

1978

Parowan Pumpers Association, Cedar Valley Pumpers Association, And Beryl Bumpers Association v. Public Service Commission of Utah, Milly O. Bernard, Olof E. Zundel, And Kenneth Rigtrup (As Successor To Joseph C. Foley), Commissioners of The Public Service Commission of Utah And California-Pacific Utilities Company, A Corporation v. Public Service Commission of Utah, Case No. 15144 Milly O. Bernard, Olof E.

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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

PAROWAN PUMPERS ASSOCIATION, CEDAR
VALLEY PUMPERS ASSOCIATION, and BERYL
PUMPERS ASSOCIATION,

Petitioners,

vs.

PUBLIC SERVICE COMMISSION OF UTAH,
WILLY O. BERNARD, OLOF E. ZUNDEL,
and KENNETH RIGTRUP (As Successor to
JOSEPH C. FOLEY), COMMISSIONERS OF
THE PUBLIC SERVICE COMMISSION OF UTAH,

CASE NO. 15143

Respondents,

CALIFORNIA-PACIFIC UTILITIES COMPANY,
a corporation,

Plaintiff,

vs.

PUBLIC SERVICE COMMISSION OF UTAH,
WILLY O. BERNARD, OLOF E. ZUNDEL,
and KENNETH RIGTRUP (As Successor to
JOSEPH C. FOLEY), COMMISSIONERS OF
THE PUBLIC SERVICE COMMISSION OF UTAH,

CASE NO. 15144

Defendants.

FILED

APR 27 1978

BRIEF OF PETITIONERS

Clerk, Supreme Court, Utah

Review of Report and Order of the
Public Service Commission of Utah

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Nov. 8, 1977

Mr. J. M. Elliott,
Judge,
Court of Utah
Building Hall

Re: Consolidated Case No. 15143, and 15144
Parowan Pampers Association and California-
Pacific Utilities Company v. Public Ser-
vice Commission of Utah

Mr. Chief Justice Elliott:

The parties plaintiff in the above entitled case
or adverse parties of interest which I anticipate will
thoroughly litigate all relevant issues arising from the facts
of the case. Consequently, the Attorney General will not
file a brief in this matter on behalf of the Public Service
Commission although I will be present at oral argument of
the suit before the Court.

Sincerely yours,

STEPHEN R. RANDLE
Assistant Attorney General

Sir:

Mr. Elliott Lee Pratt
Robert MacFarlane, Jr.
Billy O. Bernard

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CASE NO. 15144

Defendants.

BRIEF OF PETITIONERS

NATURE OF THE CASE

This Case No. 76-023-04 before the Utah Public Service Commission, involves a pass-through rate increase sought by California-Pacific Utilities Company. It seeks to recover from its 9,000 Cedar City District customers additional annual revenues of \$856,910 per year extending over the next 45 years for a total of \$32,000,000.

This increase arises out of an alleged agreement whereby California-Pacific is to pay Utah Power and Light Company the above annual sum in amortizing a \$4,500,000 investment by Utah Power and Light in the construction of a transmission line and substation to be owned by Utah Power and Light, but to be used by both utilities.

Petitioners are 300 irrigation farmers around Parowan, Cedar City and Beryl who require electricity to operate their irrigation pumps.

DISPOSITION OF THE CASE BY THE
PUBLIC SERVICE COMMISSION OF UTAH

The Commission, even though Finding that the Utah Power and Light Company-California-Pacific Utilities Company agreement was not in the best public interest, nevertheless allowed 53.03% of the requested \$856,910, or \$453,910 annually to be added to the consumers' electricity billings.

RELIEF SOUGHT ON APPEAL

The Protestants-Petitioners seek to have the Commission's Order modified so as to disallow any increase in rates in Case No. 76-023-04 arising out of the Utah Power and Light-Cal-Pac Agreement. Protestants seek no relief on the other three Cases, Nos. 76-023-01, 02 and 03.

