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Utah Pipe Line Co. v. Public Service Commission of Utah et al : Petitioner's Brief on Respondents' Motions to Dismiss

Utah Supreme Court

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APPENDIX

**IN THE SUPREME COURT
of the
STATE OF UTAH**

UTAH PIPE LINE COMPANY, a
corporation,

Petitioner,

— vs. —

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

Respondents.

Case No.
7695

**PETITIONER'S BRIEF ON RESPONDENTS'
MOTIONS TO DISMISS**

STATEMENT

This is an appeal to this Honorable Court by writ of certiorari from the proceedings, Findings and Report and Order, of the Public Service Commission of Utah in case No. 3504 amended, before said Commission, entitled "In the matter of the Application of Utah Natural Gas Company for a certificate of convenience and necessity." The petition for writ of certiorari was filed by Utah Pipe Line Company, a corporation, an intervener in the above

proceedings before the Public Service Commission of Utah under and by virtue of Section 76-6-16 of the Utah Code Annotated, 1943. The writ of certiorari thus petitioned for was granted by this Court. Respondents have now filed their motions to dismiss the petition for writ of certiorari and the writ of certiorari "on the grounds and for the reason that it affirmatively appears from said petition for writ of certiorari that the petitioner, Utah Pipe Line Company, does not have a justiciable interest in the subject matter of the action." Except as where otherwise indicated, all underscoring is supplied.

ARGUMENT AND AUTHORITIES

POINT ONE — Title 76 Utah Code Annotated, 1943 expressly gives petitioner, as an aggrieved party, a right of review in this Court.

The subject matter of this action is, of course, the application of Utah Natural Gas Company to the Public Service Commission of Utah in case No. 3504, Amended, "In the matter of the Application of Utah Natural Gas Company for a certificate of convenience and necessity," and the proceedings conducted before the Commission thereon and the Findings and Report and the Order issued therein by the Commission.

Title 76 of the Utah Code Annotated, 1943, concerns public utility regulation and contains the statutes providing for and regulating proceedings such as the one concerned in this appeal. Section 76-4-24 provides in substance that the public utilities there listed, including the type of public utility involved in the proceedings before

the Commission in this case, shall not construct or operate certain facilities without having first obtained from the Commission a certificate that present or future public convenience and necessity does or will require such construction. The section further provides that the Commission shall have power after a hearing to issue or refuse the certificate in whole or in part.

Chapter 6 of the above title concerns the procedure to be followed in proceedings before the Commission under such title. Section 76-6-10 provides that:

“At the time fixed for any hearing before the Commission or a Commissioner, or at the time to which the same may have been continued, the complainant and the corporation or person complained of, *and such corporations or persons as the Commission may allow to intervene* shall be entitled to be heard and to introduce evidence.”

Section 76-6-15 provides for rehearing before the Commission after any order or decision made by the Commission, and allows “any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected” to apply for such rehearing. The section also provides that such application for rehearing shall be a prerequisite to appeal. Section 76-6-16 provides for the exclusive method of judicial review applicable in proceedings before the Public Service Commission. This exclusive method of review is, of course, by petition for writ of certiorari to the Supreme Court of the State of Utah. Such section

provides, in part, that within thirty days after the rendition of the decision on rehearing,

“the applicant or any party to the proceeding deeming himself aggrieved by such order or decision rendered upon rehearing may apply to the Supreme Court for a writ of certiorari for the purpose of having the lawfulness of the original order or decision, or the order or decision on rehearing, inquired into and determined.

* * * *

“The review shall not be extended further than to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of Utah.”

Pursuant to and in accordance with such statutes, the Commission has adopted its Rules of Practice and Procedure, of which the following are here pertinent and are quoted:

6.1—“Parties to proceedings before the Commission shall be applicants, complainants, petitioners, defendants, respondents, interveners, or protestants, according to the nature of the proceeding and the relationship of the parties thereto.”

6.8—“An Intervener is a party who has been permitted to become a party to any proceeding before the Commission.”

6.10—“No person will be allowed to intervene in any proceeding unless it shall be made to ap-

pear to the Commission that he has a direct interest therein.”

19.6—“Within thirty days after the rendition of the decision on rehearing, *any party to the proceeding deeming himself aggrieved by such order or decision*, may apply to the Supreme Court for a writ of certiorari for the purpose of having the lawfulness of the original order or decision or the order or decision of the rehearing inquired into and determined.”

In accordance with the above quoted rules, and pursuant to the authority granted to it by Section 76-6-10, the Commission found that the petitioner, Utah Pipe Line Company, had sufficient interest and was allowed to intervene and thereby “became a party to the proceeding.” Rule 6.8 above quoted.

The Commission allowed not only your petitioner, Utah Pipe Line Company, to intervene and become a party, but also allowed others such as the Mountain Fuel Supply Company, the Utah Home Builders Association, several railroad companies, the Utah Coal Operators Association and the United Mine Workers of America, District 22, to intervene as parties. Such interveners participated in the hearing as parties and cross examined witnesses and offered evidence insofar as the Commission allowed.

As heretofore pointed out, Section 76-6-16 of the Utah Code Annotated, 1943, allows “the applicant *or any party to the proceeding deeming himself aggrieved* by such order or decision” to apply to the Supreme Court for a writ of certiorari. The test under the applicable

Utah statutes herein quoted, then, is not "Does the party petitioning for review have a justiciable interest in the subject matter" as indicated by respondents' motions to dismiss, but is, "Is the person petitioning for review a party to the proceeding deeming himself aggrieved." It is submitted that any of the above interveners, as parties to such proceeding, had the right under the above quoted statutes of this state, if he deemed himself aggrieved, to follow the same procedure that has been followed by one of those parties, namely, Utah Pipe Line Company, your petitioner herein. It is respectfully submitted, therefore, that respondents' motions to dismiss are not well taken.

A statute which is very similar to the Utah statute and which deals with appeal from Federal Power Commission rulings is the applicable section of the Natural Gas Act of the United States, 15 U.S.C.A. Sec. 717 r (b) which reads in part as follows:

"Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States. . . ."

