance, City of Weatherford, III, 558.

\textsuperscript{29} Stephen Raushenbush, \textit{The Power Fight}, pp. 139-140.
Situations have been known to arise whereby the private company refuses to remove its property from the city. In case the city of Weatherford finds itself facing a similar situation, it can go to court and force the Texas Public Utilities Corporation to remove its poles and wires. The Supreme Court of the United States established this precedent in Detroit United Railway v. City of Detroit. In this case the court said:

Action of city requiring a street railway company, upon reasonable notice, to remove its tracks and other property from the streets, does not invade the company's contractual and property rights in violation of the constitution, if its franchise to use the streets was granted by the city for a definite period which has expired.30

This ability to force the removal of the company from the city when its franchise expires insures exclusive operation of the municipal plant in only a few years.

Up to July 1, 1940, the activities of the Texas Public Utilities Corporation have been limited to the refund of deposits to the consumers on April 8, 1940, prior to the opening of the city plant.31 The city had previously arrived at a policy of not charging meter deposits to permanent residents. Accompanying the refund was a plea for continued patronage. The city's reply was a patriotic message to every potential customer in the city on a "Trade-at-Home" policy.32 The city's message brought results, for 700 customers have joined the city

31 See letter to customers from Texas Public Utilities Corporation in Appendix.
32 See letter from City of Weatherford to citizens of the city in Appendix.
service, canvassed and voluntary customers, and by July 12, 1940, only one-half the town had had an actual canvass.33

The scope of utility companies is not confined to the realms of the small communities. It embraces the entire United States; politics, public positions, public schools, colleges, universities and even textbooks have been reached by the utility doctrine of private ownership. Authors of textbooks have portrayed the ideas of the public utilities groups through direct subsidy or payment. The power this group has had on the press is especially evident because of its extensive advertising. In fact the pressure has been applied on a national scale of propaganda and indoctrination.34 The state legislatures have also been attacked with bills through certain members. In 1929 the power trust sought legislation in the State of Texas to hinder or destroy municipal ownership but without success.35

Not only must the cities interested in low rates through municipal ownership be concerned with action in the confines of their city limits, but they must also watch their legislators concerning their problem.

33 Statement from Hall Buchanan, City Accountant, Weatherford, Texas, personal interview.

34 Stephen Raushenbush, op. cit.

CHAPTER V

THE BACKGROUND FOR RATE SETTING IN WEATHERFORD, TEXAS

From the experiences of Garland and Spur, the necessity for the ability to set rates is seen. The private utility companies otherwise are allowed to use their own discretion for any schedule of rates they may place in operation. In communities where there is no competition, the utilities persist in charging for their services extortionate rates. Where municipal competition prevails, the extensive service of the utilities in various communities enables them to charge lower rates, and still return a small profit, or make up the loss in higher rates in other communities, which offer strong competition to a municipal plant that has to pay its bonds out of service revenues.

Since 1929 the City of Weatherford has availed itself of its right to set the rates that the utility company is allowed to charge. An authorized interpretation of this right is established in Texas Jurisprudence:

A municipality which operates and maintains a public utility may fix and regulate the rates to be charged for the service. But a city or town may not regulate the charges to be made for the service of a privately owned utility, unless power so to do has been granted to it by the state.

As a matter of fact, however, the legislature has, subject to some limitations, conferred regulatory power upon the municipality. Indeed, the authority which has been vested in cities by the statute is held to be not merely permissive to be exercised or not as the city may elect, but to create a duty which must be discharged
as a preliminary to the settlement of a dispute concerning the rates that may be charged by the proprietor of a service or utility. ¹

... Municipal authority in this respect may be delegated; and the statutes confer it upon home rule cities, and cities and towns of over five hundred population incorporated under the general laws. ²

To verify the interpretation, the statute must also establish the same:

The governing body of all incorporated cities and towns in this state incorporated under the General Laws thereof shall have the power to regulate, by ordinance, the rates and compensation to be charged by all persons, companies or corporations using the streets and public grounds of said city or town, and engaged in furnishing water, gas, telephone, light, power or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules, and regulations. The governing body shall not prescribe any rate or compensation which will yield more than a fair return upon the fair value of the property used and useful in rendering its service to the public, but which return in no event shall ever exceed eight (8) per cent per annum. ³

... To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless (on) proof that the same have been actually issued by the

¹ Texas Jurisprudence, XXXIV, 724-725.
² Ibid., XXX, 363-364.
³ Vernon's Annotated Revised Civil Statutes, Texas, Cumulative Annual Pocket Part, Art. 1119, II, 218.
corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and constitution of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose.\(^4\)

The right to set rates in the Charter of the City of Weatherford provides for the same as in Article 1175, wherein its wording is almost identical with that of the statute.\(^5\)

This is so clearly defined and accepted by the courts in its interpretation that little question can be raised. However, it might be well to cite two decisions to establish the evident facts. In the Community Natural Gas Company v. Natural Gas and Fuel Company case in the Court of Civil Appeals, at Austin, Texas, November 26, 1930, the court used still another case in rendering its opinion.

In the Uvalde case it was held that a city could not by contract barter away its governmental function of rate making; and, further, that the authority vested in cities under Article 1119 was not merely permissive, to be exercised or not as the city might choose, but was imposed as a duty which the city was obligated to perform. To quote from the opinion: 'This class of functions the city must perform. The city has no option. They are not to be exercised or ignored by the municipality at discretion. . . . Such functions are legal duties imposed by the state upon its creature. These duties the municipality may not omit with impunity, but must perform at its peril.'\(^6\)

Likewise in the case of Texas Louisiana Power Company v. City of Farmersville in the Commission of Appeals, the

\(^4\)Vernon's Annotated Revised Civil Statutes, Texas, II, Art. 1175, Sec. 12, 693.

\(^5\)Charter, City of Weatherford, Texas, Art. 2.

power was upheld for cities of certain classes by including in its opinion that as was rendered in the case of the City of Seymour v. Texas Electric Service Company.