STATEMENT OF FACTS

Petitioners limit their appeal to issues involving the validity of the Utah Power & Light - California-Pacific Agreement (Ex. 5). California-Pacific on the other hand raises issues concerning the propriety of allowing 53.03% of the total \$856,910 requested revenue. Therefore Petitioners must supplement Cal-Pac's Statement of Facts with additional facts, and by a restatement of some of California-Pacific's facts.

Reference to the Transcript of the testimony will be in the same manner as in the California-Pacific brief, i.e., by reference to the hearing date and appropriate page.

This proceeding before the Public Service Commission was a consolidation hearing involving four different pass-through applications to recover from the consumers certain costs incurred by the company:

No. 76-023-01 for \$340,049 in increased costs imposed by Utah Power and Light, because of a fuel adjustment increase, and effecting a 9.018% increase in rates (Ex. 1, R. 253)

No. 76-023-02 for a surcharge to recover increased power costs paid to Utah Power and Light, effecting a 4.167% increase in rates. (Ex. 2, R. 254)

No. 76-023-03 sought an increase in revenue of \$708,694 to cover increased wholesale power costs paid to Utah Power

and Light Company and effecting an 18.618% rate increase.
(Ex. 3, R. 255)

Case No. 76-023-04, the only one now before this Court on appeal, involved an annual increase of \$870,560 to recover fixed costs charged by Utah Power and Light to recover its investment in the construction of a 230 K.V. transmission line with substation, and resulted in a 22.87% increase in rates. (Ex. 4, R. 256)

These pass-through rate increases are not general rate increases involving the determination of rates of return, cost of service studies or any of the other involved rate concepts found in the general rate increases. Rather, they merely pass on to the consumers the specific added costs of operation upon the theory that there will be no increment of gain included in such cost which could increase the return to the Company. (T. 11/2, R. 175)
Cal-Pac has had no general rate increase in Utah but has had several previous pass-through increases.

California-Pacific Utilities Company, is a multi-purpose company furnishing telephone, gas, water, and electric utilities service in the States of California, Nevada, Oregon and Utah. The operation in Utah is confined to the electric utilities service offered to the approximate 9,000 consumers in the Cedar City District and a much smaller number of consumers in the Kanab area. The portion of the Company's plant and operations in Utah

is less than ten percent (10%). (Ex. 1 J, R. 253)

Cal-Pac's Cedar City District's operations involve distribution of electric power to Cedar City in which there are approximately 6,000 consumers and to furnishing one or two other small towns plus the 300 or more farmers and ranchers who irrigate by pumping water out of the ground through electric pumps. (T. 11/1, pp. 32-50) (Ex 4 C, R. 256)

In 1962 Cal-Pac, Utah Power and Light hereinafter designated UP&L and the United States Bureau of Reclamation hereinafter referred to as the Bureau, entered into a wheeling agreement (Ex. 10, R. 293-326) whereby both Cal-Pac and UP&L agreed to transmit power to the Bureau's preference customers throughout the central part of the state, including the Cedar City District, for a flat sum of \$4.20 per kilowatt year. The prime consideration for this agreement was the Bureau's agreement not to construct a Federal transmission system throughout the area. Cal-Pac in 1960 had constructed a 138 K.V. transmission line from the Beaver-Iron County line north through Beaver and Sevier to Sigurd which it wanted to protect. (Ex. 9, R. 291) (T. 9/23, pp. 26,27)

Under the wheeling agreement with the Bureau, (Ex. 10, R. 292) Cal-Pac was obligated to wheel through its system all power requirements of the various preference customers of the Bureau. These customers included the

Dixie Rural Electric Association operating in Washington County, St. George City in Washington County, the towns of Hurricane, Parowan, Paragonah, and Escalante Valley Electric Association, a rural electric cooperative operating in Iron County. (T. 9/23, pp. 88, 89, 95-97) (Ex. 9, R. 291) Over the same 138 K.V. line Cal-Pac also served its customers in the Cedar City District.

