

2000

Utah Copper Company, a Corporation v. Public Utilities Commission of Utah: Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

3582 CP

In the Supreme Court of the State of Utah

UTAH COPPER COMPANY,

A Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMIS-

SION OF UTAH, and

UTAH POWER & LIGHT

COMPANY, a Corporation,

Defendants.

No. 3582.

Certiorari Proceedings.

PETITION FOR REHEARING AND ARGUMENT IN
SUPPORT THEREOF.

DICKSON, ELLIS, LUCAS & ADAMSON,
Attorneys for Petitioner.

In the Supreme Court of the State of Utah

UTAH COPPER COMPANY,
A Corporation,
Plaintiff,
vs.
PUBLIC UTILITIES COMMIS-
SION OF UTAH, and
UTAH POWER & LIGHT
COMPANY, a Corporation,
Defendants.

No. 3582.
Certiorari Proceedings.

PETITION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF.

To the Honorable Supreme Court of the State of Utah:

The Utah Copper Company, plaintiff above named, respectfully petitions this Honorable Court to grant a rehearing of the above matter upon the following grounds, and with respect to the following matters, not passed upon, nor determined, by the opinion and decision of this Court:

I.

This Honorable Court, in its opinion and decision herein, misconceived and overlooked the effect of the action of the Public Utilities Commission of Utah in mak-

ing applicable to the contract between the Utah Power & Light Company and this petitioner, the published schedule rates on file with the said Utilities Commission from the effective date of the Commission's order and until it should, in another proceeding pending before it, determine whether or not such published schedule rates so made applicable to petitioner's contract were fair, just and reasonable.

II.

This Honorable Court in its opinion and decision herein misconceived and overlooked the questions presented by the specifications numbered 12, 41, 43 and 53 of the application of the Utah Copper Company for a rehearing before the Public Utilities Commission, the same being embraced in Exhibit "N," attached to the Petition for Certiorari herein, in that and because this Honorable Court failed to differentiate between the reasonableness of the increases in power rates sought by the Power Company, as distinguished from the reasonableness of the rates named in the then existing schedules.

III.

The contention of petitioner in these respects was, and is, that the Utilities Commission had no power or jurisdiction to make applicable to petitioner's contract any rates other than the contract rates, unless and until it should, upon proper proceedings and upon full and complete hearing, first ascertain and determine that the schedule rates to be made applicable to the service rendered petitioner were fair, just and reasonable, and make

the finding of fact in that respect as specifically required by Sections 4800 and 4830 of the Compiled Laws of Utah, 1917.

IV.

If petitioner's claim and contention be correct, then it follows that any application of the published schedule rates made by the Commission prior to the date upon which the said schedule rates might be held to be fair, just and reasonable, and any making of such rates retroactive from the date on which the Commission should determine the same to be fair, just and reasonable and applicable to petitioner's contract from the date of the Commission's order herein, would and does amount to a confiscation of petitioner's property, and a taking thereof without due process of law, and a denial of the equal protection of the law, in violation of the provisions of the 14th Amendment to the Constitution of the United States.

V.

The order made by the Utilities Commission herein should have been effective only from the date when by its order in Case No. 248, then and now pending before it, it should determine that the said published schedule rates were and are fair, just and reasonable and proper to be applied to petitioner's contract for power service, but it appears from the decision and order made by said Commission in said proceeding involved in Case No. 248, that it affirmatively found and determined that the said published schedule rates herein were not fair, just and reasonable, and therefore should not be made applicable

to the service rendered this petitioner effective upon any date whatever, and found that a reasonable rate applicable to the service rendered this petitioner was less than that prescribed in the existing published schedules when said order was made.

VI.

Further it appears in the record herein that all proceedings had in said Case No. 248 became, were and are embraced within and part of the record herein, and it further appears from said record and the order made therein and herein that the rates and schedules which said Commission found to be fair, just and reasonable were held by said Commission, not only applicable to the service rendered this petitioner, but also that the said rates should be applicable by retroactive effect as of and from noon of the 22d day of October, 1920, the date upon which the order of said Commission herein became effective.

Your petitioner therefore claims and asserts that the action of the Commission in making said rates applicable, as aforesaid, as of and from noon of the said 22d day of October, 1920, results in, and amounts to, a confiscation of petitioner's property, and a taking thereof, without due process of law, and a denial of the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

VII.

This petition is filed herein without in any way waiving petitioner's right to maintain, assert and contend in any proper tribunal, of either original or appellate jur-

isdiction, that the judgment, decision and order of this Honorable Court herein is erroneous, null, void and of no force and effect so far as the rights of this petitioner are concerned.

Wherefore, your petitioner respectfully prays that this Honorable Court do grant a rehearing herein, and hear further argument upon the points and questions hereby presented, and thereupon modify the judgment heretofore by this Honorable Court rendered herein, and reverse, set aside and annul said order of said Commission.

Dated this 16th day of March, A. D. 1921.

DICKSON, ELLIS, LUCAS & ADAMSON,

Attorneys for Petitioner.

ARGUMENT.