In the recent case of the City of Seymour v. Texas Electric Service Co. Judge Hutchison, speaking for the Circuit Court of Appeals for the Fifth District, ably reviews the authorities touching this subject, and construed article 1119 in connection with other articles of the Statutes mentioned herein, and correctly upheld the validity of that act granting to cities and towns of a certain class the power to fix and control rates to be charged by public utilities operating within their limits . . . and the conclusions stated herein are in full recognition of that rule, and the right of cities to construct, operate, and maintain municipal plants. 7

It is not a problem here of the basis of the rates to be set under this right, but attention should be directed momentarily to the foundation upon which rates are determined. The Supreme Court of the United States has followed the decision of this court in Smythe v. Ames where the rates were to be set upon a fair return upon the fair value of the property. 8 The question has always been determinably around the "fair value of the property," and decisions have established it as not more than fair return on that property actually involved in producing the service, and only stocks or bonds issued when the return was to be placed in actual property improvement where the service rendered would benefit the consumer. 9

7Texas Louisiana Power Co. v. City of Farmersville, 67 S.W. (2d) 235 (1934).
8Smythe v. Ames, 171 U.S. 361 (1898).
Taylor E. Groninger, in his book on public utility rate-making, sums this up quite well:

Fair value is recognized as the rate base; and Smythe v. Ames is referred to in practically every case pertaining to rate-making which has been passed upon by the United States Supreme Court since it was decided in 1898.

It is interesting to note that twenty-one years elapsed from the time the Supreme Court of the United States, in Munn v. Illinois, decided that privately owned property devoted to public use is subject to public regulation, until the same court established, in Smythe v. Ames, the fair value rule, by which the value of such property for rate-making purposes is determined. 10

The Munn v. Illinois case was then possibly the precedent-setter for the public regulation of those private businesses devoted to public use, and on which other cases of the right of regulation finds its authority.

With this right to set rates, records are not available that show that the City of Weatherford made any reduction in rates prior to 1929, or availed itself of this right in any way. In 1911 an attempt was evidently made by calling in a consultant, a lawyer acting as temporary City Attorney, H. C. Shropshire, for his opinion on what powers the city had in setting rates, and his charges for defending the city in any litigation that would result from the setting of rates. The city was quite wrought up at this time over its rates, as is evident in the report of the committee on water and lights requesting a rate of ten cents per kilowatt to make the rates in Weatherford comparable to other towns.

10 Ibid. p. 37.
We your committee appointed to investigate and make a contract with the Water and Light Company beg to report that we have made a total failure to make any contract that we think would be acceptable by your honorable body. The Water and Light committee recommends that the City of Weatherford Water, Light and Ice Company modify their electric light rate and make a price of 10 cents per kilowatt for lights and a rate of from 4 to 10 cents per kilowatt for power. Our reasons for the above recommendation are that the rates for light, as compared with other places, are out of line and we are paying more than other places under similar conditions; which we think are against the commercial interest of the town. 11

This report was made on June 1, 1911; on June 29, 1911 the contract for legal service was entered into with H. C. Shropshire; on the same date, the mayor sent a statutory demand to the company for the present value and condition of the plant. 12 There is no record of any action at all having been taken, up to April 5, 1912, when it is recorded that the committee appointed to make the contract was dismissed without any agreement with the company having been reached. The conclusion must be drawn that either the city did not avail itself of any rate-making power, or did not have that power at that time, or the company made some compromise with the city acceptable to them. The writer is prone to believe that some small reduction was made, in compromise, for before the World War there is a record of two small rate reductions. 13

Because of advance price in fuel costs the former rates were increased twenty-five per cent for the duration of the

11 Minutes, City Council, Weatherford, Texas, III, 391.
12 Ibid., 397.
13 B. F. Cherry, A General History of the City of Weatherford Water, Light, and Ice Company, p. 76.
war. These rates were again reduced, but intermittently, at five per cent per interval until July 1, 1919, when the rates of pre-war days were returned. It was not necessary to confer with the city officials on this because without an ordinance controlling such activity the company was free to direct its own rate scheduling.\textsuperscript{14}

The city was favorable to approaches from other concerns in regard to other means of acquiring lights. On May 3, 1900, when J. L. Sale et al, applied for an electric light and power franchise the council referred the matter, favorably, to the standing committee on water and lights.\textsuperscript{15} The franchise was granted on May 8 of the same year.\textsuperscript{16} The plant was receiving favorable action for on July 5 the city hesitated to enter into any contract with the City of Weatherford Water, Light, and Ice Company, pending the building of the new company plant.\textsuperscript{17} However, after this time, no records appear to make it evident that this new business ever completed a building.

Eight years later the city was still searching for lower light rates. At this time, September 10, 1908, the city made an experiment by contracting for four 500 candle-power street lights, to be the gas arc type, from the Gas Company at $8.25

\textsuperscript{14} Ibid.
\textsuperscript{15} Minutes, City Council, II, 259.
\textsuperscript{16} Ibid., p. 262.
\textsuperscript{17} Ibid., p. 267.
per lamp per month, to be cancelled after six months if they proved unsatisfactory. This contract was to extend for one year only. Three arc lights and all Nernst lights were to be continued under the old contract of $10.00 per arc light with the City of Weatherford Water, Light, and Ice Company. Members of the council wished to extend and give more of the lighting business to the gas company, but the gas company wished to be relieved of its obligation. The council requested sealed bids for a lighting contract for the city agencies, but the bid of the water and light company was the only one submitted. This contract was made for three years and was given of April 10, 1910. The terms of the contract are not available.

The city again attempted to get another plant in 1912, for on July 2, the city secretary was instructed to write the Cooperative Electric Company to get the full data concerning the electric plant they could erect in the city. Again the attempt failed to get other electric service for the city.

There was evidently an increasing demand for lower rates from 1920 until 1929, but no evidence of this appears in the records. George McCall, of the firm of McCall and McCall,

18 Ibid., III, 223.
19 Ibid., p. 326.
20 Ibid., p. 447.
attorneys-at-law, present city attorney, and whose father was counsel for the City of Weatherford Water, Light, and Ice Company, recalls that from 1920 on, the company made a large return to its owners, which fact was also recognized by the company's consumers. This, and the fact that the rates, now not available, pressed the matter to a settlement, demanding that the City Commission take advantage of its authority by law to regulate the rates. 21 This pressure got limited results in an ordinance passed July 10, 1929. This ordinance placed into effect the following residential schedule: 22

$0.10 per KWH for first 20 KW
0.05 per KWH for next 50 KW
0.03 per KWH for all over 70 KW
Minimum Bill: $1.00 per month.

At this time there were no reductions made in the commercial rates.

The bond election was held on November 12, 1937; when the Texas Public Utilities Corporation, who had bought the plant in 1929, realized what was going to occur in November, the officials approached the city for a new commercial rate ordinance to satisfy the demands of the business men of the city. 23 This ordinance was duly passed and adopted on October 30, 1937, and provided for the following rates for

21 Statement from George McCall, City Attorney, personal interview.

22 Ordinances, City of Weatherford, III, 411.

23 Statement from George McCall, City Attorney, personal interview.
commercial service with a minimum bill of one dollar per month:\textsuperscript{24}

\textdollar0.10 per KWH for first 10 KW
\textdollar0.09 per KWH for next 40 KW
\textdollar0.07 per KWH for next 100 KW
\textdollar0.05 per KWH for next 100 KW
\textdollar0.045 per KWH for next 400 KW
\textdollar0.03 per KWH for next 750 KW
\textdollar0.02 per KWH for all in excess of 1400 KW.

