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# How the *Compagnie Générale des Eaux* survived the end of concession contracts in France 100 years ago

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## Abstract

The end of the 19th Century also saw the end of concession contracts as an option for French municipalities to organise their water supply. An increasing number of disagreements between local authorities and their water concessionaires were dealt with in administrative courts, while the most difficult cases went as far as the French Supreme Court, the *Conseil d'Etat*. These all dealt with the same issue: the conditions governing the renegotiation and/or termination of concession contracts. The *Compagnie Générale des Eaux*, the biggest French water company, could have ended along with the concession contracts, and although the company found a reliable protector of its contractual rights in the *Conseil d'Etat*, it lost its biggest concession contracts and had to negotiate new contractual arrangements to replace the lost concessions.

*Keywords:* *Compagnie Générale des Eaux*; Concession contract; French history; Lease contract; Water supply

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## 1. Introduction

The demise of the 19th Century also saw the end of the concession contract as an option for French municipalities to organise their water supply. All across Europe, the municipal socialist movement called for public management models to develop the emerging public water services.

The future of the *Compagnie Générale des Eaux* (CGE), the biggest French water company, could have ended with the concession contract. In this paper we describe the reasons for the demise of the concession contract in the water sector in France, and then analyse the CGE's recovery strategy.

## 2. The end of concession contracts

### 2.1. France at the end of the 19th Century

From the middle of the 19th Century, large cities started constructing water networks, mainly through concession contracts, and major scientific and technical innovations combined with a major change in

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institutional and political strategy to enable what local decision makers considered to be a satisfactory way of continuing water supplies.

Scientists demonstrated that major diseases were caused by poor water quality (Murard & Zylberman, 1996), while engineers successfully introduced the treatment of both spring and surface water (Pezon, 2000). The 1884 French Municipal Law made the 36,000 municipalities inherited from the *Ancien Régime* the first political authorities to be elected on a ‘one man one vote’ basis (Morgand, 1952); the 1884 Law also granted local authorities the right to develop their own territory.<sup>1</sup>

In a situation where few people had ‘private’ access to water, there was political benefit to be gained by promoting public access to water. Local authorities stopped considering ‘private’ access to water a luxury, and instead looked on it as a way to ensure public health. Municipalities who had signed long-term concession contracts found themselves trapped by contracts that gave water companies a local monopoly to meet ‘private’ needs (tap water) as payment for their obligation to supply municipalities with ‘public’ water. When the municipalities signed the first contracts in the middle of the 19th Century, they believed that ‘public’ water, including supply to municipal buildings such as hospitals, schools and stand-pipes, came first and that the profit the concessionaires would make would come from ‘private’ water supplies (Pezon, 2003).

In 1892, fewer than 130,000 households in France had access to tap water (Goubert, 1987). In Lyon, the CGE had only 16,000 customers after 30 years of concession (Villard, 1885). In Paris, water carriers had almost vanished, swept away by the facility of tap water supplied by the CGE, but the problem was that, apart from those who were previously able to buy water from vendors, who would actually be able to afford to pay for tap water?

The new attitude of local authorities towards water was incompatible with the concession contract. The increasing disagreements between local authorities and their water concessionaires were tried in administrative courts, while the most serious conflicts ended up in the final appeals court, the *Conseil d’Etat*. From the 1880s to the 1920s, about half the cases relating to water services heard by the *Conseil d’Etat* involved a conflict between local authorities and their concessionaires. The cases all dealt with the same issue: the conditions governing renegotiation and/or termination of concession contracts.

## 2.2. Conseil d’Etat jurisprudence protected the concessionaires’ rights

Faced with conflicting arguments presented by the town municipalities and the concessionaires, the *Conseil d’Etat* decided to follow the letter of the law in interpreting the contracts. The Final Appeals Court considered that there were no limits to the two parties’ ability to negotiate agreements on capital investment, the quantity and the quality of the water to be supplied, the ‘public’ tariff, the ‘private’ tariff and the length of the contract (Pezon, 2003). The *Conseil d’Etat* stated that:

- amendments should be negotiated by the parties on the basis of the original *status quo*: municipalities who claimed extra-contractual investments in the public network or improvement in water quality were invited to provide their concessionaires with compensation in line with the initial agreement, thereby implicitly denying any economies of scale or scope;

<sup>1</sup> Article 61, Law of Municipal Organisation, 5 April 1884, Journal Officiel 6 April 1884, pp. 1857–1868.