The argument in support of petitioner's claim as presented by the questions set forth in the foregoing petition, is embodied in our original brief herein at pages 178 to 205, both inclusive. We shall not attempt to repeat that argument at length, but earnestly urge the Court to read and consider that argument because it would seem from the opinion and decision of the Court herein that the Court entirely misconceived the question of law presented and entirely misconceived the state of facts upon which the same was based.

At the time the Commission made the order herein under review, the Power Company had certain then existing filed and published schedules. The Power Company

had also applied to the Commission for leave to file new schedules whereby its rates might be increased over, not only the rates named in the special contract, but also over the rates named in the then existing schedules. The Court clearly was confused as to the facts in the case. The Court's opinion says that:

“Nor is the question regarding the extent the rates should be modified or increased, if at all, involved here. It may be, as suggested by counsel, that the Power Company is demanding a greater increase in rates than it is entitled to. That question, however, is still pending before the Commission and we must assume that the Commission will not permit the Power Company to impose upon the public by granting it the right to charge and collect excessive rates, or rates that are higher than will enable it to effectuate the purpose for which it is created and to adequately serve the public. Nor can we assume that the Commission will permit the Power Company to inflate the value of its properties with a view of enabling its stockholders to realize large profits upon their stock. All of these matters must be determined by the Commission, and in discharging its duties in that regard, in view of the abnormal conditions existing, the greatest care must, and no doubt will, be exercised to prevent injury to the public or to the public utility.”

That was not the question presented. It was not a question as to whether the Power Company should be granted an increase of rates such as it sought. It was not a question of whether the Power Company would be permitted, through the instrumentality of new schedules,

to collect excessive rates. It was a question as to the reasonableness of the then existing schedule rates as applied to the service rendered this petitioner under the contract interfered with. In short, the question was whether or not the Commission could make an order directing a consumer to pay a rate which the Commission had never found to be reasonable, fair or just, in the face of a contention by the consumer that the existing schedule rates were unreasonable, unjust, unfair, oppressive and confiscatory. Stated in another way, the question was, whether the Commission had any power to make an order putting a consumer on a new rate schedule, without passing upon that issue presented by the consumer. Our statute specifically required that issue to be passed upon and a finding of fact made with respect to it. Petitioner's right to due process of law required that issue to be passed upon and a finding of fact made with respect to it. Yet, the Commission never passed upon that issue, and never made any finding of fact that the then existing schedule rates were reasonable, fair or just, as applied to the service rendered petitioner. On the contrary, its order and opinion affirmatively showed that it had never determined that issue; and now, by the last order of the Commission (of which this Court, under our statutes, can take judicial notice), it appears that the Commission has found that the rates which it first ordered the consumers to pay, were unreasonable, unfair and unjust, because the rates which the Commission finds would be fair and just are less than those in the then, or now, exist-

ing schedule. Not only did the Commission deny the Power Company the rate increase it sought, but it fixed the schedule for petitioner's service providing rates less than those which were in effect under the existing schedules at the time the order was made interfering with the contract. It may be within the police power of the state to set aside a contract and fix reasonable rates to be paid by the contract consumer, but it is not within the police power of the state to set aside a contract and compel the consumer to pay, either temporarily or permanently, either an unreasonable rate, or a rate which the Commission had never found to be reasonable, and which the Legislature had never declared to be reasonable.

We respectfully submit that the Commission, under the facts in the record herein, had no power or authority to make its order herein effective as of any date prior to the determination that the rates imposed were fair, just and reasonable and that its order in Case No. 248, made applicable herein, whereby it imposes upon petitioner the obligation to pay the rates prescribed in its order in Case No. 248, from the 22nd day of October, 1920, was, and is, void and of no effect, but that the only power invested in said Commission was, and is, to cause the rates, declared by it to be fair, just and reasonable, to be payable, for electrical energy taken by petitioner, only from and after the effective date of said order so made in said Case No. 248, to-wit, from and after the 22nd day of March, 1921. It is not permissible for the Commission to make its order retroactive. The effect

of the Commission's order is, and will be, to require your petitioner to pay over to the Power Company, for electrical energy received by it, between the said 22nd day of October, 1920, and the effective date of the order of the Commission in Case No. 248, namely, March 22, 1921, an amount in excess of \$225,000.00, and during all of this time it had not been ascertained or determined that the rates so made retroactive were in any respect fair, just or reasonable.

We submit that the Commission's order in the respects herein referred to is unconstitutional, illegal and void, and amounts to a taking of petitioner's property without due process of law and denies to petitioner the equal protection of the law in violation of the provisions of the 14th Amendment of the Constitution of the United States.

We respectfully submit, therefore, that the opinion and judgment of this Honorable Court should be so modified herein as to hold that no order made by the Commission should, or shall, become effective upon any date prior to that upon which the said Commission shall determine by its decision and finding that the rates fixed by it and to be charged for electrical energy furnished to your petitioner by the Power Company are fair, just and reasonable, and that the order of said Commission should be reversed, set aside, vacated and annulled.

Respectfully submitted,

DICKSON, ELLIS, LUCAS & ADAMSON,
Attorneys for Petitioner.

We, attorneys for the plaintiff and petitioner herein, do hereby certify that in our opinion there is good reason to believe that judgment in the above entitled matter is erroneous in the respects set forth in the foregoing petition for rehearing, and that said cause ought to be re-examined.

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