

1951

# Utah Pipe Line Co. v. Public Service Commission of Utah et al : Brief for Respondents

Utah Supreme Court

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Calvin L. Rampton;

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## Recommended Citation

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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UTAH PIPE LINE COMPANY,  
a corporation,

*Petitioner,*

— vs. —

PUBLIC SERVICE COMMISSION  
OF UTAH, HAL S. BENNETT,  
W. R. McENTIRE, and STEW-  
ART M. HANSON, Commissioners  
of the Public Service Commission  
of Utah, and UTAH NATURAL  
GAS COMPANY, a corporation,

*Respondents.*

BRIEF OF  
RESPONDENTS

**FILED**  
OCT 20 1901

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Clerk, Supreme Court, Utah

BRIEF OF RESPONDENTS

PUBLIC SERVICE COMMISSION OF UTAH, HAL S. BENNETT,  
W. R. McENTIRE and STEWART M. HANSON,  
Commissioners of the Public Service  
Commission of Utah.

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CALVIN L. RAMPTON,  
*Attorney for Public Service  
Commission of Utah.*

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## INTRODUCTION

The respondents, Public Service Commission of Utah, Hal S. Bennett, W. R. McEntire and Stewart M. Hanson, Commissioners of the Public Service Commission of Utah submit the following brief in answer to the brief of the Petitioner heretofore filed.

The Public Service Commission of Utah will make no effort to answer paragraph by paragraph and case by case the very voluminous Brief of the Petitioner which is now on file. Much of the argument and nearly all of the cases contained in that Brief are, in the opinion of the Public Service Commission, inapplicable here for reasons which will be hereafter pointed out. All of the matters raised on the Brief of the Petitioner can be resolved by answering of three fundamental questions. First, does the Public Service Commission have the power to issue a conditional Certificate of Convenience and Necessity; Second, did the Public Service Commission make any unlawful delegation of its authority; and Third, was the Public Service Commission in its rights in proceeding to hear the application of Utah Natural Gas Company and to decide the issues therein involved before hearing the application of Utah Pipe Line Company.

In addition to these questions, the Public Service Commission again wishes to raise before this Court the question raised on the Motion to Dismiss the Writ of Certiorari. Namely, does the petitioner, Utah Pipe Line Company, have a justiciable interest in the controversy now presented to the court. The respondent would like to restate its argument in regard to this latter point and then proceed to the consideration of the matters raised in the Brief of the petitioner.

## THE PETITIONER DOES NOT HAVE A JUSTICIABLE INTEREST IN THE CONTROVERSY IN THIS ACTION

It is fundamental that in order to maintain a legal action, the person bringing the action must have a legal interest in the subject matter of the controversy. This court in the case of *Gianulakus v. Sharp*, (71 Utah 528) in considering the claim of the plaintiff in a water controversy stated:

“Before the plaintiff in this suit can be heard to complain because he has been deprived of the use of the water flowing from the springs in question, he must establish some right to the use of the water or a part thereof. Even though it be conceded that defendants title is weak, that fact alone does not entitle plaintiff to any relief.”

Therefore, regardless of how weak the case of the Utah Natural Gas Company might be, if in fact the petitioner has no property right to protect in this proceedings, it has no standing before this court.

The fact that the petitioner might conceivably at some future date acquire some rights which might be affected by the outcome of this controversy does not entitle it at the present time to institute a legal proceedings. In the case of *State v. Superior Court for King County* (131 Pac. (2d) 943), the Supreme Court of Washington stated:

“It is also a well-recognized rule that to entitle a person to institute a cause of action, he must show that he has some real interest therein. His interest must be a present, substantial in-

terest, as distinguished from a mere expectancy, or future, contingent interest, and he must show that he will be benefited by the relief granted. 39 Am. Jr. 860, P. 10. It is also a well recognized principle that public wrongs or neglect or breach of public duty cannot be redressed in a suit in the name of an individual or individuals whose interest in the right asserted does not differ from that of the public generally, or who suffers injury in common with the public generally."