The right of parties to appeal under this section apparently has not been raised in very many cases. In the case of *Cia. Mexicana De Gas v. F. P. C.* (CCA 5th 1948), 167 F. 2d 804, interveners sought review of the action of the Federal Power Commission in granting to Reynosa Pipe Line Co. a permit and a certificate of con-

venience and necessity to export gas from Texas to Reynosa, Mexico. The interveners were Mexicana, a pipeline company already serving Reynosa with Texas gas, and the Railroad Commission of Texas, the state conservation agency which intervened to prevent the exportation of Texas gas and to preserve it for domestic use. Reynosa moved to dismiss, urging that petitioners were not aggrieved persons under the Natural Gas Act. The Court said, at page 805:

“We make short work of Reynosa’s motion to dismiss. We think that petitioners are aggrieved parties within the meaning of the act, and, as such, are rightfully here.”

A note in 49 Columbia Law Review 759-795, (1949) entitled “Standing to Challenge and to Enforce Administrative Action” undertakes a thorough-going analysis of the nature of the right which entitles a person to appeal to the courts for review of administrative orders. This article re-examines the leading cases bearing on this problem to show the confusion and complete irrationality which has resulted from an attempt to transfer into the specialized field of administrative law theories developed to suit general legal requirements. It is demonstrated that the theory of case or controversy and the theory *damnum absque injuria* have been greatly distorted and have lost their original validity by application to the problem of challenge to an administrative determination. After an examination of the various federal statutes providing for review of administrative orders and

the leading cases in respect to these statutes, the writer formulates some tests:

“Sound development of the law of standing requires a stripping away of the highly conceptual and needlessly complex refinements concerning ‘interest,’ ‘rights,’ and private representation of the public interest. Every issue of standing, unless the statute raises unusual issues, involves the basically simple problem of whether or not the petitioner’s asserted interest is in the circumstances deserving of legal protection. That problem may be and should be discussed without any attendant complexity of doctrine. Some of the principal elements of that problem are: (page 791-2)

* * * *

“2. The constitutional requirement of case or controversy is satisfied when *substantial interests of parties on each side have in fact collided*—when the party seeking to challenge or to enforce administrative action has a substantial interest at stake. Despite the formulation of the doctrine of *damnum absque injuria* as requiring a ‘legal right,’ *a legislative intent, whether express or implied or read into the statute by the courts, is often enough to provide standing to challenge or to enforce administrative action.* The explanation of this may be either that the statute relaxes the requirement of a ‘right’ and makes an ‘interest’ enough, or the explanation may be that the statute creates a ‘right’ to judicial review; nothing of substance hinges on the choice of phraseology.”

Further, with reference to the effect of a statute providing for a review, this writer said:

“A case or controversy which is otherwise lacking cannot be created by statute; Congress tried that without success in the Muskrat case. Nevertheless, a statute may create new interests or rights, thereby giving standing to one otherwise barred either by lack of case or controversy or by *damnum absque injuria*. And a statute conferring standing may affect the determination of whether or not a right or a case or controversy exists. (page 764)

“The effect of such a statutory provision may be illustrated by comparing *Oklahoma v. Civil Service Commission* with *Massachusetts v. Mellon*. In the *Oklahoma* case, the Civil Service Commission entered an order finding a violation of the Hatch Act by a member of the state highway commission; this finding foreshadowed a further order reducing federal highway grants to Oklahoma, unless the State removed the offending commissioner from office. Oklahoma instituted proceedings for review pursuant to a provision allowing review by ‘any party aggrieved.’ Under *Massachusetts v. Mellon*, the Court might have said that Oklahoma was not compelled to take any federal funds, that acceptance of funds rested on consent, and that Oklahoma had no standing to question the validity of federal grants. Instead, the Court held that the federal statute created a ‘legal right’ in Oklahoma, and that ‘By providing for judicial review of the orders of the Civil Service Commission, Congress made Oklahoma’s right to receive funds a matter of judicial cognizance. Oklahoma’s right became legally enforceable.’ The Court distinguished *Massachusetts v.*

Mellon, the Lukens Steel case, and the Alabama Power case by emphasizing 'the authority for statutory review and . . . the existence of the legally enforceable right to receive allocated grants without unlawful deductions.' "

The *Massachusetts v. Mellon*, *Lukens Steel* and *Alabama Power* cases referred to above are the foundation decisions of the *damnum absque injuria* theory which denied petitioners in these cases the right to judicial review. In the Oklahoma case, (*Oklahoma v. Civil Service Commission*, 330 U.S. 127, 91 L. ed. 794 [1947]), however, Congress had provided that "(c) any party aggrieved by any . . . order of the Commission. . ." may have the order reviewed by filing a petition with the federal court. This statute, said the U. S. Supreme Court was sufficient:

"Issues presented by this suit, even though raised by a state, are closely akin to private wrongs. . . . Congress has power to fix conditions for review of administrative orders. By providing for judicial review of orders of the Civil Service Commission, Congress made Oklahoma's right to receive funds a matter of judicial cognizance." (Pages 803-91 L. ed.)

In the Rhode Island case of *Public Utilities Commission v. Providence Gas Co.*, 104 Atl. 609, there was involved a rate order by the Public Service Commission of that state fixing rates for gas service in certain communities. In such proceedings the cities and towns affected were allowed to and did intervene, contesting the

fixing of rates. There was an appeal by the city and town and the above cited opinion involved a motion of the gas company to dismiss the appeal. The court held that where the gas company, under Public Laws 1912, chapter 795, applied to the Public Service Commission to fix rates, the city and town affected thereby, having intervened under Rule 3 of the Commission as authorized by Section 17 of such Act, had the right to appeal notwithstanding Section 34 of the Act limits appeal to a "complainant." The sections and rule referred to read as follows:

Section 34—"Any public utility or any complainant aggrieved by any order of the Commission fixing any rate, toll, charge, joint rate or rates . . . may appeal to the Supreme Court for a reversal of such order."

Section 17—"All hearings, investigations and inquiries before the Commission shall be governed by rules to be adopted and prescribed by the Commission. . . ."

Rule 3—"Parties or utilities not parties, may petition in any proceeding for leave to intervene and be heard therein. Such petition shall set forth the petitioner's interest in the proceeding. The leave granted on such application shall entitle the intervener to appear and be treated as a party to the proceeding."

In making its holding, the Court said, at page 610:

"... In the circumstance of the matter we are of the opinion that, when said city and town were permitted to intervene as parties in the proceeding, which under the statute was being conducted

as though it was a complaint filed with the Commission, they intervened as parties complainant, with the rights of complainants, including the right of appeal from the final order afterwards made by the Commission.”