- local authorities did not have the ability to renegotiate the conditions of access to private services, to redefine access to this service, nor to undertake legal actions on behalf of private water users in order to obtain more favourable conditions;
- unless the concessionaire had failed to fulfil their contractual duties, i.e. had stopped ensuring the public or private water supply, the municipalities did not have the right to terminate their contract without paying compensation.

While the concessionaires might have been fulfilling their contractual obligations, it was possible that people were receiving undrinkable water, either at free fountains or at home (at their expense). In the end, the decisions of the *Conseil d'Etat* contributed to the demise of the concession as the contract under which municipalities could develop water networks and provide safe water to all (Pezon, 2007).

### 2.3. Water supplies and municipal socialism

The *Conseil d'Etat*'s primary concern was to stop private interests overriding decisions made by public authorities that could interfere with the economic balance of the original agreements, or restrict contractual obligations at the expense of the concessionaires (Long *et al.*, 1990).

In contrast to what happened in the case of gas or electricity supply, the *Conseil d'Etat* did not prevent local authorities from operating their own water services. For energy, the Court interpreted the 1884 Law in a restrictive way: risky activities and industrial activities should be the sole initiative of private investors. But the *Conseil d'Etat* did not oppose municipalities that developed their own water service (Duroy, 1996). Even the fiercest opponents of municipal socialism considered that the supply of water was not concerned by the restrictions applied to public undertakings in order to provide the freedom of trade and industry, '*la liberté du commerce et de l'industrie*' (Mimin, 1911).

For concessionaires, this meant that municipalities could organise their water service differently if they wished. Municipalities who had signed concession contracts could wait until the end of their contracts to take over the ownership of the infrastructure without paying compensation to the concessionaires, and then form their own operation. In the case of municipalities that had not yet developed their own water services (the vast majority), many chose to organise their own water supply, thereby shutting down the market for water companies.

## 3. How the CGE recovered from the demise of concession contracts

At the end of the 19th Century, the CGE was the biggest water company in France. From the 1880s to the 1920s, the company was involved in more than one third of the *Conseil d'Etat* decisions, amongst which eight cases dealt with the premature termination of the company's biggest concession contracts (for the cities of Nantes, Lyon, Toulon and Rouen).

### 3.1. The Compagnie Générale des Eaux: a pioneer concessionaire

When the company was established in 1853, it looked on the supply of domestic water as a strategic activity that would enable it to enter the irrigation business. The company could gain a reputation for looking after the interests of the general public, which would put it in a favourable position when laws

were eventually passed concerning irrigation. Besides, the company expected that supplying domestic water would be much easier than irrigation water: a single contract with a municipality would give them a local monopoly, whereas a contract would be required with each individual end user of irrigated water (CGE, 1853). As a secondary activity, the company believed no risk was involved in supplying domestic water: they would very carefully review proposals made by the municipalities and only accept those whose annual fee for public water (municipal buildings and standpipes) would not only cover its costs but also provide at least 4% profit. Extra profit would come from the ‘private’ service, which would basically be unlimited, as costs would remain fixed while profits increased up to the last connection. In Nantes for instance, the volume of water reserved for the private service was only one quarter of the volume approved for public service, but could provide three times more income (CGE, 1854).

After 20 years, the CGE owned only five water services, though it had signed a much larger number of concession contracts. It had invested 27 million French francs (FF) in a market originally believed to have a potential of FF 100 million.

Q1 The first two concessions (Lyon, 1853; Nantes, 1854) faced repeated problems relating to an insufficient supply in Lyon and bad water quality in Nantes. Moreover, the development of private connections was much slower in Nantes and Lyon than services that the company bought back from smaller concessionaires in the Paris suburbs in 1857. The company observed that in three areas of Paris (Montmartre, Batignolles and Auteuil), where the population was already used to having access to piped water, the number of water connections had unexpectedly increased. The revenues from the private services (FF 1,016,000) exceeded the municipal fees (FF 315,000) and profits ranged from 4 to 15% in 1858. At the other end of the scale, in Lyon and Nantes, many problems occurred and the water service took two or three years to set up before the supplies started, and getting the population to use the water was much more difficult than expected (CGE, 1859).