Similar language is found in a Wyoming case, *Campbell v. Wyoming Development Company* (100 Pac. (2d) 124) at Page 140 of this opinion the Wyoming court states:

"Before a party may attack the right of another, either on constitutional or other grounds, he must first show that he himself has a right which has been invaded thereby. He must have an interest which is affected. 11 Am. Jur. 849; 19 C.J. 1039, 1040; *Clark v. Duncanson*, 79 Okl. 180 192 P. 806, 16 A.L.R. 315; *Williams v. San Pedro*, 153 Cal. 44, 94 P. 234; *Davis v. Minnesota Baptist Convention*, 45 Wyo. 148, 154, 16 P. 2d 48; *Gianoulakis v. Sharp*, 71 Utah 528, 267 P. 1017. There is no reason why we should intermeddle with the claims of another, unless he has such interest."

The rule is well summed up by the authors of the *American Jurisprudence* in 39 Jur. 859 as follows:

"In considering the proper person to institute a judicial proceeding one should bear in mind the fundamental principle that courts are instituted to afford relief to persons whose rights have



been invaded, or are threatened with invasion, by the defendant's acts or conduct, and to give relief at the instance of such persons, a court may and properly should refuse to entertain an action at the instance of one whose rights have not been invaded or infringed, as where he seeks to invoke a remedy in behalf of another who seeks no redress. One cannot rightfully invoke the jurisdiction of the court to enforce private rights or maintain a civil action for the enforcement of such rights unless he has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. To enable one to maintain an action to enforce private rights, he must show that he has sustained some injury to his personal or property rights. The principle that one without pecuniary interest has no judicial standing runs through our jurisprudence."

What right of the petitioner has been invaded by the granting of the Certificate of Convenience and Necessity to the Utah Natural Gas Company? None of its rights could be invaded because it had no rights in such matter. It is true that it did have an application on file for a Certificate of Convenience and Necessity of its own and it may well be that it has a right to have such petition heard, however it can not very well be argued that it has a right to have it heard prior to the petition of the Utah Natural Gas Company which had previously been filed, nor can it be argued that it had a right to have its petition heard prior to the time that the decision was rendered in the Utah Natural Gas Company case. If



such were the rule, successive applications might forever prevent the decision on any application for a certificate merely by having successive applicants filed by different companies for substantially the same rights. If the petitioner feels aggrieved because its petition has not been heard, its proper remedy would be a Writ of Mandamus to compel the commission to hear its petition. However, until its petition is heard and it has actually been granted a franchise, it has not property rights which should be recognized by this court.

There were many protestants to the petition of the Utah Natural Gas Company's application, many of which would have actual rights at stake. Mountain Fuel Supply Company is already serving gas in the area proposed to be served by the Utah Natural Gas Company and clearly has a property right which it could have called upon this court to protect. Likewise many users of natural gas appeared as protestants. While their rights are somewhat remote, the cases generally held that they have a justiciable interest in such a matter and may secure judicial review thereof. However, the one protestant that chooses to seek the review of this court is the one protestant that has no conceivable right or justiciable interest in the subject matter of the writ.

The Petitioner here is in much the same position as a low bidder on a public contract who seeks to secure judicial review of the award of the contract to someone other than the low bidder. It is well established that such bidder prior to the time he has been awarded

a contract has no right which the courts will recognize. In this regard the following language is found on Page 234 of Donnelly on Public Contracts:

"The provisions of the statutes relating to the awarding of public contracts are for the benefit of the property owners and tax payers of the public body and not in the interest or for the benefit of contractors or bidders for public work. An unsuccessful bidder may not maintain a suit for their violation \* \* \* neither can the lowest bidders compel a Writ of Mandamus to force public officers to enter into a contract with them."

