

1952

Utah Power & Light Company and Telluride Power Company v. Public Service Commission of Utah and Nephi City : Brief of Petitioner

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH POWER & LIGHT COM-
PANY, a corporation and TELLU-
RIDE POWER COMPANY, a cor-
poration,

Petitioners,

— vs. —

PUBLIC SERVICE COMMISSION
OF UTAH and NEPHI CITY, a
municipal corporation of Utah,

Respondents.

Case
No. 7803

Brief of Petitioner

UTAH POWER & LIGHT COMPANY

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Clerk, Supreme Court, Utah.

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UTAH POWER & LIGHT COMPANY

It appears from the Record in this case, that Nephi City is a municipal corporation of Juab County, Utah, and has for many years owned and operated its hydro-electric generating plants and distribution system by means of which it furnishes electric energy to itself and its inhabitants. That the generating facilities of said City are inadequate to supply said City, (R. 43), and in order to provide an adequate supply of electric energy to meet the requirements of said City, Nephi City has

purchased from the petitioner, Telluride Power Company (hereinafter referred to as Telluride) electric energy under a contract (R. 300), which by its terms, expired January 1, 1952. (R. 302). That in March, 1950, Nephi City requested the petitioner, Utah Power & Light Company (hereinafter referred to as Utah Company) to furnish electric energy to said City. (R. 1). That Utah Company refused to furnish Nephi City with electric energy for the reason that said City was located within the territory of and was being served by Telluride. (R. 46, 101).

Nephi City filed the application in this case, No. 3516, before the Public Service Commission of Utah, for the purpose of requiring Utah Company to serve Nephi City with electricity at the nearest point on Utah Company's interconnected system where facilities are adequate for such service. (R. 1). Telluride filed its petition to intervene, (R. 8), and answered the application of Nephi City. (R. 9).

Public hearing on the application of Nephi City was held July 7, 1950 and thereafter findings and report and order were made by said Commission, which were, on November 8, 1951, amended. (R. 19).

The Public Service Commission of Utah by its amended report and order of November 8, 1951, required Utah Company to furnish and deliver to Nephi City such electric energy as Nephi City may need and will agree to purchase. (R. 42.)

The pleadings and evidence support findings of fact Nos. 1 to 6 inclusive of the amended report of the Com-

mission and that part of finding No. 7, which reads "In the operation of its electric utility within its corporate limits Nephi City does render all the electrical service common to an electric public utility." The balance of finding No. 7 is a conclusion of the Commission which we will discuss later.

STATEMENT OF FACTS

Utah Company and Telluride are electrical corporations and public utilities as those terms are defined in Section 76-2-1 U.C.A. 1943, operating in the State of Utah, with the approval of the Public Service Commission of Utah, and their respective facilities interconnect at Mona, Utah. (R. 8, 96, 97). Nephi City is located within the territory of Telluride approximately seven miles south from the point of interconnection of the two Companies. Each of said Companies has a schedule of rates approved by the Public Service Commission of Utah for services to municipalities. (R. 46, 255). The rates provided for in Utah Company's schedule are lower than those of Telluride's schedule. (R. 158-159). Each of plaintiff Companies has an ample supply of electric energy to serve the demands of Nephi City. Telluride has adequate facilities to meet all the requirements of Nephi City, (R. 45) and is and has been for many years, serving said City with electricity under contract. (R. 300). Telluride desires to continue to serve said City. Nephi City proposes to construct a transmission line from said City north seven miles to the territory served by Utah Company, and thence to a point on the interconnected system of Utah Company where facilities are

adequate to serve Nephi City and to purchase electricity from Utah Company in accordance with its approved scheduled rate.

In finding No. 7 of the Commission's amended report, (R. 46), the Commission concluded that in the operation of its electric utility Nephi City is not subject to the jurisdiction and regulation of the Public Service Commission, and stands in the same position as Telluride, and has the same right to purchase electric energy from Utah Company as has Telluride.

Based upon this conclusion the Public Service Commission of Utah made its amended order, (R. 48), that Utah Company "shall offer to furnish and deliver to Nephi City such electric energy as Nephi City may need, and will agree to purchase for its own use and for the use of its inhabitants for all general purposes, delivery to be made at the nearest point on Utah Power & Light Company's interconnected system where there are facilities of adequate capacity."

The lawfulness of the above order is raised by Utah Company, for review before this Court.

It should be observed here that the Commission did not find that it was in the public interest for Utah Company to serve Nephi City. The order is based solely upon the premise that Nephi City is not subject to the Commission's control and jurisdiction and could legally construct a transmission line from the territory of Telluride, into the territory served by Utah Company, where facilities are adequate for service to said City, and that

by reason thereof Utah Company should be required to serve Nephi City.