Another Rhode Island case is *Attleboro Steam & Electric Co. v. Public Utilities Commission*, 129 Atl. 495. The case there involved was a proceeding to fix electric rates of Narragonsett Electric Lighting Co. The Attleboro Company was a user of Narragonsett electricity and intervened. Attleboro was here appealing from the Commission’s order. The Court said at page 497 :

“The Attleboro Co. is properly here by appeal. Sec. 34, c. 795, provides that any public utility or any complainant aggrieved by any order of the Commission fixing any rate, etc., may appeal to the Supreme Court for a reversal of such order. The Attleboro Co. is not a ‘public utility’ as that term is used in the Act (32) nor is it strictly a ‘complainant’ in the technical sense, as the original proceeding was begun by the Commission on its own motion (sec. 26). The Commission by sec. 28 is required to give notice to such interested parties as the Commission shall deem necessary as provided in section 20. This latter section requires the Commission to give to ‘the public utility’ and ‘complainant,’ if any, 10 days’ notice of the time and place of the hearings. Sec. 28 provides that, after notice is given, the proceedings shall be conducted in like manner as if complaint had been filed with the Commission relative to the matter investigated. Sec. 58 provides that the provisions of the Act shall be interpreted and construed liberally in order to accomplish the

purposes thereof. One evident purpose of the statute is to subject any order of the Commission whereby anyone is legally aggrieved to review by the Supreme Court. The Attleboro Co. after appearing at the hearing in response to the notice and thereafter taking part in the proceedings, thereby became a complainant within the meaning of the statute, and was vested with all the rights of a complainant, including, of course, the right of appeal. See *P. U. Comm. v. Prov. Gas Co.* 42 R.I. 1, 104 A. 609."

Another authority dealing with statutory provisions similar to the Utah statutes is the case of *Lang v. Railroad Commission of California* (Sup. Ct. California, 1935) 42 P. 2d 639. In that case the Supreme Court of California had before it an appeal by certain truck tank carriers of petroleum, who had intervened in a hearing before the Railroad Commission of California, which hearing was to inquire into the reasonableness of rate tariffs which had been filed by rail tank carriers of petroleum. The railroads were cutting their prices for petroleum, attempting to regain some of the business lost to truck carriers. The Commission was inquiring into this reduction to see whether or not other traffic was being burdened by such cut, and the truck operators intervened to contest the cut. From an order which, in effect, approved such reductions, the interveners appealed to the Supreme Court.

The sections of the statutes involved and referred to in the opinion are here quoted to show the remarkable resemblance to the Utah statutes:

Sec. 61 (a)—“At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or persons complained of, and such corporation or persons as the commission may allow to intervene, should be entitled to be heard and to introduce evidence. . . .”

Sec. 66—“After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing. . . .”

Sec. 67—“Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review . . . for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. . . .”

On appeal, the railroads contended that the petitioners were mere interveners in the matter of the suspension of said rates, and as such had no right to maintain that appeal. In answer to such contention, the Court stated, at page 641:

“We do not so understand the position of the petitioners. While the commission, upon its

own initiative, suspended the operation of said rates, the record shows that thereafter the petitioners, and other tank truck carriers, protested the rates as filed by the rail carriers, and the matter was thereafter heard upon the protest of the tank truck carriers as well as upon the voluntary action of the commission in temporarily suspending said rates. But even as mere interveners, they are made parties to the controversy, (section 61, subd. (a), Public Utilities Act, St. 1915, pp. 115, 158, Act 6386, Deering's Gen. Laws, 1931), and, as such, could petition for a rehearing (section 66, Public Utilities Act, St. 1915, pp. 115, 160, Act 6386, Deering's Gen. Laws, 1931), and upon its denial could apply to this court for a writ of review for the purpose of determining the lawfulness of said order (section 67, Public Utilities Act, St. 1915, p. 161, as amended by St. 1933, p. 1157, Act 6386, Deering's Gen. Laws Supp. 1933)."

An interesting case illustrating the type of interests allowed to appeal under the Natural Gas Act is *Kentucky Natural Gas Corp. v. Federal Power Commission* (CCA 6th 1947), 159 F. 2d 215. In that case Kentucky was appealing from an order granting a certificate of convenience and necessity to Central Illinois Public Service Co. and denying it to Kentucky. Both had applied for a certificate for a twenty mile line which would come into the area already being served by Central Illinois. Both would have procured their gas from the same pipeline company, Panhandle Eastern. At the time of the application Central Illinois purchased from Kentucky the gas it delivered to the area to which the new twenty mile

line would be constructed, and this new line was a lateral line which would relieve Central Illinois from having to duplicate its line from Kentucky's delivery point. From the facts in the case, it does not appear that the two companies were in any way competitors. They were only competitors in the sense that they were competing for a certificate for a new pipe line to serve one market. Kentucky appealed without any question of its right to do so.

Another Federal statute with wording similar to the part of section 76-6-16, Utah Code Annotated, 1943, dealing with appeal, is the section of the Federal Communications Act dealing with appeals from actions of the Federal Communications Commission, namely, 47 U.S.C.A. sec. 402 (b) which reads in part:

“(b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

“(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

“(2) *By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.*”

The above quoted subsection (2) is, of course, dif-

ferent from the wording in the Utah provision (sec. 76-6-16, *supra*) both in grammatical construction and in that it includes “any other person” rather than limiting the section to a party to the proceeding. The following cases construing such section are helpful, however, in demonstrating what has been considered an “aggrieved person.”

In the case of *Yankee Network v. Federal Communications Commission* (C.A.D.C. 1939), 107 F. 2d 212, Yankee Network, the owner of existing stations in the Boston area, was appealing from an order granting the application of The Northern Corporation to construct another station in that area. Yankee was appealing on the ground that the granting of another permit adversely affected their economic interest in their present stations. The right of Yankee to appeal under section 402 (b) (2), *supra*, was vigorously attacked by the Commission on the ground that the act did not contemplate an appeal from the granting of an application where the appeal was brought by an existing licensee claiming to be economically affected. The Court held that Yankee did have the right to appeal under section 402 (b) (2), *supra*, on the grounds that its economic interests were adversely affected and rejected the Commission’s contention that Yankee must show an appealable interest which is protectible as a legal interest in a Court under Common Law principles.