See also in this connection *Colorado Paving Company v. Murphy* (78 Fed. 28).

A case almost exactly analogous to the case now before this court was the case of *Aller & Sharp Inc. vs. United States, et al.* This case was decided by a three man court in the southern district of Ohio on March 20, 1951. It has not been reported in Federal Reporter, but appears as Case No. 80648 in the advance sheets of the Federal Carrier Reporter. In that case an application was made to the Interstate Commerce Commission for a Certificate of Convenience and Necessity to engage as a common carrier of certain specified commodities between Chillicothe, Ohio, and certain other points in the states of Illinois and Indiana. One of the protestants in the case was Aller & Sharp, Inc., which company was also engaged as a public carrier of property but not in the same area for which the new rights were being sought. Aller & Sharp, however protested on the grounds that

as they were in the transportation business in an adjoining area, they might subsequently acquire rights in the area being sought by the petition and therefore had an interest in the matter. The Interstate Commerce Commission granted the rights sought and Aller & Sharp appealed to the U.S. District Court, the case being heard as the law provides by the District Judge and two Judges assigned from the circuit bench. In refusing to recognize the appeal the court stated:

“Since plaintiff does not have authority to transport machinery, equipment, materials and supplies used in or in connection with the manufacturing of paper from Chicago and Joliet, Ill. and Hammond and South Bend, Indiana to Chilli-cothe, it has no legal interest or standing to challenge the granting of such authority to Craig Trucking Inc.”

The fact that the Utah Pipe Line Company was allowed to enter its appearance as a protestant before the Public Service Commission does not vest in it a right to appeal to the court. This matter was considered by the U. S. Supreme Court in the case of *Pittsburg and West Virginia Railroad Company v. United States* (281 US 479). The Supreme Court stated:

“The district court held that the appellant was entitled to bring this suit under the Urgent Deficiencies Act to set aside the order, because it had intervened in the proceedings before the Commission, and because it is a connecting carrier and a minority stockholder of the Wheeling. The court erred in so holding. The mere fact

that appellant was permitted to intervene before the Commission does not entitle it to institute an independent suit to set aside the Commission's order, in the absence of resulting actual or threatened legal injury to it. *Alexander Sprunt & Son v. United States*, 281 U. S. 249, ante, 832, 50 Sup. Ct. Rep. 315. Nor does the mere fact that its lines connect with those of the Wheeling near the city of Pittsburg, Pennsylvania, entitle it to bring the suit. Its lines do not extend to Cleveland; and there is no suggestion that the order can affect it as carrier."

Whether or not the petitioners were parties in the action before the Commission is wholly immaterial to its right to bring these proceedings. The only question determinative of its right to be before this court is whether or not they actually have any right that is affected by the order. This problem was again considered by the U. S. Supreme Court in the case of *Edward Hines Yellow Pine Trustees v. United States* (263 US 216). The Supreme Court states:

"The mere fact that plaintiffs were not parties to the proceeding in which the order was entered does not constitute a bar to this suit. For it is brought to set aside an order alleged to be in excess of the Commission's power. *Interstate Commerce Commission v. Diffenbaugh*, 222 U.S. 42, 56 L. ed. 83, 88, 32 Sup. Ct. Rep. 22; *Skinner & E. Corp. v. United States*, 249 U.S. 557. 63 L. ed. 772, 39 Sup. Ct. Rep. 375. But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges canceled. They must show also that the order alleged to be void subjects

them to legal injury, actual or threatened. This they have wholly failed to do."

Not only does the petition for a Writ of Certiorari fail to state facts indicating a justiciable interest in the controversy in this petition, it in fact states facts which negative the existence of such an interest.

For the reasons above stated, it is the position of the Public Service Commission of Utah that the petition of Utah Pipe Line Company should be dismissed without a consideration of the fundamental issues involved therein.