The combined lighting and power service schedule in the same ordinance arranged the rates as follows:\textsuperscript{25}

\textdollar0.03 per KWH for first 90 KWH per contract KW
\textdollar0.025 per KWH for next 2500 KWH
\textdollar0.01 per KWH for all above 2590 KWH

However, this excerpt appeared at the end of the section just given, as a provision for the minimum bill: "\textdollar1.65 per KW of the highest contract KW established in 12 months ending with current month."\textsuperscript{26}

The rate for general power use for a connected load of from one to fifteen horsepower was included as the following, the minimum bill to be one dollar per month for each horsepower or fraction of one horsepower:\textsuperscript{27}

\textdollar0.10 per KWH for first 50 KWH
\textdollar0.075 per KWH for next 100 KWH
\textdollar0.05 per KWH for next 500 KWH
\textdollar0.03 per KWH for all over and above 650 KWH

After the Texas Public Utilities Corporation had lost its law suit involving the bond issue, the company presented yet another ordinance making substantial reductions in all

\textsuperscript{24}Ordinances, City of Weatherford, Texas, III, 540.
\textsuperscript{25}Ibid.
\textsuperscript{26}Ibid.
\textsuperscript{27}Ibid.
departments of service rendered by the company. At this
time the Texas Legislature had before it a bill relative
to an excise and sales tax, and the City Commission dis-
dcovered a paragraph within the proposed ordinance that read:

Plus the proportionate part of any new tax, or
increased rate of tax, or governmental imposition(ex-
cept state, county, city and special district ad valorem
taxes and any income taxes) levied or assessed against
the company or upon its electric business, as the re-
sult of any new or amended laws or ordinances, after
June 1, 1934.28

The City Commission could have no part of such a clause,
and struck it out, inserting a clause taken from the former
ordinance of 1937, reading:

Plus or minus an amount calculated at the rate
of 0.025¢ per KWH for each 1¢ by which the average
cost of fuel used, delivered at company's boiler room,
during the calendar month next wholly proceeded 15¢
or shall have been less than 9¢ per 1,000,000 Btu.29

As can be seen, the City Commission feared that if it
allowed the excise and sales tax clause, the consumers of
Weatherford would be paying the tax, if passed by the legis-
lature, originally defined as a tax primarily on the receipts
of the corporation. However, the clause would be merely a
shift of the tax upon the shoulders of the consumers.30 The
actual wording of the clause places this interpretation upon
it.

28 Proposed Rate Schedule, 1938, Files, City of Weather-
ford, Texas.

29 Ordinances, City of Weatherford, III, 558.

30 Statement from George McCall, City Attorney, personal
interview.
On January 13, 1939, the City Commission passed the ordinance under which both the Municipal Light Plant and the Texas Public Utilities Corporation are servicing. The rate schedules for residence service, commercial service, combined lighting and power, general power service, ice refrigeration, grain elevator and feed mill service, and moving picture theatres, with the minimum bills, were included in the one ordinance condensed in the following rates:

**Residence Service**

- $0.10 per KWH for first 10 KWH
- $0.05 per KWH for next 40 KWH
- $0.03 per KWH for next 79 KWH
- $0.02 per KWH for all additional KWH

Minimum Bill: $1.00 per month

**Commercial Service**

- $0.10 per KWH for first 10 KWH
- $0.05 per KWH for next 200 KWH
- $0.04 per KWH for next 400 KWH
- $0.022 per KWH for next 2,500 KWH
- $0.015 per KWH for all additional KWH

Minimum Bill: $1.00 per month

**Combined Lighting and Power**

- $12.00 per month for first 8 contract KW, or less
- $1.50 per KW all additional contract KW and
- $0.03 per KWH first 90 per contract KW
- $0.025 per KWH next 2500 KWH
- $0.01 per KWH all additional KWH

Minimum Bill: $1.65 per KW of the highest contract KW established in the 12 months ending with the current month

**General Power Service**

- $0.10 per KWH for first 50 KWH
- $0.075 per KWH for next 100 KWH
- $0.05 per KWH for next 500 KWH
- $0.03 per KWH for all additional KWH

Minimum Bill: $1.00 per horsepower connected

**Ice Refrigeration Service**

- $2.00 per contract horsepower, including the use of 60 KWH for each of the first 50 contract horsepower and 120 KWH for each contract horsepower in excess of the first 50 contract horsepower

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31 *Ordinances, City of Weatherford, Texas, III, 558.*
12.5 mills per KWH next 50 KWH per contract hp.
10.0 mills per KWH all additional KWH
Minimum Bill: The contract hp charge but not less than
$100.00 during the months of April to September, inclusive
Grain Elevator and Feed Mill Service
Busy Season:
$2.00 per contract hp including the use of 40 KWH per
contract hp
$.02 per KWH all additional KWH
Off Season:
$1.00 per contract hp including the use of 10 KWH per
contract hp
$.04 per KWH all additional KWH
Large Grain Mill and Elevator Service
$100.00 which includes the use of 4,000 KWH
2.00 for each contract KW in excess of 100 added to
the minimum
Minimum Bill: $100.00
Moving Picture Theatres
$40.00 for the use of 1000 KWH
.03 per KWH for next 1000 KWH
.025 per KWH all additional KWH
Minimum Bill: $40.00
In small bills up to forty kilowatt hour usage, the
1939 ordinance presented a substantial saving over the 1929
ordinance, but when the bills amount to sixty kilowatt usage
the difference is reduced to a minimum of one per cent. For
service of 200 kilowatt hours or more the saving again in-
creases. It is evident however, that in the scale of use in
average homes there is little difference in rates. Table 3
attempts to show these differences.