Beginning in 1972 Cal-Pac and UP&L undertook investigations to determine the feasibility of constructing a larger line from Sigurd down to Cedar City to take the place of the existing 138 K.V. line. (T. 11/2, pp. 165, 166) Considerable study was undertaken to determine the future needs of the area, both as to wheeling customers and as to Cal-Pac's own customers. (T. 11/2, pp. 166) In furtherance thereof UP&L issued a letter to Cal-Pac dated December 6, 1972 (Ex. 48, R. 470) wherein the estimated costs of the Sigurd to Iron County, line would be \$2,720,000, the line from Iron County to Cedar City would be \$2,925,000 and the termination substation at Sigurd would cost approximately \$720,000. Should Cal-Pac not purchase all of its power requirements from Utah, nevertheless it would reimburse Utah for all of the fixed costs of the Sigurd termination and would continue to pay the fixed annual costs for a period of 45 years.

Thereafter on March 21, 1973 UP&L gave another letter of intent to which Cal-Pac agreed on March 23,

1973. (Ex. 49, R. 472-475) This letter differed in some respects from the earlier letter. It provided: (a) for a location of the Sigurd line thus placing the southern terminal at the Beaver County-Iron County line; (b) for Cal-Pac to pay UP&L 1/12th of its annual fixed charges on the Sigurd to Iron County line for a period of 45 years; (c) for a definition of fixed charges; (d) that should Cal-Pac terminate its firm power purchases from UP&L, it should nevertheless continue to pay annually to UP&L the same fixed annual charges for the remainder of the 45 year period, or it could elect to pay off the entire unpaid investment; and (e) that the final agreement to be entered into would be subject to the approval of regulatory authorities having jurisdiction.

The final agreement (Ex. 5, 28, R. 259-270, 366-376) was signed March 26, 1975. This agreement in substance provided that the fixed charges would be payable on a monthly basis for the next 45 years, that at the end of that time UP&L would continue to own the transmission line, that at any time when Cal-Pac elected to discontinue service, it nevertheless would still be obligated to pay the entire 45 years of fixed charges, that UP&L had the right to tap into the line and if it did so there would be a negotiated adjustment in the fixed charges, and that by the formula used to determine the fixed charges UP&L would realize a 9.5% return on its investment, would have

taxes paid, would have the maintenance and operating costs paid for and would place the line in its own rate base. (T. 8/10, p. 66)

Beginning with the earlier negotiations in 1972 and continuing on to the culmination, through signing, of the final agreement Cal-Pac gave no notice or other information to the consumers of the pending negotiation and the finalizing of the agreement. At no time did Cal-Pac present either the letters of intent or the final agreement to the Utah Public Service Commission for its consideration and review. (T. 8/24, p. 20)

Cal-Pac in explaining why it entered into the agreement with UP&L indicated that it primarily was so that it would not have to make any capital investment, it having just completed its own partial segment of the proposed line, to-wit; the line from the Beaver-Iron County line down to the town of Parowan for a cost of \$2,200,000. (T. 9/24, p. 19)

The formula finally implemented by Cal-Pac and UP&L (Ex. 4, R. 256 letter dated August 5, 1976) was based upon an investment of \$4,461,000 for the 230 K.V. line and \$424,000 for one-half of the termination at the Sigurd substation, (less investment tax credits). The total of the fixed charges to be paid by the consumers in this pass-through over the 45 year period if the full \$861,000 were paid would be 32,000,000, based upon the \$4,850,000 in-

vestment. At no time, even upon completion of all the payments would Cal-Pac own the transmission line or the termination facilities at Sigurd. (Ex. 5) The full amount of the annual charges is to be passed on to the consumers.

Various determinations were made as to the relative and comparative cost under various alternatives. If the money were borrowed by California-Pacific then the total would only be \$23,000,000, the annual payments would begin at \$781,750 and reduce down to \$253,750 per year. (Ex. 47) Mr. Workman testified that if California-Pacific owned the line the first five years would cost 6.6 million dollars less than under the present arrangement. (T. 11/2, p. 150) Although there was testimony that at the time of construction in 1975 the company could not afford to build the line, that condition was apparently temporary. Mr. Workman testified that the line could be financed now. (T. 11/2, pp. 148, 149) There is no evidence that the company could not have built the line in 1973 when the first letter of intent was agreed to by the utilities.