In the case of *Ward v. Federal Communications Comm.* (C.A.D.C. 1939), 108 F. 2d 486, the same Court held, at page 487, that a station owner in Memphis,

Tennessee was an aggrieved person under the above quoted section and could appeal from the granting of an application to operate a station in Boston on the same frequency as the Memphis station on the grounds that the Boston station would create objectionable electrical interference with his Memphis station.

In reference to a situation where there are two applications for certificates for the same privilege or right, this same opinion reads as follows, at page 490:

“We have said that if the Commission’s prior consideration of a previously filed and co-pending application—where request has been made for joint consideration—has ‘seriously prejudiced’ an applicant we would have a case in which we might say that the latter applicant has an appealable interest as a person aggrieved. . . .”

This honorable Court has at least once indicated what is considered the essential element involved in making a party aggrieved. In the case of *Openshaw v. Openshaw* (Sup. Ct. Utah 1943) 144 P. 2d 528, the plaintiff filed suit to seek alimony upon a divorce decree, and from an insufficient judgment, she appealed. Defendant moved to dismiss the appeal of plaintiff on the ground that she was not an aggrieved party and was not prejudiced because she actually got a judgment for a substantial part of what she claimed. The Court dismissed the motion, saying, at page 530:

“104-41-4, U.C.A. 1943, provides that ‘any party to a judgment or decree may appeal therefrom.’ Neither the constitution nor the statute

limits the right of appeal to the party or parties against whom a judgment or decree is rendered. Assuming the correctness of respondent's contention to the effect that a party must be 'aggrieved' before he can appeal, nevertheless, if he fails to recover in substance what he claims he was entitled to receive, he is aggrieved."

On the basis of the foregoing, it would definitely appear that, for an appeal to be made to this honorable Court from a final order of the Public Service Commission of Utah, the law of Utah requires only that the party seeking the review be a "party to the proceeding deeming himself aggrieved" and that there is no requirement such as respondents urge by their motions to dismiss. This is more than adequately confirmed by the foregoing authorities and by the accepted standards. Petitioner, Utah Pipe Line Company, has, by its Petition for Writ of Certiorari filed with this Court, established that it is a party "deeming itself aggrieved." It is respectfully submitted, therefore, that Respondents' Motions to Dismiss should be overruled.

POINT TWO—Independent of the right of review provided by the Utah statute, petitioner has such special interest in the subject matter of the action as to warrant review by this Court.

Let us assume, for the purposes of argument, that, in spite of the clear wording in Section 76-6-16, Utah Code Annotated, 1943, to the effect that "any party to the proceeding deeming himself aggrieved by such order or decision . . . may apply to the supreme court for a writ

of certiorari” and that “the provisions of the code of civil procedure relating to writs of review shall so far as applicable and not in conflict with the provisions of this chapter apply to proceedings instituted in the supreme court under the provisions of this section,” nevertheless the wording of Section 104-67-3, Utah Code Annotated, 1943, is construed to require some “beneficial interest.” The wording of that section, dealing in general with applications to this Court for writs of certiorari, reads in part: “The application must be made, on affidavit, by the party beneficially interested. . . .” If such wording is interpreted as requiring some special interest in the subject matter of the litigation, it is submitted that petitioner, Utah Pipe Line Company, has that interest.

In the case of *McCarthy v. Public Service Commission of Utah* (Sup. Ct. of Utah, 1938) 77 P. 2d 331, this honorable Court had before it an appeal by writ of certiorari instituted under what is now Section 104-67-3 of the Utah Code Annotated, 1943. Action was on certiorari to review and annul an order of the Public Service Commission of Utah, granting to the defendants a permit to operate as a contract motor carrier of property over the public highways of the state. The plaintiffs were common carriers of property and passengers over private lines of railroads or the public highways of the state, operating under certificates of convenience and necessity. After the issuance of the permit complained of to the defendants, the plaintiffs, desiring to oppose the same, filed with the Commission their petitions for a rehearing

and reconsideration of the action so taken, praying that the permit be vacated or denied. The Commission denied the plaintiffs' petitions, and under the section heretofore referred to, the plaintiffs sought review in this Court by writ of certiorari. It was contended by defendants that plaintiffs had no special, direct or immediate interest in the proceeding or decision complained of, and were not injured thereby since they still might seek and obtain all the transportation business they could get, the same after as before the decision. Concerning this contention, this court said, at page 335:

“We cannot assent to this view. The plaintiffs have a special interest in opposing the defendant Company's application for a permit in excess of and different from the interest of the community in general. In quality, plaintiffs' interest in opposing the application is exactly the same as that of the Company in maintaining it, namely, the effect thereof upon their prospect for earning money in their business. The available supply of business over a given route or over all routes covered by their common facilities is the source from which the earnings of each carrier must come. Whatever subtracts from the total volume of business is a diminution of earning capacity for those who must compete for and share in the remainder and who have equipped themselves at large expense for carrying a larger share of the business. True, no carrier has a property interest in any specific business or shipment until he actually gets it, connects with it, appropriates it, by contracting therefor with the shipper. But he is entitled to his chance as a competitor at all the business there is as against anyone proceeding unlaw-

fully or without due authorization of the statute to divert or appropriate any part of it.”

In the case now before this Court, Utah Pipe Line Company and Utah Natural Gas Company were, at the time of the hearing, and are until this appeal is disposed of, competitors for the right to construct a pipe line along virtually the same route, and to serve the identical principal market. The success of Utah Pipe Line Company's application before the Federal Power Commission, of its application before the Public Service Commission of Utah, and of the proposed construction of its pipe line, depend upon its success in contesting the application of Utah Natural Gas Company; for it cannot, practically speaking, proceed if the certificate of Utah Natural Gas Company is allowed to stand, and it is here, in good faith, attacking the granting of such certificate to its competitor on the many grounds set out in its petition.