ARGUMENT

Utah Company has never solicited any business nor served any electric energy in the territory south of Mona, Utah, except to serve the Thermoid Rubber Company in accordance with an order of the Public Service Commission dated June 27, 1946. (R. 101). It was rendered so that the Thermoid Plant could be located near Nephi as desired by Thermoid and also very much by the inhabitants of Nephi. Telluride agreed to this. The Commission, however, expressly stipulated as follows: "The authority hereby granted to Utah Power & Light Company is limited to serving the Thermoid Company only at the plant site hereinabove mentioned and shall not be construed to authorize Utah Power & Light Company to serve any other customer in the territory now being served by Telluride Power Company." (R. 99, 306.)

On March 29, 1950, at the invitation of Nephi City, (R. 307), a representative of Utah Company met with the City in Nephi. (R. 101). Utah Company then informed Nephi City that Nephi was being served by Telluride and was located in territory which was served by Telluride and Utah Company had no facilities of any kind to serve electricity south of Mona, Utah, except the Thermoid switchrack and the right to use the Telluride Company's lines from Mona to Thermoid switchrack, which Utah Company had been granted in accordance

with the above quoted order of the Public Service Commission. That use was for the sole use of Telluride and Thermoid Rubber Company. (R. 101). Utah Company at that time informed Nephi City that for the reasons above stated it could not render service to Nephi City. (R. 101, 102).

In spite of the fact that Utah Company has never professed to serve any area south of Mona, the order of the Commission requires Utah Company to offer to furnish and deliver to Nephi City such electrical energy as Nephi City may need. (R. 47). From this order Utah Company filed with this Commission in due time an application for rehearing, specifically complaining as follows: (R. 57).

“That said Order requires Respondent to devote a part of its property to public use outside the territory which it has undertaken and professed to serve.

“That said Order deprives Respondent of the use of its property to serve the area to which it is dedicated and thereby impairs and unduly interferes with the proper management of the said property in good faith by Respondent.”

According to the order, Utah Company must offer electrical service for use in supplying the electrical requirements of an area approximately seven miles south of its territory. The order, by its terms and tenor, requires Utah Company to profess to serve an area which it has never served. This is a violation of the Utah Constitution and the United States Constitution because

it constitutes the taking of property without due process of law. A UTILITY CANNOT BE REQUIRED TO RENDER SERVICE IN AN AREA WHICH IT HAS NOT PROFESSED TO SERVE.

The property of Utah Company is dedicated to serve the customers located within territory certificated, under the provisions of Title 76 Utah Code Annotated 1943, by the Public Service Commission of Utah.

The Southerly boundary of Utah Company's territory is Mona, Utah. Nephi City is located seven miles outside of and to the south of Utah Company's territory.

The Public Service Commission of Utah is without power or authority to compel Utah Company to furnish electric service to a city outside its territory and which it has not undertaken or professed to serve and to which it is under no obligation to serve.

The effect of the amended order of the said Commission is to take over the management of Utah Company, that is take the property of Utah Company for public use without just compensation.

Northern Pacific Railway v. North Dakota, 236 U. S. 585. On page 595 the court said:

“But, broad as is the power of regulation, the State does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, * * *.”

Interstate Commerce Commission v. Oregon-Washington Railroad and Navigation Company, 288 U. S. 14, 53 S. Ct. 266. On page 274 the court said:

“* * * The railroads, though dedicated to a public use, remain the private property of their owners, and their assets may not be taken without just compensation. The Transportation Act has not abolished this proprietorship. State courts have uniformly held that to require extension of existing lines beyond the scope of the carrier's commitment to the public service is a taking of property in violation of the Federal Constitution. * * *.”

Hollywood Chamber of Commerce v. Railroad Commission of California, 219 P. 983 (Cal.). The contention was made in this case that public utilities act conferred power to require an extension of service into an area not served before by virtue of an act which confers power to regulate service rendered by public utilities.

On page 984 the court said:

“We entertain no doubt that neither the Railroad Commission nor any other governmental agency possesses such power. It has been repeatedly held by this court and by the Supreme Court of the United States that railroads are private property, the owners of which, in common with other property owners, are under the protection of national and state Constitutions * * *.”

Oklahoma Natural Gas Co. v. Corporation Commission (Okla. 1922), 211 Pac. 401, P.U.R. 1923B, 836; *Okla-*

homa Natural Gas Co. v. Scott (Okla. 1925), 241 Pac. 164, P.U.R. 1926B, 67; *Atchison T. & S. F. R. Co. v. Railroad Commission* (Cal. 1916), 160 Pac. 828, P.U.R. 1917B, 336.

The foregoing authorities amply demonstrate that the order of the Public Service Commission of Utah is unlawful and void.

Respectfully submitted,

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