The use of the 230 K.V. line is divided on a kilowatt hour bases so that 53.06% of the useage is for the Cal-Pac consumers and 46.97% useage for the Bureau of Reclamation wheeling customers. (Ex. 43, R. 448) (R. 103-Findings of Fact on Third Tentative Order)

Although California-Pacific filed the agreement with the Federal Power Commission there is no action by said Commission constituting consideration or approval thereof. (Ex. 31, R. 380-382)

The Protestants in this matter have invested substantially in extensive pumping and irrigation systems throughout the Cedar City District area in reliance upon the electric service. They will be substantially hurt by the increased rates. (T. 11/1, pp. 32-50)

ARGUMENT

POINT I

THE ALLEGED AGREEMENT BETWEEN CAL-PAC
AND UP&L IS VOID AND CAN NOT BE USED
TO INCREASE RATES.

A. Neither Cal-Pac nor UP&L have complied with
Section 54-4-30 U.C.A.

Section 54-4-30 U.C.A. provides as follows:

"Acquiring Properties of Like Utility Only on Consent of Commission. - Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the public utility commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest."

The above section unequivocally requires a public utility to obtain the consent of the Public Service Commission before entering into leases or other types of arrangements whereby it either leases or acquires the plant or properties of another public utility. The evidence is clear (T. 8/24, p. 20) that, neither the original letters of intent nor the final agreement were ever presented to the Commission for consideration. Furthermore the Commission has so determined in Finding No. 9 (R. 231):

"9. The contract between Utah Power and Light and California-Pacific Utilities Company has never been submitted to the Utah Public Service Commission for its approval."

Where a statute prohibits the performance of a bargain, then such bargain is illegal. See Restatement of Contracts, para. 580:

"Bargain in Violation of a Statute

"1. Any bargain is illegal if either the formation or performance thereof is prohibited by constitution or statute.

"2. Legislative intent to prohibit the formation of a bargain, or an act essential for its performance, may be manifested by (a) express prohibition, or (c) imposing a penalty for doing an act that is essential for the performance thereof, or (d) requiring a license, inspection or something similar from persons making such bargains or doing acts essential for their performance, or (e) other terms of a statute interpreted in the light of the purpose of its enactment."

The legislative intent is clear in the Utah statute:

"Such consent shall be given only after investigation and hearing and Finding that said purchase, lease or acquisition of said plants, equipment, facilities will be in the public interest."

Section 54-7-25 U.C.A. provides for various monetary penalties in the event a utility fails to comply with an provision of Title 54. Thus under the Restatement such a penalty is further indication of the illegality of the agreement. See also Shasta County vs. Moody, 265 Pac. 1032 (Ca.

However perhaps as important a consideration as can be found is the express requirement that such an agreement be presented to the Commission so that the Commission can determine whether or not it is in the best public interest. The consumers of Cal-Pac, including the various irrigation pumpers users, are entirely at the mercy of the company in this pass-through type of a rate increase. The consumers have no knowledge or information of the agreement, the burden of which is going to be placed squarely 100% upon their shoulders. Thus reliance upon the statute is the only protection which they have. Failure to comply with the statute is thus more than a mere technicality to Petitioners. By the time the pass-through rate hearing comes into focus, the alleged agreement entered into either in 1972 through the letter of intent, or in 1975 through the formalized document, has long since been executed. There has been no hearing at which the Protestants can examine or object to the agreement.

In this case the importance of compliance with the statute is even more clearly evidenced by the Commission's Finding to the effect that the Agreement is not in the public interest. The Commission found in Finding 18:

"The contract between Utah Power and Light and California-Pacific is not in the best interest of the customers of California-Pacific Utilities."