A case similar to that before this Court is *Western Pacific California Company v. Southern Pacific Company*, 284 U.S. 47-52, 76 L. ed. 160 where petitioner, a railroad corporation, proposed to construct a 25-mile railroad along the shore of San Francisco Bay. Western Pacific made application to the Interstate Commerce Commission for authority to construct the road, and the Southern Pacific Company appeared in opposition. Before the application was heard by the Commission, Southern Pacific Company began extending its tracks into the same area that Western Pacific proposed to serve, whereupon Western Pacific brought this suit to enjoin such extension. The trial court entered a decree

granting a permanent injunction. On appeal the 9th Circuit (46 Federal 2d 729) reversed, holding that Western Pacific was not a "party in interest," the circuit court saying:

"As appears from the foregoing statement, the appellee has been organized as a corporation, has projected a line of railroad, and has applied to the Interstate Commerce Commission for a certificate of necessity. On these facts, without more, without a railroad, without a right of way, and without traffic to protect, it sought a permanent injunction enjoining the appellant from building a spur track, or extending its line, as the case may be. Such showing will not, in our opinion, support or justify an injunction such as was granted here."

On appeal to the U.S. Supreme Court the decision of the Circuit Court was reversed, the Supreme Court saying:

"If, as the court below seems to have assumed, a 'party in interest' must possess some clear legal right for which it might ask protection under the rules commonly accepted by courts of equity, the paragraphs under consideration would not materially aid the Congressional plan for promoting transportation. On the other hand, there was no purpose to permit *any* individual so inclined to institute such a proceeding. The complainant must possess something more than a common concern for obedience to law. See *Massachusetts v. Mellon*, 262 U.S. 447, 488, 67 L. ed. 1078, 1085, 43 S. Ct. 597. It will suffice, we think if the bill discloses that some definite legal right possessed

by complainant is seriously threatened or that the unauthorized and therefore unlawful action of the defendant carrier may directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation. Here, the petitioner was peculiarly concerned; its own welfare was seriously threatened. It alleged the beginning of an unlawful undertaking by a carrier which might prove deleterious to it as well as to the public interest in securing and maintaining proper railroad service without undue loss. It relied upon the procedure prescribed by the statute to secure an orderly hearing and proper determination of the matter. The disclosures of the bill were enough to show that the respondent's intended action might directly and seriously affect the project which complainant was undertaking in good faith. There was enough to give the latter the standing of a '*party in interest*' within intendment of the Act." (76 L. ed. at page 162)

A California case dealing with the requirement of beneficial interest in its statute is *Bodinson Manufacturing Company v. California Employment Commission* (Sup. Ct. of California, 1941), 109 P. 2d 935. In that case the petitioner before the Supreme Court sought a writ of mandamus to compel the employment commission to set aside its decision awarding unemployment compensation to two persons, to compel it to deny such compensation to other persons, and to compel it to correct petitioner's merit rating under the Unemployment Insurance Act. The petitioner was an employer who had, at one time, employed the persons, compensation for

whom he was opposing. The court observed, in its opinion, that the writ of mandamus in California was the proper method of appealing from alleged illegal administrative actions. The respondents contended that the employer was not a proper party to challenge the decision of the Commission awarding benefits under the Act. In rejecting this contention, the court stated, at page 941:

“In providing for mandamus proceedings the Code of Civil Procedure, section 1086, requires only that the petitioner be a party ‘beneficially interested.’ The act provides in section 67, St. 1939, p. 3010, that ‘any employer whose reserve account may be affected by the payment of benefits to any individual formerly in his employ may become an interested party to any proceeding under this article. . . .’ It is conceded that the petitioner took the required steps to become an interested party under the statute in the present case and, indeed, was the moving party in appealing to the full Commission from the decision awarding benefits to the correspondents. We are aware of no authority which holds that a person permitted by statute to participate as an interested party in the administrative hearings and to take appeals at the administrative level is, nevertheless, without a sufficient interest in the result to test the legality of the final decision before a court of law. Indeed, it seems to us that elemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same.”

Further, in addition to the foregoing, it is submitted that petitioner can and has shown that it is vitally interested in this proceeding, and has whatever interest is necessary to prosecute this appeal. On December 11, 1950 at the commencement of the hearing complained of before the Commission, petitioner Utah Pipe Line Company, as set out in its petition for writ of certiorari, presented its petition to the Commission for leave to intervene in the proceedings then about to begin, in which petition the Utah Pipe Line Company represented that there was then pending before the Federal Power Commission its application for a certificate of public convenience and necessity for the construction and operation of a natural gas pipe line from Northwestern New Mexico to the Salt Lake City, Utah, market, and that the Utah Pipe Line Company felt that the Utah Natural Gas Company, which was then seeking a certificate of convenience and necessity from the Public Service Commission of Utah to build a pipe line from Southeastern Utah to the Salt Lake City market, was not capable of supplying the service but that Utah Pipe Line Company was capable of supplying it, and that the two parties were potential competitors, and that the public interest involved in the awarding of a certificate of convenience and necessity required that the qualifications of both parties be fully investigated. The Commission granted petitioner Utah Pipe Line Company the right to intervene, but restricted its intervention to show only why the Utah Natural Gas Company's application should not be granted.

This very restriction of intervention is one of the

points upon which petitioner, Utah Pipe Line Company now seeks review. The petitioner has assailed such ruling and restriction by the Commission as an action which, is arbitrary and capricious and in violation of the due process clause of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States. Petitioner has followed the sole and exclusive statutory method of appeal from rulings and orders of the Public Service Commission of the State of Utah, and if this appeal, by the sole and exclusive method of writ of certiorari, is not allowed, petitioner has no other recourse to secure review of the wrongs complained of in such ruling. Certainly, then, petitioner has a substantial interest in appealing this proceeding, and it is submitted that this point alone sufficiently refutes respondents' statement in their motions that, "It affirmatively appears from said petition for writ of certiorari that the petitioner, Utah Pipe Line Company, does not have a justiciable interest in the subject matter of the action."

Further in connection with petitioner's intervention, petitioner states that its purpose in attempting the intervention above referred to was not only to contest the application of the Utah Natural Gas Company, but also to show that it, Utah Pipe Line Company, could better serve the interest of the public, which the Utah Pipe Line Company knew at the time of its intervention should be considered by the Public Service Commission under the statute requiring that certificates for construction of this sort would be granted only upon a showing that

the public interest would be protected by requiring that the present or future public convenience and necessity does or will require such construction. (76-4-24, Utah Code Annotated, 1943; *Mulcahy v. Public Service Commission*, (Sup. Ct. Utah 1941) 117 P. 2d 298).