It might be well to compare the existing residential
rates with those existing in other communities to see if
the rates in Weatherford are favorable to the interests of
the consumer. Under its ability to set rates the City Com-
misson might even set lower rates if these rates do not ap-
ppear to be the lowest that might be set.
TABLE 3

<table>
<thead>
<tr>
<th>No. of KWH Used</th>
<th>Bill Under 1929 Rates</th>
<th>Bill Under 1939 Rates</th>
<th>Difference Between 1929 and 1939 Bills</th>
<th>Per Cent of Difference to Nearest 1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>$1.50</td>
<td>$1.25</td>
<td>$0.25</td>
<td>20%</td>
</tr>
<tr>
<td>25</td>
<td>2.25</td>
<td>1.75</td>
<td>.50</td>
<td>29%</td>
</tr>
<tr>
<td>40</td>
<td>3.03</td>
<td>2.50</td>
<td>.55</td>
<td>22%</td>
</tr>
<tr>
<td>60</td>
<td>3.65</td>
<td>3.36</td>
<td>.29</td>
<td>9%</td>
</tr>
<tr>
<td>100</td>
<td>4.85</td>
<td>4.80</td>
<td>.05</td>
<td>1%</td>
</tr>
<tr>
<td>150</td>
<td>6.35</td>
<td>6.26</td>
<td>.09</td>
<td>1%</td>
</tr>
<tr>
<td>200</td>
<td>7.65</td>
<td>7.26</td>
<td>1.59</td>
<td>8%</td>
</tr>
<tr>
<td>300</td>
<td>10.35</td>
<td>9.26</td>
<td>1.59</td>
<td>17%</td>
</tr>
</tbody>
</table>

Sherman, Texas is now serviced by the Texas Power and Light Company, and this company has just recently instituted a new rate schedule in that city.

A privately owned utility company, Texas Power and Light, furnishes electricity in the City of Sherman lower than the City of Weatherford charges in its city, where the municipal light plant is competing with a privately owned utility. The per cent difference is very small, yet the fact remains that the municipal light plant is not rendering the service that the idea of municipal ownership has as its object.
The amount of the electric bills for the use of a certain number of KWH under the Weatherford rates and the Sherman rates and the per cent of difference between the bills

<table>
<thead>
<tr>
<th>No. of KWH Used</th>
<th>Bill Under Weatherford Rates</th>
<th>Bill Under Sherman Rates</th>
<th>Difference Between the Bills</th>
<th>Per Cent of Difference to Nearest 1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>$1.25</td>
<td>$1.25</td>
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</tr>
<tr>
<td>25</td>
<td>1.75</td>
<td>1.74</td>
<td>$0.01</td>
<td>.....</td>
</tr>
<tr>
<td>40</td>
<td>2.50</td>
<td>2.47</td>
<td>.03</td>
<td>1%</td>
</tr>
<tr>
<td>60</td>
<td>3.36</td>
<td>3.33</td>
<td>.03</td>
<td>.....</td>
</tr>
<tr>
<td>100</td>
<td>4.80</td>
<td>4.64</td>
<td>.16</td>
<td>3%</td>
</tr>
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<td>150</td>
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<td>5.64</td>
<td>.62</td>
<td>10%</td>
</tr>
<tr>
<td>200</td>
<td>7.26</td>
<td>6.64</td>
<td>.62</td>
<td>8%</td>
</tr>
<tr>
<td>300</td>
<td>9.26</td>
<td>8.64</td>
<td>.62</td>
<td>7%</td>
</tr>
</tbody>
</table>


Garland, Texas is a small city that owns its own municipal light plant and is competing with Texas Power and Light Company. Its rates also are smaller than those of Weatherford, but only on increased consumption.

The rates of Garland compare favorably up to the forty kilowatt hour usage bracket, but for more increased usage, Weatherford's rates are higher.
### TABLE 5

The amount of the electric bills for the use of a certain number of KWH under the Weatherford rates and the Garland rates and the per cent of difference between the bills.

<table>
<thead>
<tr>
<th>No. of KWH Used</th>
<th>Bill Under Weatherford Rates</th>
<th>Bill Under Garland Rates</th>
<th>Difference Between the Bills</th>
<th>Per Cent of Difference to Nearest 1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>$1.25</td>
<td>$1.22</td>
<td>$0.03</td>
<td>2%</td>
</tr>
<tr>
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<td>1.85</td>
<td>.10b</td>
<td>....b</td>
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<tr>
<td>40</td>
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</tr>
<tr>
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<td>2.97</td>
<td>.39</td>
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</tr>
<tr>
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<td>4.80</td>
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</tr>
<tr>
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<td>5.00</td>
<td>1.26</td>
<td>20%</td>
</tr>
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<tr>
<td>300</td>
<td>9.26</td>
<td>7.78</td>
<td>1.48</td>
<td>16%</td>
</tr>
</tbody>
</table>

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*Garland allows a 10% discount if the bill is paid on or before the tenth of the month. J. R. Stultz, City Secretary, states that only a few customers fail to avail themselves of this saving; therefore the discount has been allowed here to get a true picture of the saving over the Weatherford rates. These bills were figured from rate schedule cards available in the City Secretary’s office, Garland, Texas.*

*This difference and per cent of difference is in favor of the Weatherford rates in the use of 25 KWH.*

It is by no means the intention of the city government to let these rates remain at the present level in Weatherford. However, since the public utilities corporation has stated that the present rates are as low as they can go and return a profit, the city commission plans to make no further...
reductions until after February 6, 1946. However, after that time, the thought in the minds of the city officials is to pass a rate ordinance allowing for a twenty-five percent reduction under the present rate schedule.

**TABLE 6**


<table>
<thead>
<tr>
<th>No. of KWH Used</th>
<th>Bill Under Weatherford Rates</th>
<th>Bill Under Denton Rates</th>
<th>Difference Between the Bills</th>
<th>Per Cent of Difference to Nearest 1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>$1.25</td>
<td>$1.00</td>
<td>$0.25</td>
<td>20%</td>
</tr>
<tr>
<td>25</td>
<td>1.75</td>
<td>1.50</td>
<td>.25</td>
<td>14%</td>
</tr>
<tr>
<td>40</td>
<td>2.50</td>
<td>2.10</td>
<td>.40</td>
<td>16%</td>
</tr>
<tr>
<td>60</td>
<td>3.36</td>
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<tr>
<td>100</td>
<td>4.80</td>
<td>3.90</td>
<td>.90</td>
<td>19%</td>
</tr>
<tr>
<td>150</td>
<td>6.26</td>
<td>4.65</td>
<td>1.61</td>
<td>26%</td>
</tr>
<tr>
<td>200</td>
<td>7.26</td>
<td>5.40</td>
<td>1.86</td>
<td>26%</td>
</tr>
<tr>
<td>300</td>
<td>9.26</td>
<td>6.90</td>
<td>2.36</td>
<td>25%</td>
</tr>
</tbody>
</table>


The City of Denton has been recognized as one of the leaders in municipal ownership of electrical service; and since Weatherford plans to make a rate reduction when it has

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32 Statement from George McCall, City Attorney, personal interview.

33 Statement from Conrad Russell, Mayor, City of Weatherford, personal interview.
the exclusive right of operation, it might be well if Weatherford would profit by the schedule now in operation in Denton.