The general rule relating to the violation of a statutory prohibition is set forth in 17 Am Jur 2d Para. 167, Contracts:

"It is the prevailing rule that where a statute designed for the protection of the public prohibits in express terms the making of a contract, such contract is absolutely void whether the thing contracted for is malum in se or merely malum prohibitum."

. . .

"It is fundamental that no contract between individuals can make it lawful to do that which a statute positively commands shall not be done."

We suggest also that the language of this court in Silver Beehive Telephone Company vs. Public Service Commission of Utah, 30 Utah 2d 44, 512 P.2d 1327 is appropriate:

"We are cognizant of the prerogatives of the Commission in general supervision of public utility services, and of its presumed expertise in doing so. Nevertheless, inasmuch as the Public Utilities Act provides for an appeal to this court, it must be assumed that it was not intended to be merely perfunctory, but was intended to be a substantial and meaningful review for the purpose of giving correction and guidance when it appears that the actions of the Commission are so clearly inconsistent

with its purpose of regulating utilities on behalf of the public interest and the utility involved that they transgress the tolerable limits of reason."

The statute is extremely clear in stating that (a) no utility shall lease any facilities without the consent and approval of the Commission; and (b) that such consent shall only be given after investigation and a hearing and finding that the lease "will be in the public interest".

The Commission has found as a fact that the agreement was not submitted to the Commission and now finds that the agreement is not in the public interest. There can be no more clear violation of the regulatory concept, of the legislative intent and of the principles enunciated by this Court than in this particular situation.

B. Section 54-4-26 U.C.A. has also been violated by Cal-Pac and UP&L. This section provides:

"Every public utility when ordered by the Commission shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures submit such proposed contract, purchase or other expenditure to the commission for its approval."

See also Lincoln Highway Realty vs. State of New Jersey, 128 Super 35, 1974, wherein the court further supports the general rule in stating:

"By requiring his (State Treasurer) approval the lawmakers clearly intend to protect the public interest by drawing upon the judgment of the state treasurer in validating the transaction

only upon his watchful concurrence in the judgment of the director. This condition is not merely a matter of form. Its fulfillment is vital to the very concept of any power in the director to contract for the acquisition of property except after a public solicitation of bids."

Under Section 54-4-26 the Commission has under Regulation A 67-05-95 ordered every public utility to submit to the Commission any contract involving the construction of facilities, purchase or disposal of assets having a value of over 25% of total Utah plant, prior to being placed into effect. This agreement is governed by the Regulation.

The total utility plant of Cal-Pac in the Cedar City District is \$12,629,525; the total cost of the investment is \$4,500,000 which when amortized over the 45 year period increases to \$32,000,000. Thus the contract is of sufficient size, (it exceeds 25% of the plant investment in Utah) to have been presented to this Commission for approval before taking effect. (Ex. 1-I, R. 253)

Certainly the very concept of public utility regulation contemplates protection of the public (the consumers) from unreasonable and wrongful actions of the utilities. This can be no more evident than in the very complicated rate cases coming before the commission and even more importantly in this rate case in which the consumer is going to bear 100% of the burden imposed on him by the contract entered into between two utilities over which the consumer has no control and of which the con-

sumer has no information or notice. Where the terms of the contract are so unreasonable and the necessity of the contract itself is questionable, the disadvantage to which the consumer is placed in this case is substantial.

California-Pacific in its brief complains that the Commission has only allowed 53% of the annual charge to be placed on the shoulders of the 9,000 consumers and has left no means by which to recoup the additional \$400,000 per year. This argument has little substance. Obviously the entire amount is wrongfully assessed since it is based upon an illegal contract. However, assuming that even a portion of the increase is proper, obviously the utility has other ways of raising the additional money. Any time a utility seeks a rate increase there is the possibility that it will not obtain the complete relief that it claims. In such cases the utility may go to the investors or the stockholders, may renegotiate the agreement, seek Commission or judicial relief or borrow the funds. These alternatives are now available. (T. 11/2, pp. 148, 150) The Commission has jurisdiction over Utah Power and Light and California-Pacific and could readily within its jurisdiction determine what should be done in this instance. That is not for Protestants to urge at this point.