The purpose, then, of Utah Pipe Line Company was dual: first, to attempt to show the Commission that it, not Utah Natural Gas Company, could better serve the interest of the public; but failing in this, second, to make certain that the proceedings whereby Utah Natural Gas Company was granted a certificate would be conducted in the lawful manner required by the statute. (76-6-16, Utah Code Annotated, 1943). As a party to such proceedings, Utah Pipe Line Company now prosecutes this appeal and complains that the Commission has not regularly pursued its authority as required by the same section above quoted, and that, in addition, the proceedings and the order growing out of such proceedings violate rights of the Utah Pipe Line Company under the Constitution of the United States and of the State of Utah, all as set out in petitioner's Petition for Writ of Certiorari.

The effect on the right to review of being a party to the proceeding before the Commission is discussed in *Baltimore and Ohio Railroad Company v. United States*, (commonly called the Chicago Junction Case) 68 L. ed. U. S. 667 where Mr. Justice Brandeis said:

“The plaintiffs may challenge the order because they are parties to it. The Judicial Code, Sec. 212 (originally the Commerce Court Act,

June 18, 1910, chap. 309, 36 Stat. at L. 542, Comp. Stat. Sec. 1005), declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' *The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied.* For, otherwise, there would in some cases be no redress for the injury inflicted by an illegal order. Moreover, the fact of intervention, allowed as it was, implied a finding by the Commission that the plaintiffs have an interest. In the proceeding before the Commission, they opposed by evidence and argument the granting of the application. This they did as of right. For under the rules of practice, adopted by the Commission pursuant to Paragraph 1 of Section 17 of the Interstate Commerce Act, the intervener becomes a party to the proceeding, entitled, like any other party, to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel. The intervention must be preceded by an order of the Commission granting leave; and leave can be granted only to one showing interest. No case has been found in which either this court or any lower court, has denied to one who was a party to the proceedings before the Commission the right to challenge the order entered therein." (Page 675)

The fundamental problem raised by the motion is, what is the relationship of Utah Pipe Line Company to the rights accorded to Utah Natural Gas Company? If the Commission was without authority, as petitioner contends, to grant the certificate permitting Utah Natural Gas Company to hold the Salt Lake market while

others prospected for natural gas, and if petitioner has been deprived by the unlawful action of the Commission in itself obtaining a certificate, then petitioner has such a special interest as to permit review by this Court. It is manifest that gas cannot be supplied to the consumers in this area by both Utah Natural Gas Company and Utah Pipe Line Company. The requirements of the market and the large expenditures requisite for establishing a distribution system preclude the possibility of duplicate operations. This Court knows that the duplication of services by public utilities is not in the public interest and must be avoided. Since the right to perform the service is wholly dependent upon governmental authorization, it is highly unlikely that a responsible government agency will twice confer this right, benefit and privilege. The result of these circumstances is that the action of the Public Service Commission has conferred the rights and benefits of this gas market to Utah Natural Gas Company and effectively foreclosed the market to Utah Pipe Line Company without trial.

Utah Pipe Line Company and Utah Natural Gas Company were competitors for this market and as such public convenience and necessity required that the Commission give Utah Pipe Line Company a full, fair and lawful hearing before granting any certificate. The right to serve the market confers a substantial economic benefit. It establishes an exclusive property right of considerable value. If the Commission's action is erroneous and unlawful as alleged in the petition for the writ, then Utah Pipe Line Company has suffered serious

damage to its economic interest and is a person substantially aggrieved by the Commission's action. The memorandum of authorities submitted in behalf of the Public Service Commission asserts that Utah Pipe Line Company has no property interest to protect. The use of such a generalized statement confuses a proper consideration of the real elements of loss and injury. The writer of the article in *Columbia Law Review* (Vol. 49, page 793), in summarizing some of the principal bases for review, says:

“The directness and magnitude of the injury or threatened injury is usually a factor. In the *Chicago Junction Case*, the Court was impressed by the fact that even though the interest was a mere competitive one the amount involved was ten million dollars a year. * * * One of the soundest reasons for standing was stated by the Massachusetts court in holding that a producer of paper cartons could challenge an order fixing a higher price for milk in cartons than for milk in bottles: ‘To say that he was not in truth “interested” and “aggrieved”, if the order is illegal, would be unrealistic and would place theory above fact.’ ”

Utah Pipe Line Company has tremendous proven reserves of natural gas now available to supply the Salt Lake market and the financial ability to construct and the “know-how” to operate the required pipeline facilities to supply that market. Its application was filed with the Federal Power Commission and with the Public Service Commission to accomplish these purposes. These are

the economic endeavors and physical resources which make up Utah Pipe Line Company's property interest developed in anticipation that the larger property right in the form of a certificate of convenience and necessity would be open to acquisition. It is wholly unrealistic to contend under this situation that Utah Pipe Line Company is not "a party to the proceeding deeming himself aggrieved."

RESPONDENTS' CASES

In the memorandum of authorities filed by the respondents they avoid all reference to the Utah statute (76-6-16) which expressly authorizes a review by "a party to the proceeding deeming himself aggrieved" and base their argument on the old legal injury theory. The interests of an aggrieved party protected by a statutory right to judicial review are broader and the right of an aggrieved party to a review are more in keeping with justice than the narrow legalistic injury theory. Nor do respondents in their memorandum of authorities consider the effect of the Commission's determination that Utah Pipe Line Company had at the trial such a legal interest as entitled it to intervene. That determination in itself reflects on the question of right to review in a rather decisive fashion.

The cases referred to in the memorandum of authorities of the respondents are distinguishable and of little value to this Court. Respondents rely on:

The Utah case of *Gianulakus v. Sharp* (Sup. ct.

of Utah, 1928) 71 Utah 528, 267 P. 1017, the Washington case of *State v. Superior Court for King County*, 131 P. 2d 943, and the Wyoming case of *Campbell v. Wyoming Development Company*, 100 P. 2d 124, were all original suits brought in trial courts. Further, the citation from *American Jurisprudence*, Vol. 39, page 859, comes from the title "Parties", division "Plaintiffs" and deals with persons who are allowed to institute litigation in courts of general jurisdiction and does not deal with persons allowed to apply for review under "statutory certiorari" such as is now before this Court.

