

1955

Cedar City Corporation v. Public Service Commission of Utah : Brief of Appellant

Utah Supreme Court

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DEC 3 1957

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In the Supreme Court of the State of Utah

CEDAR CITY CORPORATION,

Petitioner,

vs.

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Civil No. 8401
Petitioner's Brief

PUBLIC SERVICE COMMISSION OF
UTAH,

Respondent.

APPELLANT'S BRIEF

PATRICK H. FENTON,

Attorney for Appellant

TABLE OF CONTENTS

	Page
Statement of facts	2
Statement of Points	4
Argument	5
Point 1. Rate increases must be based upon a hearing and Evidence	5
Point 2. The residential rate increase of the Cedar System of Southern Utah Power Company order- ed by the Public Service Commision of Utah under date of 27 May, 1955, was put into effect without evidence.	6
Conclusion	7

STATUTES CITED

Utah Code Annotated 1953.

CASES CITED

Mountain States Telephone & Telegraph Co. vs. Public Service Commission, 105 U. 266, 145 Pac. 2d 790

Los Angeles & Salt Lake Railroad Co. vs. Public Utilities Commission, et al. 81 U. 286, 17 Pac. 2d 287.

Mountain States Telephone & Telegraph Co. vs. Public Service Commission, 107 U. 502, 155 Pac. 2d 184.

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STATEMENT OF FACTS

Case No. 4016 before the Public Service Commission of Utah entitled "In the Matter of the Present Schedule of Rates, Tolls and Charges of Southern Utah Power Company," was originally heard in Cedar City, Utah, commencing 8 June, 1954. As a result of this hearing the Public Service Commission denied the applicant any increase. The applicant petitioned the Public Service Commission of Utah for a re-hearing. The matter was heard on the petition for re-hearing commencing 30 November, 1954. As a result of the hearing on 30 November, 1954 the Public Service Commission of Utah on 5 January, 1955 issued findings and an order to the effect that Southern Utah Power Company was authorized to increase its rates for electrical service in its Cedar system to a level which would produce additional annual gross revenue of not more than \$69,648.00 when applied to the volume of sales during the 12 months period ending 30 September, 1954. Said order further specified that the Company was to file its proposed rates within 10 days of the date of that Order and said Order further specified that further hearing would be heard to determine a reasonable and appropriate schedule of rates in conformity with the provisions of said order.

Prior to the hearing on 30 November, 1954 the Company had filed a proposed schedule of rate increase. These items did not include a change or a proposed change in residential rates.

After the Order of 5 January, 1955, the applicant Company filed its proposed schedule of rates and served same on parties and made the same proposal that said applicant Company had made prior to 30 November, 1954. Again there was no increase proposed or indicated in the residential rate structure of the Cedar System of said company. Hearing on these proposed rates was set for 8 February, 1955 and postponed to 10 March, 1955. The

hearing commenced on 10 March, 1955 and concluded on 12 March, 1955.

At no time during said hearing and during previous hearings was there any proposal to raise residential rates although the Commission was several times placed upon notice that in the event thereof that Cedar City Corporation would object to any such proposal and would present evidence against any proposal to raise residential rates. At no time during any hearing did the Public Service Commission or any party to said hearing propose an increase in said residential rates. At the conclusion of the hearing on 12 March, 1955 the Public Service Commission gave the parties permission to file written arguments. In the written argument of Escalante Valley Electric Association on file with the Public Service Commission in this matter, a proposal was made that all rates be increased the same amount straight across the board. This was not clarified as to whether or not the increase was to be by percentage or just how the increase was to be applied. Cedar City Corporation immediately filed its objection to this proposal and asked for a hearing on same and asked that in the event this proposal was seriously considered by the Commission that Cedar City Corporation be given an opportunity to propose that all rate differentials be abolished and everyone pay the same rate regardless of use. The Public Service Commission of Utah has never directly ruled upon the proposal of Escalante Valley Electric Association or the objection of Cedar City Corporation or the proposal of Cedar City Corporation. At no other time in connection with these hearings and the matters in connection therewith, was there any indication or suggestion that the Public Service Commission of Utah might consider a raise of residential rates in the Cedar System of Southern Utah Power Company.

Under date of 27 May, 1955 in the Further Report and Order of the Public Service Commission of Utah,

finding No. 9 recites that the sum of \$18,410.00 should be placed upon the residential rates of Cedar System and ordered that Southern Utah Power Company submit schedule to this effect and that same should go into effect on and after the first day following the meter readings in the Month of June, 1955. Cedar City Corporation thereafter duly filed with the Public Service Commission of Utah its application for a re-hearing of the decision and order of said Public Service Commission on 10 June, 1955 on the basis and for the reason that the order of 27 May, 1955 and that portion pertaining to or effecting residential rate increase was made without a hearing, without evidence and without opportunity for same and upon the basis that proposed residential rates were unjust and confiscatory and that the order was based upon a rate base that was unfair and discriminatory and tends to the confiscation of property and that said order was based upon an expense period that contained many items that were not normally re-occurring expenses.