In summary, we can look at an earlier California case in which two electric utilities entered into a contract to sell properties one to the other without obtain-

ing approval of the Utilities Commission required by statute. The Court in striking down the contract stated:

"It needs no citation of authority to the effect that said statute was enacted primarily in behalf of the public rather than the owners of public utilities. It is a settled rule that a contract will not be enforced if the contract is in violation of the provisions of a statute enacted for the protection of the public.

. . .

"It will be noted that the language of the Public Utilities Act is not only prohibitory, but a penalty is provided for violations thereof. Such a statute must be construed as being prohibitory and a contract made in contravention of the terms thereof is void and unenforceable." Napa Valley Electric Co. vs. Calistoga Electric Co., 176 Pac. 699 (Calif. 1918)

"Futhermore, the law is well settled that where a statute provides a penalty for an act, a contract founded on such an act is void, although the statute does not pronounce it void, nor expressly prohibit it." Shasta County vs. Moody, supra

POINT II

THE ALLEGED AGREEMENT LACKS PROPER CONTRACT ELEMENTS.

A. Essential Elements are Subject to Future Negotiations. The contract is still subject to modification or future negotiation of an essential portion thereof. Paragraph No. 7 in the agreement provides that if Utah Power and Light elects to make a tap into the line, that the parties would then negotiate an equitable adjustment of the fixed charges. There is no formula established for

such negotiation and it is clear that such adjustment would affect the annual fixed charges and would thus in turn affect the amount to be billed to the consumers each year.

The consumers therefore are asked to assume the burden of that uncertainty and must do so without having any participation in such negotiations, if and when they occur. With such an uncertainty, it is evident that there has been no mutual assent and therefore no contract.

An agreement to agree upon future compensation is too indefinite to form an enforceable agreement. As is set forth in 17 Am. Jur. 2d Contracts, Para. 82:

"An agreement which does not specify the price or any method for determining it, but which leaves the price for future determination and agreement of the parties is not binding."

B. The Agreement Imposes an Unconscionable Forfeiture Upon California-Pacific.

Under the alleged agreement the line will be permanently owned by Utah Power and Light. (Ex. 5, R. 259-270) (T. 8/10, p. 74, 75) The agreement further provides that should California-Pacific elect not to purchase its power from Utah Power and Light, nevertheless California-Pacific (its consumers) would be obligated to continue to make the annual payments without receiving the benefit of the use of the line and of course without the possibility of eventually owning the line. The contract provides for no means of terminating this annual payment un-

less California-Pacific would elect to pay off the obligation in a lump sum.

Such a provision imposes an unconscionable burden upon the consumers without affording them any corresponding benefits. It is axiomatic that our courts do not favor such unconscionable and punitive type forfeitures. This is one more reason why the agreement is not in the public interest.

C. The Method of Determining the Annual Charge Violates the Provisions of the Agreement. Paragraph 5 of the agreement, and also the Letter of Intent provide that the fixed charges will be applied to "Company's actual cost of constructing the line and terminating facilities". Nevertheless all of the Exhibits are based upon estimates rather than upon actual costs. Thus even at this point the very essence of the charge to be assessed to these consumers is subject to variables arising out of estimates of a different cost figure, as opposed to a reliable figure which would result from the actual costs.

This Court simply and clearly sets forth the rule in Candland vs. Oldroyd, 248 Pac. 1101:

"So long as there is any uncertainty or indefiniteness, or future negotiations or considerations to be had between the parties, there is not a completed contract. In fact there is no contract at all. This general rule is accepted by all courts and text writers and it is useless to cite authorities to support it."

The clarity of this contract is extremely important to the consumers who must assume all of the obligations without any of the controls of them. To be subjected to the whims of future negotiations on matters which determine the actual dollars to be paid out by the consumers should in all good conscience be avoided. The rates should not be based upon incomplete and unenforceable contracts.