Up to the 100 kilowatt hour used bracket the percentage of difference does not reach the twenty-five per cent decrease as planned for Weatherford, if Weatherford followed Denton's schedule. However, in the low brackets of kilowatt hours used, there may not be as large a reduction expected as in the higher brackets of usage. In any case the Denton rates compare favorably with those in other cities showing that the rates charged under exclusive municipal service are much more attractive than those under competition or under exclusive operation of private companies.

The following rate schedule in existence in Denton, Texas is one recognized as reasonable for consumers of electricity:34

**Domestic:**
- $0.06 per KWH for first KWH
- $.03 per KWH for next 70 KWH
- $.015 per KWH for all over 100 KWH

**Minimum Bill:** $1.00 per month

**Commercial:**
- $0.04 per KWH for first 1,000 KWH
- $.03 per KWH for next 2,000 KWH
- $.02 per KWH for next 2,000 KWH
- $.015 per KWH for all over 5,000 KWH

**Minimum Bill:** $0.50 per horsepower per month

**Air Conditioning (Separate Meter and Circuit):**
- $0.02 per KWH

A recapitulation shows that the rates in Weatherford at the present time compare quite unfavorably with those in other communities, where the municipalities operate their own municipal light plants, whether in competitive or exclusive

---

operation. However, the attitude of as little friction as possible with the private corporation has its attributes since the competition has only six years to run. If the time limit of competition was to last much longer, it is recognized that the rates should be lowered even at the cost of friction between the two plants. There are just two reasons for municipal ownership: one is efficient ownership at the lowest possible cost; and the other is just enough return for services above operating cost to warrant the operation to keep increase of taxation at a minimum.

Besides presenting a community enterprise and a hoped for reduction in rates, the municipal plant presents an actual monthly investment for those accounts formerly paid to the Texas Public Utilities Corporation, since formerly the city has had to buy its electric power from the private company. The monthly accounts paid to the utility company have not been kept separately in the monthly accounts, approved, by the city, and no definite amounts paid for electricity is discernible; but taking the accounts of both water and light together, since the city will construct and operate a waterworks and distribution system at some future date, it is seen that in 1939 the city paid to the Texas Public Utilities Corporation $3,870.39 for water, lights and rental of fire hydrants.\textsuperscript{35} In 1928 the city paid $7,773.65 to the private company.\textsuperscript{36} In other words in 1939 the city saved $3,903.26

\textsuperscript{35} Monthly Accounts, Minutes, City Commission, Vol. VI.

\textsuperscript{36} Ibid., Vol. V.
over what it had been paying in 1928. After the Texas Public Utilities acquired the plant and the first rate reduction had been induced, the city paid $6,676.30 to that corporation or a saving of $1,097.35 over what it had paid in 1928.\textsuperscript{37} If we might take the amounts paid in 1939, 1938, 1936, 1930, and 1928 and divide by four to get an approximate average of the amounts paid each year since 1928, we can arrive at the approximate average of $5,955.38 as the amounts paid each year to the company. If we multiply this by eleven, we find that $65,509.18, approximately, has been paid, enough to pay off over twenty per cent of the $250,000.00 bond issue for the electric light and power plant and distribution system, or almost nineteen per cent of the $350,000.00 waterworks bonds, or almost eleven per cent of the combined issues of $600,000.00 for both electric and waterworks plants and systems. This in itself warrants municipal ownership.

George McCall, City Attorney, made the statement that twenty-five per cent of the city's general fund went to the Texas Public Utilities Corporation.\textsuperscript{38} Table 7 shows that this per cent through the years has actually been larger than the figure given, although in 1939 the per cent figure drops to under twenty-five per cent. In 1928 before there were any rate reductions, the per cent paid out of the general fund was thirty-eight per cent, while the reduction in rates in 1929

\textsuperscript{37} Ibid.

\textsuperscript{38} Statement from George McCall, City Attorney, personal interview.
TABLE 7

THE APPROXIMATE PER CENT OF THE GENERAL FUND PAID TO THE TEXAS PUBLIC UTILITIES CORPORATION FOR THE YEARS 1928, 1930, 1936, 1938 AND 1939 BY THE CITY OF WEATHERFORD FOR WATER AND ELECTRIC SERVICE

<table>
<thead>
<tr>
<th>Year</th>
<th>Ad Valorem Tax Received&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Approximate One-fourth Per Cent Paid in General Fund&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Amount and Per Cent Paid to Texas Public Utilities Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Amount&lt;sup&gt;c&lt;/sup&gt;</td>
</tr>
<tr>
<td>1928</td>
<td>$83,787.00</td>
<td>$20,196.00</td>
<td>$7,773.65</td>
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<tr>
<td>1930</td>
<td>89,692.00</td>
<td>24,423.00</td>
<td>6,676.30</td>
</tr>
<tr>
<td>1936</td>
<td>67,540.00</td>
<td>16,885.00</td>
<td>5,406.07</td>
</tr>
<tr>
<td>1938</td>
<td>70,974.00</td>
<td>17,743.00</td>
<td>5,601.18</td>
</tr>
<tr>
<td>1939</td>
<td>68,000.00</td>
<td>17,000.00</td>
<td>3,870.39</td>
</tr>
</tbody>
</table>

<sup>a</sup>These figures were taken from the annual auditors' reports for 1928, 1930, 1936, 1938, and 1939, filed in the city records in the City Secretary's office, Weatherford.

<sup>b</sup>This figure of one-fourth per cent was the approximate figure given by C. E. Canafax, City Secretary, Weatherford.

<sup>c</sup>These amounts were taken from Volumes V and VI of the approved monthly accounts, Minutes, City Commission, Weatherford.

had lowered the per cent paid to twenty-seven in 1930. The next real change occurs again in 1939, after the municipal plant was a fact, and the Texas Public Utilities Corporation again desired a change.

A question that arises in the ability of the City of Weatherford to set rates is the one appearing to be quite attractive if its legality can be established. In Texas this legality has not been proven; neither can situations be found
that correspond. This question is whether or not the municipal light plant can sell its electric service to the public cheaper than the private company, in competition with each other. On the surface of the question, this would appear to be discrimination.

In exercising the power which has been conferred upon it to establish rates, a municipality may not fix for one proprietor of an utility rates which are higher or lower than the rates which have been established for another, there being no difference in respect of service, patrons or territory. 39

This was also the opinion rendered in the case of the Natural Gas Company v. Natural Gas and Fuel Company in the Court of Civil Appeals. 40 No mention is made either in Texas Jurisprudence or this case cited whether this discrimination would also include discrimination in a situation where a municipal corporation would set rates for its own plant lower than that of its competitor.

However, on the other hand, the United States Supreme Court, in the Springfield Gas and Electric Company v. City of Springfield, evidently allowed this privilege of the municipality setting lower rates than it would allow its private competitor to charge.