#### THE PUBLIC SERVICE COMMISSION HAS AUTHORITY TO ISSUE CONDITIONAL CERTIFICATES OF CONVENIENCE AND NECESSITY

The petitioners' brief from the beginning over to page 96 is devoted to argument and cases holding that Public Service Commissions and other regulatory bodies were within their rights in refusing to grant Certificates of Convenience and Necessity where the evidence failed to show either an adequate supply of the commodity to be sold or the financial ability on the part of the petitioner to carry on the business proposed. With this argument and with the cases cited in support thereof, the Public Service Commission of Utah has no quarrel. Undoubtedly, it would have been within the power of the Commission in this case on the evidence presented to have refused to grant the Certificate of Convenience and Necessity to the applicant, Utah Natural Gas Company.

The evidence as presented at the hearing clearly shows that there is a need for an additional supply of natural gas in the area proposed to be served by Utah Natural Gas Company. This much the petitioner, Utah Pipe Line Company, admits. In fact it makes that allegation in its own petition which is now on file before the Commission and before the Federal Power Commission. It is also true, as the petitioner states, that the evidence fails to show a sufficient supply of proven gas reserves to make the construction of the pipe line proposed by Utah Natural Gas Company feasible. Likewise the evidence shows that until the estimated gas reserves are proven, the company would not have available sufficient finances to construct the proposed line. On the other hand, the evidence is equally clear that the estimated reserves, if proven, would be sufficient to justify the construction of the line proposed and that if the reserves as estimated are proved that adequate financing will be available to Utah Natural Gas Company. The question presented to this court for decision therefore is as follows: Where the public demand for the commodity is established and where an estimated supply is sufficient to meet the requirements of the construction proposed, may the public Service Commission issue a Certificate of Convenience and Necessity conditional upon the proving of the estimated supplies? The Public Service Commission of Utah believes that it has that power and authority and proceeded accordingly in issuing the Certificate of Convenience and Necessity which is challenged in this action.



Section 76-4-24, U.C.A., 1943 in regard to the powers of the Commission to issue Certificates of Convenience and Necessity says in part:

“\* \* \* the Commission shall have power after a hearing to issue said Certificate as prayed for or to refuse to issue the same, or to issue it for the construction of a portion of the contemplated railroad, street railroad, aerial bucket tramway, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment public convenience and necessity may require. \* \* \*”

It may be contended by the petitioner that the power of the Commission to place conditions in the Certificate goes merely to the extent of placing therein conditions, the failure to meet which will cause a cancellation of the Certificate. However, a further reading of this same section shows that that is not the case. This further excerpt clearly shows that it was the intention of the Legislature to grant the Commission power to issue a Conditional Certificate where certain of the requisites for the issuing have not been proved. One of the things which a utility contemplating the securing of a Certificate of Convenience and Necessity must do before having the Certificate issued is to secure franchises from the cities, towns and counties in which it intends to operate. The issuance of this franchise is a condition precedent to the operation under the Certificate. It is a legal condition precedent which is just as binding and which is



just as necessary as the physical conditions precedent of adequate supply and adequate financing. However, the statute provides that before securing the franchise from the city or town, the utility may nevertheless make application to the Commission for a Certificate of Convenience and Necessity and the Commission may issue the certificate conditioned upon the later securing of the franchise from the city or town in question. The statute reads as follows:

“\* \* \* If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The Commission may thereupon make an order declaring that it will thereafter upon application, under such rules and regulations as it may prescribe, issue the desired certificate upon such terms and conditions as it may designate after the public utility has obtained such contemplated franchise or permit. Upon presentation to the Commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate.”

That is exactly what the Commission has done in this case. The Commission has found that the reserves are not yet proven, however, it has issued an Order granting the Certificate conditionally providing however in the said Order that before the applicant may exercise its rights under the Certificate, it must make

a showing to the Commission that it has the proven reserves and that it has the financial ability to carry forward the construction of the pipe line proposed. The right of Public Service Commissions to thus issue Conditional Certificates has been recognized by many Commissions and it is fairly common for such conditions to be attached.