POINT III

THE COMMISSION'S DISALLOWANCE OF A PORTION OF THE TRANSMISSION LINE EXPENSE IS PROPER.

California-Pacific claims under its Point II that the Commission has no authority to disallow the transmission line expense. The cases cited by Cal-Pac are not controlling in a rate hearing such as we have in this instance. If this Commission did not have the power in a rate hearing to allow or disallow different items that go to make up a rate, then obviously the Commission would have absolutely no regulation over rates.

Plaintiff refers to a Logan City case as authority. The matter there in question involved the placing of poles in the distribution system. Furthermore the statute under which that case was decided was Section 54-4-26 which

includes language relating to the benefit accruing to officers or stockholders. The case is distinguishable.

The Commission simply found that the line costs which were being charged to the Cedar City District consumers should not include those costs relating to the furnishing of power to the Bureau of Reclamation wheeling customers. Such a decision in no way involves management prerogatives. It is a factual determination that the line costs should be allocated to useage of the line - and nothing else.

Furthermore the Commission in our case has before it the Section of the statute requiring such contracts to be presented to it for consideration and for a finding that the contracts are for the best public good. Within this frame work the commission properly held that only a portion of the costs should be allocated to these particular consumers in this pass-through rate hearing.

In so arguing, however, Petitioners nevertheless maintain that the entire line cost charged should be eliminated for the reasons that have been set forth in Points I and II above.

POINT IV

THE ALLOCATION OF 53.03% IS SUPPORTED
BY THE EVIDENCE AND BY APPROPRIATE
FINDINGS.

California-Pacific argues in its Point III and in

its Point I that there is no evidence and that there are no proper findings to support the Order disallowing a portion of the transmission line costs.

The Record simply does not bear out this argument.

The Commission is its initial Findings (R. 103) found after a portion of the hearing had been completed:

"That for the month of August, 1976, the applicant handled certain amounts of power, both by way of 'wheeling' for the Bureau of Reclamation, and for sale to its own customers. The testimony was that for the month of July the applicant wheeled 18,452,646 KWH and transferred for its own customers 20,167,354 KWH, which meant that about 53% of the power was for the use of the applicant's own customers."

Those Findings are reaffirmed by the final Findings and thus very specifically support the ultimate conclusion that the allocation of 53.06% is correct and supported by the evidence.

California-Pacific also claims that the Findings to the effect that the Utah Power and Light - California-Pacific Agreement was not in the best interest of the consumers, was not supported by appropriate evidence and Findings. An examination of the provisions of the contract and the effect thereof upon the consumers as is developed in the Statement of Facts indicates quite clearly that the Finding is supported by the evidence. Certainly as we have pointed out above in Points I and

II above such an agreement is not in the best interest of the customers. The evidence is clear to justify such a Finding.

The foregoing Findings which are disputed by California-Pacific are supported by the evidence and thus can not be challenged in the absence of a claim of fraud or a violation of constitutional rights. There is no evidence to support such a claim and thus the Findings should stand.

CONCLUSION

Protestants submit that the imposition upon them of the annual charge sought by California-Pacific is unlawful. The contract which is the very basis for the rate increase is unlawful and void. No rates should be imposed when based upon such a contract.

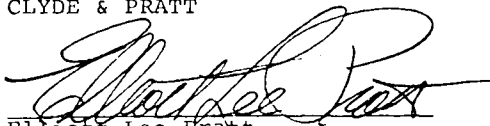
The agreement imposes unconscionable burdens upon the consumers which are unrelated to any benefits accruing to them.

Therefore the Commission's Order imposing the transmission line costs should be disallowed.

DATED the 26th day of April, 1978.

Respectfully submitted.

CLYDE & PRATT

A handwritten signature in dark ink, appearing to read "Elliott Lee Pratt", written over a horizontal line.

Elliott Lee Pratt
Attorneys for Petitioners