Based on this experience, the CGE did not create any new services until 1881. Instead it concentrated on extending existing services (in the suburbs of Paris and Lyon), preferably by buying services that were already being operated by smaller concessionaires. One exception was the concession with the city of Nice in 1864, which was also purchased from a local operator, and gave the company a geographical base for developing irrigation in Provence.

This revised strategy led the company to reconsider the way it measured performance. From 1858 on, it stopped assessing performance by the number of contracts signed, and started to monitor it on the basis of water services provided. A service resulted from various concession contracts, which were signed separately, with neighbouring municipalities. The company expected each service to bring in at least 4% profit, regardless of the performance of each concession contract.

To facilitate the implementation of its new strategy, the CGE changed the decision-making process concerning contracts. In 1874, shareholders gave the executive board the power to decide on any new contract that only concerned the extension of existing services. The board of shareholders retained the power of decision for contracts that entailed the development of a new water service (CGE, 1874). Ten years later, the company held concession contracts with 118 Paris suburban municipalities, and with dozens of municipalities around Lyon and Nice, mainly bought back from local water companies (CGE, 1884).

### 3.2. The turmoil of the 1880s and 1890s

Under the competitive pressure resulting from the birth of the *Société Lyonnaise des Eaux et de l’Eclairage*, the CGE restricted its zero risk strategy. In 1881, CGE shareholders empowered

the executive board to make decisions on new contracts even when they constituted a new geographical base.

In three years, the CGE took control of six new water services.<sup>2</sup> However, this aggressive strategy did not last long. Although the CGE accepted less favourable contracts than during the first stage of its development (see Table 1), it could no longer find many cities to enter in to contracts with.<sup>3</sup> Furthermore, private services developed as slowly in Boulogne sur Mer, and in Rennes, as they had in Nantes and Lyon 25 years previously (CGE, 1889, 1890).

In the mid-1880s, the company's concern was no longer to compete for more water services but rather to protect existing services. The biggest cities (Lyon, Nantes, Toulon, Nice) expressed their desire to terminate their concession contracts. The city of Paris lobbied Parliament for a regulation that would authorize any tenant to connect his house to the water network (CGE, 1892). If successful, Paris would no longer need the company to sell 'private' water. The medium and small municipalities that comprised the Paris suburbs also complained about water quality and called for general water filtration.

In this context of discord, the company took its conflicts (see Table 2) as far as the Supreme Court, confident in the court's impartiality and its lack of involvement in local passions. The *Conseil d'Etat* ruled water concession litigation on the same basis as for any concession, allowing the water company the same rights as any other concessionaire. As far as water quality was concerned, the company was given permission to refuse to treat water if the contract had not included such a clause, even though this resulted in a cholera epidemic in a Paris suburb in 1892. Concerning contract termination, the CGE was given the right to terminate contracts and to be reimbursed for any capital not yet depreciated together with the profit it would have made up to the end of the contract, based on the last ten years' average profit made on each concession.

### 3.3. *The Compagnie Générale des Eaux' compromise*

Though the company received full protection from the *Conseil d'Etat*, it still had to negotiate local compromises with municipalities who, unlike Nantes and Lyon, could not afford to terminate their contracts. The executive board decided to stop any further development until solutions had been found for each water service to solve the problem of unsatisfactory water quality (CGE, 1894).

For a while, the company insisted on increasing tariffs to compensate for additional investment. It succeeded once, in 1894, in its Paris suburb water service, under very specific conditions.<sup>4</sup> Though not repeated, this experience taught the CGE that improving water quality was a valid investment. In the Paris suburb water service, the company reported 2,973 new connections in 1903, versus 2000 or so in the years preceding the introduction of water filtration (CGE, 1904).

In other water services, where municipalities were unlikely to increase water rates, the CGE started to negotiate alternative financial sharing schemes. Investment in water quality or network extension could

<sup>2</sup> The contract with Rouen complemented the water service already in operation in a small town next to Rouen since 1880. It was not a new service *per se*.

<sup>3</sup> Arras, Ancenis and Morlaix were smaller cities compared to the previous.

