

1987

Utah State Coalition v. Utah Power and Light : Unknown

Utah Court of Appeals

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Unknown.

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DOCKET NO. 20152

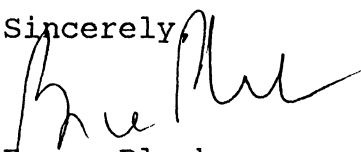
Geoffrey J. Butler
Clerk of the Court
Supreme Court
State of Utah
332 State Capitol
Salt Lake City, Utah 84114

Re: Utah State Coalition v. Utah Power & Light
Case No. 20152

Dear Mr. Butler:

Enclosed is a copy of the legislative history which I referred to in my oral argument on the above case.

Sincerely,


Bruce Plenk
Attorney at Law

BP:mh

Enclosure

cc: Edward Hunter

FILED
APR 23 1987

Clerk, Supreme Court, Utah

PUBLIC UTILITY

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Commission Chairman Richard Dunham testified before the Commerce Committee's Oversight Subcommittee that the average processing time for a license was 6 years in fiscal year 1974, up from 4 years in 1971.

The intent of my amendment is to get on with the business of environmentally clean energy production, and out of the business of promulgating red tape.

HOUSE CONFERENCE REPORT NO. 95-1750

* * * * *

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE
OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4018) entitled "An Act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics" submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the House bill (H.R. 4018) struck out all of the bill after the enacting clause and inserted a substitute text which contained two titles. Title I (the "Public Utilities Regulatory Policies Act of 1977") contained the text of S. 2114, as amended by the Senate. Title II was identical, except for clerical and conforming changes, to part V (Public Utility Regulatory Policies) of title I of H.R. 8444, as passed by the House.

The House amendment to the Senate amendment struck out the text of the Senate amendment and substituted the text of title I of H.R. 8444 as passed by the House.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for both the Senate amendment and the House amendment. The differences between the Senate amendment, the House amendment, and the substitute agreed to in conference are noted below, except for clerical correction, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Since the Senate and House amendments both substituted new texts for the House bill, H.R. 4018 (which was unrelated to electric and gas utility matters when it originally passed the House), references in the explanation below to "the House bill" are not intended to serve as references to H.R. 4018 as originally passed by the House but as references to Part V of title I of H.R. 8444 as passed by the House. Similarly, since the Senate amendment contained both the texts of S. 2114 as amended by the Senate and the text of Part V of title I of H.R. 8444, as passed by the House, references to the Senate amendment in the explanation below are intended to serve as references to S. 2114 as passed by the Senate.

No action was taken by the conferees with respect to that portion (title II) of the Senate amendment which contained the text of Part V of title I of H.R. 8444 or with respect to that portion of the House amendment to the Senate amendment as contained in other titles of H.R. 8444.

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The Secretary of Energy, any affected utility, or any electric consumer of an affected utility may intervene under this provision to initiate or participate in the consideration of one or more of the standards established by this title or other concepts which contribute to the achievement of the purposes of the title. The conferees intend for the term intervention to be interpreted broadly to include intervention or participation at the beginning of a proceeding or otherwise but do not intend for such term to connote a right to initiate a proceeding.

The conferees intend that the phrase "other concepts which contribute to the achievement of the purposes of this title" be construed broadly so that no one will have to prove his case in advance before being allowed to intervene. Any issue which may contribute to the purposes of the title should be given consideration if it may contribute to these purposes. The procedures for the type of intervention are left to State law.

This section ties in with section 112(a) in the sense that the Federal right to intervene can result in a request for consideration of a particular standard specified in section 111(d), in which case a section 111(a) determination should be made. Again, section 112(a) contains a provision by which this determination may be based on appropriate prior determinations and evidence so as to avoid unnecessary delay and expense. However, the conferees are relying on the State courts (except as otherwise specified in section 123) to review these proceedings and insure that proper procedures under this Act and State law are followed.

The conferees intend that the phrase "affected electric utility" means any utility which is subject to regulation by the same regulatory authority which utility might be affected by precedents set in a case relating to another utility. This term would also include utilities permitted to participate or intervene under State law.

Subsection (b) of this section deals with the participant's or intervenor's access to relevant information available to other parties to the proceeding.

It is the intention of the conferees as expressed in subsection (c) that the right to intervene or participate created by this section vest as of the date of enactment of the legislation. Intervenors or participants should be permitted to intervene or participate in proceedings which are ongoing on that date only to the extent such intervention would be timely and not disruptive of the proceeding and is in accordance with otherwise applicable law. Within this constraint, the State regulatory authority or nonregulated utility should provide maximum opportunity under State law to participate in ongoing proceedings. Federal courts will be available to interpret the actions under this provision of Federal law after protest in a State court, as provided in section 123(a)(2)(B), or directly in the case of the Secretary of Energy.

Section 122. Consumer representation

Section 122 is a modified version of the House provision with respect to consumer representation. The purpose of this section is to provide a mechanism to assure that the interests of electric consumers will be represented at the State level in proceedings dealing with the standards set forth in subtitle B. The mechanism chosen for this

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purpose is either of two options. One makes the utility liable to provide compensation directly to electric consumers who substantially contribute to the approval, in whole or in part, of a position advocated by the consumer in a proceeding concerning the utility relating to any standard set forth in this title by creating a right of action against the utility. The second option provides that the State or State regulatory authority or nonregulated utility may have a program to otherwise provide adequate compensation to persons described in subsection (b). Such a program may include an adequately funded office of public counsel which adequately represents the interests of persons described in paragraphs (1) and (2) of subsection (b).

The conferees intend that the phrase "substantially contribute to the approval, in whole or in part," be broadly construed by the State agencies, nonregulated utilities, and the courts to effectively provide for compensation commensurate with the contribution to the approval of one or more of the standards.

In section 122(a)(3)(A), the State regulatory authority or nonregulated electric utility may include a preliminary proceeding to require that (1) as a condition of receiving compensation under the procedure under paragraph (2), the consumer demonstrate that, but for the ability to receive the award of fees, participation in such proceeding may be a significant financial hardship for the consumer, and (2) persons with same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation. The conferees intend that phrase "significant financial hardship" is to be construed broadly, the determination not being restricted to whether the consumer can participate in that particular case but give consideration to other financial burdens, including those associated with intervention in other cases. The intention is not to compensate intervenors who can afford to intervene in any event if the State regulatory authority or nonregulated utility adopts the procedures in subsection (a)(2) or (a)(3)(A).

Subsection (d) provides that any Federal payments to intervenors under this section are subject to the appropriation process.

Subsection (e) states that nothing in this section shall affect or restrict any rights of any participant in any proceeding under any other applicable law or rule of law. Payment of funds pursuant to this section does not permit the State regulatory authority to control the nature of the legal representation or manner of handling of a case in any proceeding. Payment of costs of participation are not intended to be used as method to dictate who should represent a participant or intervenor.

Section 123. Judicial review and enforcement

This section provides for the judicial review of any actions arising under subtitles A, B, or C and for enforcement of the requirements of these subtitles. In general, as stated in subsection (a), the jurisdiction of the Federal courts is limited by this section; review and enforcement is primarily in the State courts. Federal court review can occur in only limited instances described in this section; the provisions of appellate review under title 28 of the U.S.C. do not apply to actions arising under subtitle A, B, or C except as specifically provided for in this section.