The *Gianulakus* case, *supra*, was an original suit in equity wherein the plaintiff claimed the right to the use of waters from springs located on defendant's adjoining land. In a former case, the rights to the use of the water had been litigated and the plaintiff here (defendant there) had lost by a decree giving to the defendant here (plaintiff there) the right to the use of all the water from the springs and defendant there (plaintiff here) had been perpetually enjoined from taking water from the springs or from interfering with the other's use of the water. On a plea of *res judicata* the lower court dismissed this case and on appeal this Court affirmed that dismissal. The *Campbell* case, *supra*, was an original suit brought in a district court to quiet title to waters. The Court held that the plaintiffs had no title to the waters in question.

The *Superior Court* case, *supra*, was a suit instituted by taxpayers of a school district in a court of general jurisdiction to enjoin county school board members and

the county school superintendent from approving and carrying into effect a contract hiring Beardsly as school superintendent for one school in the county until the appeal of Thomas, the superintendent who had been dismissed and replaced by Beardsly, was finally determined. The taxpayer plaintiffs claimed that the board had not given sufficient reasons for firing Thomas as was required by a statute. The lower court dismissed the suit and the upper court affirmed the dismissal on the ground that the statute requiring "reasons" had never gone into effect and that, therefore, the dismissal of Thomas had not been illegal.

The *Aller & Sharp, Pittsburg and West Virginia* and *Edward Hines Yellow Pine Trustees* cases were all cases brought in U. S. District Courts to enjoin and/or set aside orders of the Interstate Commerce Commission issued pursuant to the Interstate Commerce Act. The section allowing such suits is 49 U.S.C.A. section 1 (20), which reads in part as follows:

"Any construction, operation, or abandonment contrary to the provisions of this paragraph . . . may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or *any party in interest.*"

The provisions of Section 76-6-16, Utah Code Annotated, 1943, allowing "any party to the proceeding deeming himself aggrieved" to apply for a writ of certiorari are more extensive and enlarge upon the right to a review

as compared with a statute permitting suit by any party in interest.

Counsel for respondents place particular emphasis upon the *Aller and Sharp Inc. case* (Commerce Clearing House No. 53-95, May 7, 1951—S Fed. Carrier Cases). In that case Craig Trucking Inc. had authority to operate as a common carrier in the transportation of certain commodities between certain prescribed areas. Craig Trucking Inc. applied to the Interstate Commerce Commission for an enlargement of its rights. *Aller and Sharp Inc.* were contract carriers by motor vehicle and challenged the granting by the I.C.C. of additional rights to Craig Trucking Inc. The Commission granted the application and the suit was to enjoin Craig Trucking Inc. The appellate court held that *Aller and Sharp Inc.* had no standing to challenge the grant of the operating rights to Craig Trucking Inc. in that “it does not have authority to transport machinery, equipment, materials and supplies used or in connection with the manufacture of paper, from the four above named destination points to Chillicothe.” That is to say, the court held that because different commodities were to be transported there was no conflict. How different is that case from the case now before this Court? Utah Natural Gas Company and Utah Pipe Line Company propose to carry the same commodity along essentially the same route and supply the same market. If Utah Pipe Line Company proposed to carry natural gas in its line and Utah Natural Gas Company proposed to carry oil in its line, then the *Aller and Sharp Inc. case* might be in point.

It is believed that the proper test of the applicability of case citation to the problem before this court is measured by its relation to the fact situation from which the citation develops and the relationship of that fact situation to the one under consideration by the court.

A comparison of the fact situations existing in the cases cited by respondent Utah Natural Gas Company and the fact situation before the court by reason of Utah Pipe Line Company's petition for a writ of certiorari reveals the following:

Moffat Tunnel League et al. v. United States, 53 S. Ct. 543. Petitioners were unincorporated, voluntary associations formed by the local communities in and around Craig, Colorado. They were not competitors of the D. & R. G. W. R.R., the party favored by the Commission's order. The petitioners were not engaged in the transportation business. They had no plans to undertake railroad construction or operate any type of a transportation system. The court characterized their interest as no more than a sentiment.

Utah Pipe Line Company is a competitor of Utah Natural Gas Company. Utah Pipe Line Company has extensive plans for construction of pipe line facilities for transportation of natural gas. Utah Pipe Line has large proven gas reserves to market.

The *Edward Hines Yellow Pine case* (44 S. Ct. 461) referred to presents a fact situation that is entirely dissimilar to the one now before the court. Petitioners were large wholesale lumber merchants. They were not competitors of the railroads who were directly affected by

the Commission's order discontinuing penalty charges for failure to immediately unload and return freight cars. Small lumber jobbers were benefited by this order because they were allowed to use the freight cars as warehouses for a limited period of time. The railroads made no objection to the order and freely adopted it. Because the order helped to prevent the large lumber wholesaler from establishing a monopoly, they objected. The court, as in the Sprunt case, reasoned that in effect the injury emanated from the railroads and not the Commission. That the loss of comparative economic advantage in an already lucrative market was in reality no injury.

Petitioner before this court has much more than the loss of a comparative advantage to protect. It seeks to protect a right to an exclusive market.

Rochester Telephone Corp. v. U.S., 59 S. Ct. 754. An order of the F.C.C. had classified petitioner as being controlled by a New York Telephone Company and hence subject to certain regulatory requirements of the Commission. Petitioner objected to the classification. The lower court, with the full record of the Commission's determination before it, dismissed on the merits the petitioner's request to set aside the order. On appeal to the U. S. Supreme Court the question of standing to seek review was brought up for consideration. The court held that petitioner did have standing to challenge the Commission's order and was properly before the court. The lower court's decision was upheld after the Supreme Court looked into the merits of such decision. In con-

nection with the question of standing, the court discarded the negative order doctrine holding it to be an unrealistic technical device which confused rather than clarified the problem of who had standing to question a Commission order. Therefore, the case illustrates a situation where the petitioner was held to be entitled to question or challenge the Commission's order. Utah Natural Gas Company has apparently erroneously cited the case for the opposite proposition.

Federal Power Commission v. Hope Natural Gas, 64 S. Ct. 281. The quote from this case included by Utah Natural Gas in its memorandum relates to petitioner's objection to a finding by the Commission that past rates charged by petitioners were too high. The finding was made on the complaint of the City of Cleveland and in aid of state regulation. The finding in no way harmed petitioner (Hope Natural Gas) because it did not affect the present charges nor did it subject petitioner to any penalties, governmental or otherwise; nor did it create any consumer claims against petitioner. The real controversy of the case was in relation to the Commission's order establishing the present rates. In connection with that order petitioner was accorded standing to challenge. The finding in relation to past rates was merely an unimportant incident of the case.