<sup>4</sup> The negotiation took place with the State representative, the *préfet*, at the *département* level, and not with the mayors of the 118 municipalities or local authorities who signed up concession contracts in the first place. It was enforced for all the municipalities involved in a concession contract with the CGE. Tariffs increased by 1 centime/m<sup>3</sup> to compensate for the production of filtered water for 118 municipalities.

Table 1. CGE water services (1853–1890).

Date	New services	New services already operated	Financial conditions
1853	Lyon		4% profit on municipal fee only
1854	Nantes		4% profit on municipal fee only
1857		Paris suburb	Unknown
1860		Paris	No investment, no municipal fee; profit on private service equal to 25% of FF 3.6 million revenue
1863		Nice	4% profit on municipal fee only
1880		Rouen suburb	Unknown
1881	Rennes		4% profit on municipal fee and revenue from the private service limited to 8% of the investment
	Boulogne sur Mer		4% profit on municipal fee, decreasing with the volume of water for the private service
		Toulon	Unknown
		La Seyne	Unknown
1883		Rouen	Unknown
		Arcachon	Unknown
1884		Arras	Unknown
1887	Ancenis		Profit on municipal fee
1890	Morlaix		Unknown

be partially paid by the municipality either by extending the length of the contract or by removing the option to terminate the contract (Table 3).

The company reached agreement with medium sized cities, and also secured its irrigation business in the Nice region, but it could not prevent the cities of Rouen and Toulon from ending their concession

Table 2. CGE at the *Conseil d'Etat*.

Local authority	No. decisions	Year of <i>Conseil d'Etat</i> decision
Nantes	4	1878, 1883, 1900, 1908
Lyon	4	1906, 1911, 1923, 1926
Toulon	5	1893, 1895, 1921, 1928
Rouen	4	1911, 1912, 1924, 1925
Paris suburbs		
Courbevoie		1882
Saint-Mandé		1885
Neuilly-sur-Seine		1888
Ivry		1890
Clichy	9	1893
Asnières		1896
Pantin		1899
Nanterre		1908
Montreuil		1909
Ancenis	1	1889
Saint-Brieuc	2	1888, 1900
Petit-Quevilly	1	1890
Nice	1	1894
Rennes	1	1905

Table 3. Contractual instruments to ensure water quality.

Municipalities	Date	Municipal fee	No possible termination
Boulogne sur Mer	1904	X	
Nice	1903	X	X
Villefranche	1905	X	

Table 4. The end of large-scale CGE concession contracts.

	Lyon	Nantes	Toulon	Rouen
Start of the contract	1853	1854	1882	1883
Length of contract (years)	99	60	62	60
Date of the municipal decision to terminate the contract	1888	1895	1911	1911
Official termination date	1900	1900	1912	1912

contracts. Along with the loss of Nantes and Lyon, the termination of contracts with Rouen and Toulon ended the expansion of the company as a concessionaire supplying major urban areas (Table 4).

In 1912, the company made huge sacrifices in order to renew its contract with the city of Paris. The executive board presented the renewed contract to the company's shareholders as non-profit oriented. The purpose was to keep a 'moral position'. The new rate would cover the operating costs, but none of the indirect costs that the company detailed on each of its lists of water services, which translated in substantial revenue drops as shown in Figure 1.

The company did not have to make such sacrifices to renew the first municipal contracts that came to term in the Paris suburb service between 1902 and 1905 (Figure 2). Although the company accepted some cuts in water rates and shorter contracts (35 to 45 years), it enjoyed a strategic advantage over any single municipality when the time came to renegotiate a contract. The company was the only supplier of filtered water in the whole region. Unless all the municipalities in the Paris suburban water service got together in an inter-municipal organisation, they could do nothing but renew their contracts with the CGE.

In 1913, the CGE agreed to its first contract for 23 years. Together with the *Société Lyonnaise des Eaux et de l'Eclairage*, formerly its main competitor, the company bought water services located in the suburb of the city of Lille from local operators.