The private corporation whatever its public is organized for private ends and may be presumed to intend to make whatever profit the business will allow. The municipal corporation is allowed to go into the business only on the theory that thereby the public welfare will be subserved. So far as gain is an object it is a gain

39 Texas Jurisprudence, XXXIV, 719.

to a public body and must be used for public ends. Those who manage the work cannot lawfully make private profit their aim, as the plaintiff's directors may, but must . . .

But the fact that the municipality owned the plant for which its council fixed the rate was supposed to disqualify its officers at least when other plants were submitted to the judgment of strangers. But a city council has no such interest in the city's electric plant as to make it incompetent to fix the rates . . . The conduct of which the plaintiff complains is not extortion but on the contrary charging rates that draw the plaintiff's customers away.\textsuperscript{41}

Whether this would be upheld in the Texas courts is not known, but with \textit{Texas Jurisprudence} for reference and authority it might be said that this type of action upon the part of the municipal corporation would be discriminatory and therefore illegal.

\textsuperscript{41}Springfield Gas and Electric Co. v. City of Springfield, 42 S.Ct. 25 (1923).
CHAPTER VI

CONCLUSIONS

Several conclusions can be drawn, and several predictions can be made from the facts and observations presented. First, from the evidence drawn from the records and other information available, there is no doubt that the citizens of Weatherford, Texas, have been exploited. In the early history of electric service the city government was not willing to continue paying high tributes to the City of Weatherford Water, Light and Ice Company; but when it came to a question of either paying or not having that service, the city officials were even anxious to increase these payments rather than lose the service. If the city agencies lost the electricity, the individual citizen would have also lost it. Immediately prior to the time that the Texas Public Utilities Corporation purchased the plant, there was little doubt that the company was on a paying basis, and the reaction was such that the city had to avail itself of the power of regulation. Not content with rate regulation as its only means of control because in comparison with rates in other certain communities the rates in Weatherford were, and are, unfavorable, the decision was made to erect and operate a municipal light and power plant.

Authorities point out that a city dissatisfied with its electric service should make every attempt to obtain the
operating private plant. The city government of Weatherford did make every attempt to purchase the plant from the private company, but the electric system was not for sale. Since this attempt at purchase failed, the city had the power and the right of condemnation. The city had a substantial and reasonable cause for not condemning the properties of the Texas Public Utilities Corporation. The statutes have established the right of condemnation, but only one case in the Texas courts have commented upon that right. Just because the case would have been a test case is really not material when the fact that the potential strength of the utilities corporation is so enormous as to make competition with it a very risky factor. This in itself is reason to make condemnation attractive. Although the result of condemnation may have forced the City of Weatherford to pay more compensation than the properties' worth, no price actually could be too large to know that all troubling factors are removed and the future is clear of any impediment. The writer is prone to believe that the city should have condemned and taken over the holdings of the Texas Public Utilities Corporation.

Competition was the means whereby the city must operate when it forsook any choice of condemnation. The right of operating a municipal light plant is clearly defined in the statutes, but competing against a private company existing under an unexpired franchise is not mentioned. However, the statutes not only give the city the right to operate its
plant but also refuses to recognize an exclusive franchise given any private organization. In other words an individual, persons, or corporation cannot service a community exclusively if the city officials would see fit to grant this privilege. The courts on this basis have repeatedly upheld the right of municipalities to compete against private companies in electric service and grant them exclusive right of operation only when no impairment of a franchise obligation is involved.

The picture for the Weatherford plant cannot be entirely clear as long as competition exists. A successful future may be predicted in the light of some other communities that have run the gamut against resources of the private corporations. Whether the practices or similar practices of the private utilities in Brady, Spur, and Garland will be attempted in Weatherford is not known. But if the experiences of these cities are in any way true activities of these large companies, then Weatherford may look for similar tactics. The administrative personnel of the Texas Public Utilities Corporation in Weatherford is of such a high intelligent standard that it is difficult to conceive of such devices being put into practice. The city could no doubt have avoided any trouble by condemnation.

There is no question of Weatherford's authority to set rates under the present laws, but since the city did not take any definite action until 1929, there have been only two residential rate changes and two commercial rate changes on
the records. The manner in which the city records have been kept made it impossible to obtain any record of any rate schedules that were in effect up to 1929. In making rate comparisons a true picture of the rates being charged in seen. The rates are by no means favorable and since these were set at the lowest the Texas Public Utilities would consent to, it is evident that they are by no means acceptable. The purpose for legal authority to set rates has been the protection of those individuals who consider electric service a necessity rather than a luxury. Even now the advisability of allowing the present schedule to exist should be questioned. The purpose of a municipal plant is to render cheaper service to the greatest number of people, and, if competition exists, this purpose should still be maintained. A municipal plant is a public enterprise and should be administered for the interests of the public, and even if there remains six years of competition, there are six years of rates higher than should be allowed. The city authorities do not wish to further antagonize their competitor, but they are safe guards of the public and should see that the desires of the people are fulfilled to the best of their ability.

This has been done in Weatherford, for the authorities were the ones to instigate and answer the people when the clamor grew for public operation and distribution of electricity. Their sincereness may not be brought up for disrepute
or criticism, but the voters voiced their opinion for their plant, and the first concern is low rates.

One of the questions that arose in the pursuit of this study was whether a municipality could charge lower rates for its electric service than it would allow a private company to charge. This was established in the highest court in the land, but a satisfactory authority could not be found to establish this right under the Texas statutes or the Texas courts. It is thought that there may be some legal technique to allow this, but in this study the question had to be abandoned as discrimination under Texas law. The realization is maintained that this would be an ideal method of competition with a private competitor, if it could be firmly developed as legal.

The City of Spur has continually reduced its tax rate through the proceeds of the home owned light plant. In so doing, Spur has refuted all principles of home ownership. In most instances the property owners are the ones most able to pay taxes and fill the coffers of the city, while the electric service charges are reaching everyone in this city. In other words, the city is by necessity maintaining higher rates than it would otherwise have to charge. The rates to be charged should not be higher than those returns needed to pay off the bonded indebtedness and supply public improvements demanded by the residents without any increase in taxation. A municipal light plant is a social reform, and not a social revolution.
The plan of procedure for establishing the Weatherford Municipal Light Plant has been that recognized by those who have pioneered the field as the one best insuring its success. However, in so doing, the scheme in Weatherford has one fault. The fact that the Utility Board of Control tied the Manager of the Plant with the office of Mayor is the fault. Although not a civil or electrical engineer, the mayor is a competent man. Either the compensation for the job should be attractive enough to please the mayor without his position as mayor having to be retained, or it should attract a competent person outside the city government. No criticism is meant against the mayor or the board of control, just against the tying in of the position of manager with city politics. The writer in knowing the condition in Weatherford recognizes, in reference to this criticism, that the people in Weatherford are of the highest type and that politics may never enter into the administration of the plant; but the administration as set up has this one weakness which must be recognized and if possible avoided by the thoughts in the minds of the public in the city.