Said application for he-hearing was denied by the Public Service Commission of Utah on 24 June, 1955.

STATEMENT OF POINTS

1. Rate increases must be based upon a hearing and evidence.

2. The residential rate increase of the Cedar System of Southern Utah Power Company ordered by the Public Service Commission of Utah under date of 27 May, 1955, was put into effect without a hearing and without evidence.

ARGUMENT

Point 1

RATE INCREASES MUST BE BASED UPON A HEARING AND EVIDENCE.

The basis of the Public Service Commission's authority in matters of rate making is based on Title 54, Utah Code Annotated 1953. This is, of course, a delegation of power by the legislature of the state of Utah to a commission of the state of Utah, and the principal delegating authority to a body of this nature and restricting authority to that actual delegation is to be applicable. Section 54-7-12 Utah Code Annotated 1953 and amendments thereto, entitled "Change or increase in rates—Hearing and findings necessary—Effective dates" reads in effect concerning the change part thereof, that "no public utility shall raise any rate, fare, toll, rental or charge, or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

Mountain States Telephone & Telegraph Co. vs. Public Service Commission of Utah, 105 U. 266, 145 Pac. 2d 790, held that a valid rate order of the Public Service Commission must be preceded by a hearing and finding, and at such hearing there must be evidence adduced reasonably calculated to resolve issues presented for determination.

The case of Los Angeles & Salt Lake Railroad Co. vs. Public Utilities Commission, et al. 81 U. 286, 17 Pac. 2d 287, held that the commission's findings regarding a non-agency station was not sustained by the evidence and also held that a commission's finding must be supported by reasonable evidence.

Point 2

THE RESIDENTIAL RATE INCREASE OF THE CEDAR SYSTEM OF SOUTHERN UTAH POWER COMPANY ORDERED BY THE PUBLIC SERVICE COMMISSION OF UTAH UNDER DATE OF 27 MAY, 1955, WAS PUT INTO EFFECT WITHOUT A HEARING AND WITHOUT EVIDENCE.

In this matter there was no evidence introduced at any point in the three hearings concerning an increased residential rate. There was no hearing of any kind conducted in connection with residential rates although requested by Cedar City Corporation if there was any indication of residential rate increase and in the Further Report and Order of 4016 before the Public Service Commission of Utah under date of 27 May, 1955, there is no finding of any item in connection with a residential rate increase, with the exception of paragraph 9. Paragraph 9 finds that "The facts set forth above indicate to us that the rates which the company proposes in this proceeding do not make an equitable or reasonable distribution of the allowed increase in revenues." The finding goes on to the effect that various rates are in the opinion of the commission high enough. The only true finding concerning residential rates is in the following paragraph wherein the Public Service Commission makes the following mention of residential rates: "We find that the allowed increase in revenue of \$69,648.00 should be distributed to the following classes of service in the amounts indicated: Residential, \$18,410.00." There is no other mention of residential rates in the findings. There is no finding other than set forth above concerning the reasonableness of this increase.

It is to be noted that although various witnesses who objected to the company's proposed rates were asked how they felt a better distribution could be made that all witnesses declined to answer.

The order of the Public Service Commission dated

27 May, 1955 was arbitrary and without evidence or hearing. A hearing should be held before any rate increase is put into effect. This is shown in the case of Mountain States Telephone & Telegraph Co. vs. Public Service Commission, et al. 107 U. 502, 155 Pac. 2d 184. In this case the Public Service Commission had ordered a reduction of telephone rates and stated that this order was not based upon satisfactory evidence and the court held that the decision should be set aside inasmuch as the order was arbitrary and that the order should be remanded to the Public Service Commission for a hearing.

CONCLUSION

That it is improper for the Public Service Commission of Utah to put a increased rate schedule into effect without a hearing and without evidence. That the order of the Public Service Commission of Utah dated 27 May, 1955 in the above entitled matter as far as the residential increase therein contained was concerned put a rate increase into effect without a hearing and without evidence. Therefore this act, insofar as it pertains to the rate increase of residential rates of the Cedar System of Southern Utah Power Co. was beyond the authority of Public Service Commission of Utah.

Wherefor your Petitioner prays that this matter be remanded to the Public Service Commission of Utah with instructions for said Public Service Commission to Utah to conduct a rate hearing pertaining to the increased residential rates set forth under the Commission's order of 27 May, 1955 and that said Public Service Commission be ordered to set aside any and all schedules pertaining to increased residential rates of the Cedar City System of Southern Utah Power Co. put into effect as a result of the Commission's order of 27 May, 1955.

Respectfully submitted,
PATRICK H. FENTON,
Attorney for Petitioner.