The Public Service Commission of the State of Arkansas in re Southwestern Gas & Electric Company decided on December 12, 1949 and reported at 82 Public Utilities Rep. (new series) 52, had before it an application for a Certificate of Convenience and Necessity by an electrical utility proposing to build a power line to transmit power from a government dam which was at the time under construction. At the time of the issuing of the certificate, the applicant had negotiations under way with the Government for a contract to purchase the power to be produced by the dam being constructed. Such contract, however, was not at the time of the application, nor at the date of the final Order thereon completed. The Commission nevertheless issued a Conditional Certificate to be effective only if the contract with the Government for the purchase of the power was completed.

In the case of Tennessee Gas Transmission Company decided by the Federal Power Commission December 7, 1948 and reported at 76 Public Utilities Reporter (new series) 422, the applicant had a proposed financing plan which it submitted to the Commission. The pro-

posed plan, however, did not contemplate competitive bidding for its securities. Nevertheless the Federal Power Commission granted the petition with the provision that a new plan of financing acceptable to the Commission which would include competitive bidding for the securities be submitted, and that upon the submission of the satisfactory plan the company could proceed to operate under the Certificate being granted.

The Panhandle Eastern Pipe Line Company made application to the Federal Power Commission for a Certificate of Convenience and Necessity. The Federal Power Commission issued the certificate but inserted the condition in the certificate that before the Panhandle Eastern could exercise the rights thereunder they must submit their proposed financing plan to the Securities and Exchange Commission and obtain approval of that Commission. This right of the Federal Power Commission to impose this condition was challenged by the Panhandle Eastern Pipe Line Company in the case of *Panhandle Eastern Pipe Line Company vs. Federal Power Commission* reported at 169 Federal (2d) 881. The Federal court in that decision upheld the authority of the Federal Power Commission to grant the conditional Certificate.

As has been above stated the Public Service Commission of Utah feels that it acted within its granted powers in issuing the Certificate in question with the conditions therein contained even though the evidence as presented at the hearing did not show that the esti-

mated reserves of Utah Natural Gas Company were proved to the extent that the Commission could make a finding thereon.

THE PUBLIC SERVICE COMMISSION MADE NO DELEGATION OF ITS AUTHORITY.

It is contended by the Petitioner that the Public Service Commission of Utah in the Certificate of Convenience and Necessity issued on March 12, 1951 delegated to a geologist the power of the Commission to make a finding as to the adequacy of the gas supply of Utah Natural Gas Company. This, the Commission did not intend to do and does not believe that it did do.

In order to determine whether or not there is an adequate supply of gas it is, of course, necessary for the Commission to lean very heavily upon the testimony of expert witnesses on this subject. The Commission has listened to experts produced by Utah Natural Gas Company, by Utah Pipe Line Company and other interested parties and reserves the right to make its own investigation to aid it to determine this fact. If the language of the Commission order is subject to the interpretation placed thereupon by Petitioner, it certainly carries a meaning not intended by the Commission and for the inaptness of the language, if such exists, counsel takes full responsibility. Upon the expiration of the one year period granted in the certificate in which the applicant, Utah Natural Gas Company, may present evidence that it has an adequate supply of gas and



adequate financing available it is the intention of the Public Service Commission of Utah to again set the matter down for hearing. All interested parties will be given notice and will be given an opportunity to appear. The burden of proof will be upon the applicant, Utah Natural Gas Company to prove to the satisfaction of the Commission that an adequate supply of gas is available. This proof, of course, must come in the form of testimony by competent witnesses. The petitioner in this case, as well as all other protestants, will be given an opportunity to controvert this evidence if they feel that it is not reliable. However, the Commission felt that before it should proceed with any such hearing the applicant, Utah Natural Gas Company, should first furnish the Commission with documentary evidence, which would establish prima facie that the requirements of the certificate had been met. It was not and is not the intention of the Commission to delegate any of its powers. When the necessary evidence is in as to whether or not the conditions of the certificate have been met, the Commission will then consider this additional evidence and on the basis of that evidence will reach its own findings as to whether or not Utah Natural Gas Company has complied with the orders of the Commission and is entitled to have its certificate made unconditional.