It is known that there is nothing free of criticism, but if all roads are open the writer can see but one criticism of the establishment of electric service that can ever be made by those interested in the welfare of the people of Weatherford, Texas. Possum Kingdom Dam is now in the process of construction in a neighboring county. If Weatherford had waited and made the proper negotiations, the city could have bought
its power from this project at approximately the same cost as the city can produce it. From this set up the city would have been responsible for its own distribution system. The saving from construction costs would have been enormous and in buying the power wholesale and retailing it to the consumer, the city could still have low rates, return a small profit, and keep the tax increase at a minimum.

With this one criticism, municipal ownership in Weatherford has every attribute. The city general fund will save in payments to the private company and rather than the money leaving the confines of the city, the funds will be returned by means of public improvements. Although the existing rates have been criticized, it is quite definitely implanted in the minds of the city officials that there will be further rate decreases when the municipal operation becomes exclusive. The designation of the revenues of the plant are first to retire bonds and after that time, when the bonds are retired and the revenue fairly reliable and standard, then the improvements will be made. The free service to the city and schools will give the city a saving. The Municipal Light Plant will raise the standard of living and place electricity in abundance in the reach of all within the city.

To the writer nothing appears to mar the prediction of unexcelled success for the Weatherford Municipal Light Plant. Several criticisms have been made with the hope that they are constructive; several observations have been made with the hope that nothing that might endanger the success of the plant
has been overlooked. In this regard, it may be said that the path may be rough and the waters may be turbulent, but the Weatherford Municipal Light Plant will prevail as a public enterprise and an attribute to the social thinking of the public, the city officials and the City of Weatherford.
APPENDIX

WEATHERFORD LIGHT PLANT BONDS
RETIREMENT:

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<tr>
<th>Year</th>
<th>Total Annual</th>
<th>March 15 Principal</th>
<th>March 15 Interest</th>
<th>Sept. 15 Principal</th>
<th>Sept. 15 Interest</th>
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<td>1969</td>
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*Ordinances, III, 577.*
The following is a copy of the notice sent to the Texas Public Utilities Corporation:

Date ............

To The Texas Public Utilities Corporation
Weatherford, Texas

I hereby direct you to at once, upon the receipt of this notice, remove your electric meter and any other property pertaining to the electric service that you may have thereon, from my premises, located at No. ............ Street in the City of Weatherford. ............

The following is a copy of the card sent from the citizens of Weatherford to the City of Weatherford Municipal Electric Plant:

CITY OF WEATHERFORD MUNICIPAL ELECTRIC PLANT

No. ____________________________ Date ____________________________

To the City of Weatherford:

Please connect my premises located at No. ............ Street, to our City's Electric Distribution System for Electric Service of

Residential, Commercial, or Industrial Class

I understand that no meter deposit is required—that the rates will not exceed those I am now paying—that I agree to pay you at Weatherford, Texas, the charges for electric service, as measured by the City's meter, with a minimum of one dollar per month, on or before the 10th day of the month after the service is rendered; a failure to do so entitles you to discontinue service and remove your property; your agents have free access to the premises for purpose of installing, inspecting, reading, repairing property of the City. The City shall not be liable for interruption or failure in the supply of electricity, nor in any case whatever for damage or injury to persons or property arising out of, or directly or indirectly occasioned by the supply or use of electricity by defective wiring apparatus and equipment on my premises.

Applicant ____________________________ Address ____________________________

Class of Service: ____________________________ Meter No. ____________________________

Amp. ____________________________ Voltage ____________________________ Account No. ____________________________

Date Connected: ____________________________ 194 Connected by __________
The following is a copy of the letter sent to the mayor of the City of Brady from Charles Shumaker:

1715 W. Mulberry St.
Denton, Texas
June 26, 1940

Mayor, City of Brady
Brady, Texas

Dear Sir:

As you possibly know we have recently completed a Municipal Light Plant in Weatherford, Texas to compete against the Texas Public Utilities Corporation. I understand that in the operation of your local plant in competition with a private utility company, you had quite some difficulty with the practices of the company.

I am making a study of some of the devices, practices, and activities of corporation owned utility companies in competition with municipal plants and would appreciate any information you could give me on their activities in your community.

Very truly yours,

Charles Shumaker

The following note from the mayor of Brady was sent Charles Shumaker:

We have never had any competition but the utilities tried several underhand methods to get service inside our city limits.
The following is a copy of the letter sent from the city secretary of Garland, Texas, to Charles Shumaker:

Ray Clinger, Mayor     J. R. Stultz, Secretary     Heyward White, Treasurer

THE CITY OF GARLAND

Aldermen

H. H. James    O. K. Irvine
R. E. Coomer    L. A. Powell
H. L. Beach

GARLAND, TEXAS

June 28, 1940

Mr. Charlie Shumaker,
1715 West Mulberry St.,
Denton, Texas.

Mr. Shumaker:

In reply to your letter of June 26th, in regard to the activities of the privately owned Utilities here. I will tell you that they will try every scheme they can think of to obtain business, they will do anything to freeze the Municipal company out of business, unless the City passes an Ordinance to protect them.

I trust that the information which I have given you is the information which you asked for, and that it will be of some help to you.

Yours truly,

City of Garland, Texas.

By City Secretary.
The following is a copy of the letter sent from the City of Spur to Charles Shumaker:

THE CITY OF SPUR

"We Own Our Own at Home"

Spur, Texas

7--3--40

Mr. Charles Shumaker
1715 Mulberry Street
Denton, Texas

Dear Sir:

Your letter addressed to the Hon. Mayor of the City of Spur, has been referred to this office for attention.

For your information, we wish to advise that the City of Spur installed a municipal light plant to operate in competition with the West Texas Utilities Company in 1925.

Before building a light plant, the City Commission tried every conceivable way to get the Utilities Company to reduce their rates; but they were told that they were selling electricity in Spur as low as good financing would permit, and unless the City granted a franchise to them that they would never have a cheaper rate than 15¢ per KWH.

The City Commission then decided that they would build a light plant in accordance with Articles 1111 to 1118 inclusive in the 1925 Revised Civil Statutes of Texas, and operate same thereby saving the Spur citizens several thousand dollars in electric rates annually.

As soon as the West Texas Utilities Company learned that a contract had been signed between the City of Spur and Fairbanks Morse and Company, and they were fully assured that they were going to have competition in Spur they reduced their rates from 15¢ per KWH to 13¢ per KWH.