L. Singer & Sons v. U. P. RR., 61 S. Ct. 254, was not a petition to review a commission order. It was rather a suit for an injunction to restrain extension of railroad facilities without first obtaining a certificate of convenience and necessity. Petitioner was a whole-

sale food broker located near the Kansas City, Missouri farmers' market. Kansas City, Kansas proposed to construct facilities for a farmers' market in that city. The respondent railroad offered to buy some of the bonds issued by the city to finance the project and also the railroad offered to lay tracks into the market. Petitioner objected to the railroad providing the transportation facilities because such facilities might enable food brokers located in the Kansas City, Kansas area to compete with them. The court held that petitioner was not a party in interest because it in effect could show only the possibility that adverse competition might develop. In addition, petitioner had no right to question how the respondent railroad employed its facilities since this was not a proceeding before an administrative body.

This fact situation is entirely foreign to the situation before this court.

Alabama Power v. Ickes, et al., 58 S. Ct. 300, 82 L. ed 374. Ickes was Federal Emergency Administrator of Public Works during the depression and Congress had appropriated money for the purpose of stimulating reemployment. Among other things public buildings were being sponsored and municipalities were obtaining grants for such construction. Alabama Power Company served electric power to certain municipalities. These municipalities entered into agreements with Ickes as such administrator under which the municipalities proposed to build municipal power plants with federal funds. Alabama Power Company brought suit against Ickes

to enjoin the performance of the agreements. The court denied an injunction.

Syl 2—"The interest of a taxpayer in the moneys of the Federal Treasury is not sufficient to enable him to maintain a suit to enjoin an alleged unlawful use of such moneys."

Obviously the Alabama Power case is not in point here.

Respondents would have the court believe that petitioner is in the classification of a person having an interest common to the public generally. Such is not the situation in the case before the court. The special interest of Utah Pipe Line Company which it has asserted from the beginning of this controversy is peculiar to this petitioner and to no other person. It is that special interest which Utah Pipe Line Company seeks to protect in this proceeding. It is that interest which Utah Pipe Line Company sought to protect before the Public Service Commission of Utah.

CONCLUSION

For the purpose of respondents' motions, the Court must assume that the facts set forth in the petition of Utah Pipe Line Company are true. The petition shows that before the amended application of Utah Natural Gas Company was heard by the Public Service Commission of Utah, Utah Pipe Line Company had filed with the Federal Power Commission for a certificate of public convenience and necessity wherein it sought permission

to construct and operate a natural gas pipe line essentially along the same route as proposed by Utah Natural Gas Company but extending into a point near Aztec, New Mexico; that Utah Pipe Line Company proposed to serve the same market as was to be served by Utah Natural Gas Company. In the petition of Utah Pipe Line Company for leave to intervene in the Utah Natural Gas Company case, Utah Pipe Line Company set forth:

“9. That said projects of your petitioner and of applicant are in direct competition and that it is in the public interest that this Honorable Commission be given factual data upon which it may determine as to which of said projects would result in the best possible service in the public interest.”

The petition for writ of review also sets forth that on the 26th day of January, 1951, Utah Pipe Line Company filed its application No. 3578 with the Public Service Commission of Utah for authority to construct and operate the natural gas pipe line system set forth in its application then pending with the Federal Power Commission and that on January 27, 1951 and in accordance with the rules and regulations of the Federal Power Commission and the Public Service Commission of Utah, Utah Pipe Line Company requested a “joint hearing” on its then pending applications. The petition for writ of review sets forth that notwithstanding these matters the Commission refused to permit Utah Pipe Line Company to offer any evidence as to the New Mexico reserves

and their availability to Utah and in effect limited Utah Pipe Line to an examination of the alleged reserves and financial condition of Utah Natural Gas Company.

Utah Pipe Line Company in its petition for the writ specifically set forth (paragraph 11) the basis for this action. Among other things Utah Pipe Line Company alleged there was no competent substantial evidence to sustain the findings of the Commission; that the Commission improperly delegated its authority; that the Commission acted arbitrarily and capriciously in limiting the participation of Utah Pipe Line Company in the proceeding; that the Commission acted in violation of the due process clause of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States in not permitting Utah Pipe Line Company to show the extent of its reserves in New Mexico and the pendency of its application before the Federal Power Commission; and that the Commission acted arbitrarily and capriciously in not processing the application of Utah Pipe Line Company then pending before it and particularly in not having a joint hearing thereon with the Federal Power Commission.

Legal standing to sue is the narrow issue now before this Court. The record of the Commission is not before the Court and without such record the Court cannot properly consider the issues raised by the petition for review. For the purpose of respondents' motions the allegations of the petition for the writ of certiorari must be assumed as true. The statement in respondents' memorandum of authorities that interminable delay

would result if the Commission was required to process a series of applications before it could decide one application is beside the point. The application of Utah Pipe Line Company was the only application before the Commission at the time the Utah Natural Gas matter was being tried. Nothing prevented the Public Service Commission of Utah from ordering an immediate hearing upon the application of Utah Pipe Line Company. The Commission arbitrarily elected to not process that application and now maintains that position. If the Commission had regularly pursued its authority it would have granted a full hearing to this intervener in the Utah Natural Gas Company case so that it could be determined in the public interest what other sources of gas supply might be available to the Salt Lake market. The narrow issues on which the Public Service Commission of Utah required the case to be tried violated the rights of this petitioner and authorizes this review.

Respondents' statement that Utah Pipe Line Company "is in much the same position as a low bidder on a public contract who seeks judicial review of the award of the contract to another bidder," should be paraphrased by saying that Utah Pipe Line Company is in much the same position as a low bidder who has submitted a sealed bid as the specifications required, and whose sealed bid is kept in the file and ignored by the administrative agency at the opening of bids and the awarding of the contract.

On the basis of the foregoing it is submitted that petitioner, Utah Pipe Line Company, has, in its petition

for writ of certiorari, established its right to the writ as granted by this Court and has, if same be necessary, shown that it has whatever interest is required in the subject matter of this review. The motions to dismiss should, therefore, be overruled.

Respectfully submitted,

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