THE COMMISSION DID NOT ACT ARBITRARILY IN PROCEEDING TO HEAR FIRST THE APPLICATION FILED FIRST.

The application of Utah Natural Gas Company was filed with the Commission on May 29, 1950. No immediate demand for hearing was made and the Commission having other matters to attend to did not set the matter down for hearing. On November 17, 1950, the Utah Natural Gas Company filed an amended application and then asked that the Commission proceed to hearing thereon. Accordingly, the Commission set the matter down for December 11, 1950. At the time the hearing for Utah Natural Gas Company was set, the Commission was not aware that such a company as Utah Pipe Line Company existed or that it intended to make any application to this Commission. An investigation of the records of the Secretary of State's office will show that the Utah Pipe Line Company was not even qualified to do business in the State of Utah until the 9th day of December, 1950. Only on the morning of December 11, 1950, the date set for hearing some weeks previously on the Utah Natural Gas Company case, was the petition of Utah Pipe Line Company filed with the Commission. If the petition of Utah Pipe Line Company had been filed before the date for hearing set for Utah Natural Gas Company's application, it is probable that the Commission would have set the two matters down together. However, after this matter had been set, after notice had been given and after the parties interested were assembled to hear the evidence on the

petition of Utah Natural Gas Company the Commission did not feel that it should continue this matter merely because another company had seen fit, on the very morning of the hearing, to file another application. If such were the practice of the Commission it would seldom get a hearing completed.

The officers of Utah Pipe Line Company knew, or should have known, for a considerable period before December 11, 1950 of the pendency of the application of Utah Natural Gas Company. The local papers gave wide publicity to this application when it was first filed in May of 1950. In view of the circumstances surrounding the filing of the petition of Utah Pipe Line Company, the Commission felt that it should proceed with the hearing of the first application filed as expeditiously as possible.

This matter was considered by the Supreme Court of Iowa in the case of *Haase vs. Iowa State Commerce Commission*, 40 N.W. (2d) 612, where the Supreme Court held that the Public Service Commission need not necessarily grant the certificate to the first applicant in point of time, but that all other things being equal that matter may be considered in determining who should be allowed to render the service being sought.

THE ORDER ISSUED BY THE PUBLIC SERVICE COMMISSION IS IN THE PUBLIC INTEREST.

In the case of *Collett vs. Public Service Commission*, 211 Pac. (2d) 185 this court stated:



“It should be kept in mind that the primary interest involved in these cases is that of the public. *Union Pacific Railroad Co. v. Public Service Commission*, 103 Utah 459, 135 Pac. (2d) 915. The “convenience” and “necessity” involved in the determination of an application is the public convenience and necessity, not that of individuals. \* \* \*”

In the case of *Mulcahy vs. Public Service Commission*, 117 Pac. (2d) 98 this court went into a very detailed discussion of what constitutes public convenience and necessity. As has been pointed out above, there can be no question in this case but that it is in the public interest that a new supply of gas be brought into the populous sections of the state of Utah. This was the thought uppermost in the minds of the members of the Public Service Commission of Utah when issuing the Order complained of in this case. The Commission desired to adopt and believed that it did adopt the course designed to fill this need in the quickest and most satisfactory manner. It appeared from the evidence at the hearing that the Utah Natural Gas Company was well along in its planning to provide gas to prospective customers. It further appeared that associates of Utah Natural Gas Company had spent considerable sums in exploration work to bring in new gas supplies within the state. It further appeared that the drilling program of these associates would be greatly accelerated if some assurance were given them that they would be able to market the gas which they might develop.