On the 25th day of October 1928, the Board of Commissioners in Special Session, anxious for the success of their proposed municipal light plant, and in as much as they had never granted a franchise to any telephone, telegraph, or electric light company, passed a criminal ordinance making it unlawful for any person, persons, firm or corporation to conduct and operate any public utilities plant without a franchise from the City of Spur, Texas; duly passed by its Board of Commissioners. This ordinance was enjoined in Federal Court by the
West Texas Utilities Company, and on November 5, 1928 the City enjoined the West Texas Utilities Company from setting poles, and building other lines, until the pending suit was tried.

This case was heard on the 10th day of December 1928, before the Hon. James C. Wilson, resulting in the City of Spur going ahead with the erection of the municipal plant.

The West Texas Utilities Company was not satisfied with the verdict rendered by Judge Wilson, and appealed it to the United States Circuit Court of Appeals in New Orleans. For your information the decision of Judge Wilson in Lubbock, Texas was affirmed.

There was some interesting data brought out in the trial at Lubbock, the most important in my opinion, was that the West Texas Utilities Company swore that the actual physical value of the property they purchased from the former owners for $145,000.00 was only $60,000.00; the other $85,000.00 being paid for good will and etc.

Our Municipal Light Plant began operating on May 1, 1929, and on this day the West Texas Utilities Company made a further rate reduction from 13¢ per KWH to 2½¢ per KWH a rate they continued to charge until May 1, 1936; which was somewhat less than their 15¢ rate.

In a number of instances their rate was far below 2½¢ per KWH as they had numerous flat rates, some of which were as follows:

There was a cafe in Spur, which cooked, lighted, heated and refrigerated with electricity, with an average monthly consumption of approximately 10,000 KWH for which they only paid $20.00 per month.

The Wilson Hotel in Spur, a twenty-six room hotel, had a flat rate of $40.00 per month in the summer months and $60.00 per month in the winter months. This hotel lighted, cooked, refrigerated and heated all water for bath purposes and in the winter months heated the entire building with electricity, for only $60.00 per month. I would judge that this hotel would have consumed from 12,000 to 15,000 KWH per month. As a matter of fact if they had been using coal for heating purposes, the coal would cost more than that paid for electricity per month.

There were other similar instances too numerous to mention. By these tactics the Utilities Company was successful in securing a number of our citizens to reconnect to their lines.
We have approximately eighty-five street lights, one located on every corner of our City, and our street lights are not turned out on moon light nights; as some of the municipalities are forced to do, which obtain current from Private Power Companies. For your information the City of Spur was formerly paying the West Texas Utilities Company $40.00 per month for ten 250 C.P. street lamps; today we have eighty-five street lamps and the cost to our tax payers amounts to approximately $70.00 per month. In other words we have eight times as many street lamps at a cost of only $30.00 per month more. Our water pumping was formerly costing the City of Spur, when current was furnished by the West Texas Utilities Company, approximately $230.00 per month. Today, we are pumping more water than was formerly used and our water pumping bill averages approximately $75.00 per month.

For the period ending April 30, 1940, we netted on our light plant $5,391.80 after paying all operating costs, prepaid insurance, interest on investment, and taking a depreciation of $4,073.89. We have all of our bonds and interest paid to date and a cash reserve balance of $5,316.68 in the electric fund. If we had all of the electric business in the City of Spur it would only be a matter of a few years until we could eliminate assessing a City tax against the citizens of Spur.

We have an unusually low tax rate now; only 80¢ per $100.00 valuation, and the total valuation is based on approximately 65% of actual value. Our taxes have been reduced more than 50% since building our light plant in 1929.

Trusting this will give you the information required, however if additional information is desired, we shall be glad to furnish same at your request.

Yours very truly

THE CITY OF SPUR

P.S. Since the legislature passed the rate ordinance; the City of Spur and the West Texas Utilities Company have the same rate in Spur.
The following is a copy of the letter sent from the Texas Public Utilities Corporation to its customers:

TEXAS PUBLIC UTILITIES CORPORATION

Weatherford, Texas

April 25, 1940

Dear Customer:

We enclose our check refunding to you the customer service deposit you have with us. This check covers the amount our records show you have deposited with us, plus interest from January 1st of this year to April 30, 1940.

My thirty fellow workers here in Weatherford join me in expressing to you our sincere appreciation for your business and we all assure you that we will do our utmost to merit your continued patronage. We all feel that our standard, tried and proven equipment, plus our long experience in the business, assures you a quality of service that cannot be excelled.

As to rates, I can assure you that the rates prescribed in the Rate Ordinance of the City of Weatherford apply equally to our company or a municipal plant. Any change in this ordinance in the future would likewise apply to both systems. In other words, rates of our company and a municipal system will be the same, as provided by law.

Again thanking you for your business, I am,

Sincerely yours,

Frank Alderdice.
The following is a copy of the letter sent to the citizens of Weatherford from the Municipal Light Plant:

CITY OF WEATHERFORD
MUNICIPAL LIGHT PLANT
Weatherford, Texas

June 8, 1940

To All Loyal Citizens of Weatherford:

Within a very short time the completion of your Municipal Light Plant will be a reality and its construction represents the greatest co-operative move for the future development of this community that has been made since the town was founded.

We are proud of the splendid co-operation given this most worthy project by you forward thinking citizens from the very beginning and for this, we wish to express our sincere appreciation. Your loyal support and patronage to the Plant will bring immemorable benefits to this community for years to come just as it is doing for all Texas cities who own and operate their utilities.

THE WEATHERFORD MUNICIPAL LIGHT PLANT is yours--USE IT!

When you pay your electric light bill to the City of Weatherford, you are in reality, making a payment to yourself. This really means something as we feel that every loyal Weatherford citizen is interested in the future betterment of the town he calls his. This electric plant was built solely for the benefit of the citizens of Weatherford and its success depends upon your patronage and support as a user of electricity. We have no stock to sell you but we do have electricity to sell you, upon which there is a nice profit and these profits will reap you good dividends in years to come.

This is a service to ourselves and when you patronize your home-owned plant you are patronizing yourself. "Keep Weatherford Money in Weatherford".

If you have not signed up to use your own electricity within the past two weeks, we urge you to do so at once. If it isn't convenient for you to call by the office at the City Hall, telephone Number 400 and someone will be glad to call at your home or place of business.
Work on the Municipal Water System will start within a very short time.

Watch the Local Papers for Announcement of the Grand Opening and Inspection of the Plant, which We Hope to Announce Soon.

CITY OF WEATHERFORD
MUNICIPAL LIGHT PLANT

"Owned and Operated for and by the Citizens of Weatherford."
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