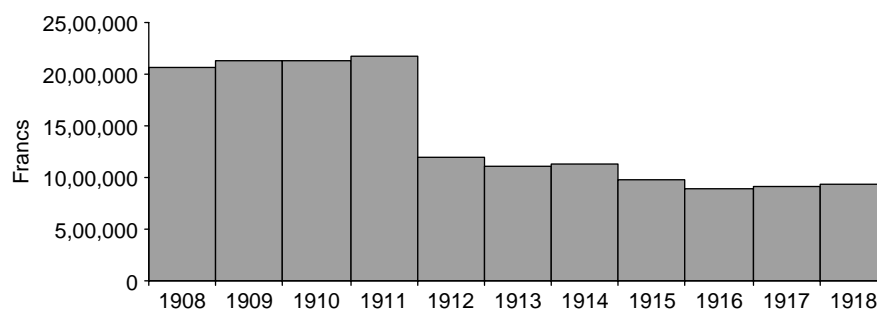


Fig. 1. Paris water service revenues, 1908–1918.



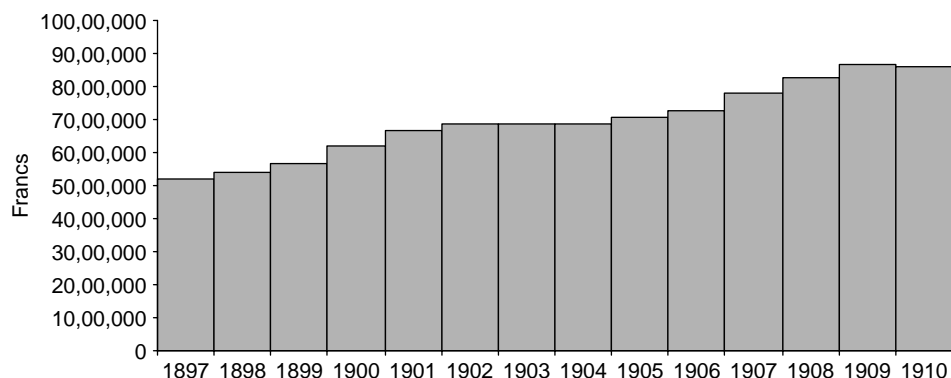


Fig. 2. Paris suburbs' water service revenues, 1897–1910.

#### 4. Conclusion

The *Compagnie Générale des Eaux* recovered from the demise of concession contracts just before the beginning of World War I. The official termination of the Rouen and Toulon concession contracts, and the conditions of the renewal of the Paris contract signalled the end of the period in which the CGE failed to develop an irrigation market. Two water services combined domestic and irrigation water supplies (Nice and Toulon). The company lost the latter and only kept the former because, in 1904, the city of Nice lost its ability to terminate the contract. The change that the CGE expected in official regulations regarding irrigation never occurred; the connections with the State administration that had facilitated the growth of the CGE regarding the water supply market did not work as well for irrigation. It was also the end of the period in which the CGE failed to develop domestic water supply based on concession contracts. Though the company succeeded in enforcing its rights as concessionaire, it also learned that under a concession contract, a water service was unlikely to promote water use, and only met the needs of the wealthiest members of the population.

The company benefited from the fragmentation of local administration. With suburban services covering dozens of distinct municipalities, only the biggest municipalities could *de facto* withdraw from a concession contract. Smaller public partners finally disentangled from their concession contracts by defining a new partnership that only left their concessionaire the responsibility for the operation of the service. Local authorities would then largely impose a water tariff system which was accepted by the population. The company recovered from the demise of the concession contract through new contractual arrangements that prefigured the lease contract that would be the general rule in France after World War II.

Finally, two lessons can be drawn from this French experience in water concessions. First, compared with other developed countries, where private water companies collapsed in the early 20th Century, France has always combined public and private management for local water services. Water companies survived the disrepute surrounding concessions, by turning their concession contracts into lease or *affermage* contracts, according which investments are publicly financed (Pezon, 2006). Neither in France, nor in other developed countries, has domestic water been developed on the grounds of the full cost recovery principle; the concession contract, in particular, failed to do so. In today's developing countries, the international community acknowledges that water services cannot be charged for

investment costs up front, and limits its financial requirement to the recovery of operating costs. More research needs to be done in order to adjust the financing mechanisms to the development process entailed by improved access to water.

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## **Author Queries**

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- Q1** References Lyon (1853) and Nantes (1854) have been cited in text but not provided in the list. Please supply reference details or delete the reference citations from the text.
- Q2** References Copper-Royer (1896), Loriferne (1987) and Loosdregt (1990) are provided in the list but not cited in the text. Please supply citation details or delete the reference from the reference list.