The Commission felt in this case, and still feels, that the only matter for consideration by the Commission was the question of bringing in a gas supply at the earliest possible date. Ordinarily in hearing an application for a certificate of convenience and necessity the Commission is also concerned with the welfare of a competitive company. In this case the Commission did give considerable thought to the situation of Mountain Fuel Supply Company, but there was little or no evidence in the case that the Mountain Fuel Supply Company would be able, within the reasonable future, to satisfy the demands for gas. Mountain Fuel Supply Company has not seen fit to appeal the Commission's Order to this court. The Commission does not feel that in considering public convenience and necessity it should give any consideration at all to the convenience or the welfare of the Utah Pipe Line Company. As far as appears from the record, the Utah Pipe Line Company does not have one dollar invested in the State of Utah. It will not lose anything as a competitor of the Utah Natural Gas Company except a conjectural advantage which it hoped to gain by having a Certificate issued to itself. Therefore, if it appears to the court that the action of the Commission in this case was in the interest of potential gas users of the State of Utah, it appears that no consideration should be given to any other aspect.

Certainly, there is sufficient evidence in the case from which the Commission can logically hold that the public interest could be best served by issuing the certificate which would encourage the progress of the

Utah Natural Gas Company and its associates. In regard to the discretionary power of the Commission in such a matter, the following language is found in Vol. 3, Ponds Public Utilities, 1850:

“\* \* \* The discretionary power of the commission to grant or withhold certificates of convenience to public utility companies is broader than its power to govern rates and services of such companies. In the exercise of the latter powers, the lawful scope of the commission's orders is hedged about by statutory and constitutional guaranties and inhibitions. In the granting or withholding of certificates of convenience, no justifiable question touching confiscation of property or impairment of vested rights can well arise. Time and again this court, in consonance with the prevailing attitude of courts throughout the country, has declared that it will not substitute its judgment for that of some administrative tribunal created by legislative authority for dealing with matters of nonjudicial character; and certainly the question whether a competing gas company should be licensed to serve industrial plants in and around Wichita and Hutchinson is peculiarly a question for an official board to determine and one with which a judicial tribunal should be slow to meddle. \* \* \*”

It appears certain that the public interest would not be served by any order of this court disturbing the action heretofore taken by the Public Service Commission of Utah. Before this case comes to hearing, nine months of the one year period given to the Utah Natural Gas Company in which to make its showing of adequate

reserves will already have elapsed. By the time this court could make its order or at least shortly thereafter, the defects which Utah Pipe Line Company claims exist in the proof of the Utah Natural Gas Company would either have been rectified or else the certificate of the Utah Natural Gas Company would have been re-called by its own terms.

Let us assume that at the end of the year period granted, Utah Natural Gas Company is able to prove adequate reserves and adequate financial ability. Certainly, it would then be in the public interest that they should proceed with the construction of the pipe line as expeditiously as possible. Any order of this court which might cause uncertainty or delay in the progress of this company under such circumstances would be adverse to the public interest. On the other hand let us assume that at the end of the year's period the Utah Natural Gas Company is unable to make its showing. In that event, the Certificate heretofore issued to them would be null and void and any action of this court in setting the same aside would be a useless and futile gesture.

## CONCLUSION

This court is being asked by a non-resident corporation of the State of Utah which does not have a dollar invested in this state to weigh the interests of the people of this State of Utah against the imagined

rights of that corporation to itself be granted a certificate. None of the many parties before the commission who form a part of the public of the state of Utah and whose interest in whether or not a new supply of gas is brought into the State is very real, have found any quarrel with the Commission's decision. The Commission has no prejudice for or against either the Utah Natural Gas Company or the Utah Pipe Line Company. The members of the Commission have attempted to fulfill their duty in protecting the interests of the public of the State of Utah.

Respectfully submitted,

CALVIN L. RAMPTON,

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Commission of Utah.*