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IN THE SUPREME COURT OF THE STATE OF UTAH

UTILITY SHAREHOLDER ASSOCIATION OF UTAH, *et al.*,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF UTAH, *et al.*,

Defendants,

UTAH DEPARTMENT OF BUSINESS REGULATION, *et al.*,

Intervenors.

Case No. 18286

UTAH STATE COALITION OF SENIOR CITIZENS,

Plaintiff,

vs.

PUBLIC SERVICE COMMISSION OF UTAH, *et al.*,

Defendants,

UTAH DEPARTMENT OF BUSINESS REGULATION, *et al.*,

Intervenors.

Case No. 18303

UTAH DEPARTMENT OF ADMINISTRATIVE SERVICES,

Plaintiff,

vs.

PUBLIC SERVICE COMMISSION OF UTAH, *et al.*,

Defendants,

UTAH DEPARTMENT OF BUSINESS REGULATION, *et al.*,

Intervenors.

Case No. 18304

BRIEF OF UTAH STATE COALITION OF SENIOR CITIZENS

ON PETITION FOR WRIT OF CERTIORARI TO
THE PUBLIC SERVICE COMMISSION OF UTAH

FILED
JUN 21 1982
Clerk, Supreme Court, Utah

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Donald B. Holbrook, Esq.
Elizabeth M. Haslam, Esq.
Jones, Waldo, Holbrook &
McDonough
800 Walker Building
Salt Lake City, Utah 84111

Attorneys for Utility Shareholder Association of Utah, Alex Oblad & Harold Burton

---

Edward W. Clyde, Esq.
Clyde, Pratt, Gibbs & Cahoon
77 West 200 South, Suite 200
Salt Lake City, Utah 84101

Robert S. Campbell, Esq.
Gregory B. Monson, Esq.
Watkiss & Campbell
310 South Main St., #1200
Salt Lake City, Utah 84101

Attorneys for Mountain Fuel Supply Company

Calvin L. Rampton, Esq.
Jones, Waldo, Holbrook &
McDonough
800 Walker Building
Salt Lake City, Utah 84111

Attorneys for Wexpro Company

Bruce Plenk, Esq.
Ronald E. Nehring, Esq.
Utah Legal Services, Inc.
637 East Fourth South
Salt Lake City, Utah 84102

Attorneys for Utah State Coalition of Senior Citizens

Thomas A. Quinn, Esq.
Ray, Quinney & Nebeker
79 South Main, Suite 400
Salt Lake City, Utah 84111

Attorneys for Utah Committee of Consumer Services

Jay D. Gurmankin, Esq.
Stephen H. Blum, Esq.
Giauque & Williams
500 Kearns Building
Salt Lake City, Utah 84101

Attorneys for Utah Department of Administrative Services

Stephen H. Anderson, Esq.
Merlin O. Baker, Esq.
A. Robert Thorup, Esq.
Ray, Quinney & Nebeker
79 South Main, Suite 400
Salt Lake City, Utah 84111

Attorneys for Utah Department of Business Regulation, Division of Public Utilities

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NATURE OF THE CASE

This action is a Petition for a Writ of Certiorari to the Public Service Commission of Utah seeking to set aside the report and Order of the Commission dated December 31, 1981.

DISPOSITION AT COMMISSION

The Commission approved a Stipulation and Agreement proposed by Mountain Fuel Supply Company, Wexpro Company, the Division of Public Utilities, and the Committee of Consumer Services, allegedly carrying out the mandate of this Court in Committee of Consumer Services v. Public Service Commission, 595 P.2d 871 (1979).

RELIEF SOUGHT ON APPEAL

Utah State Coalition of Senior Citizens seeks to have the Report and Order set aside.

STATEMENT OF THE CASE

Plaintiff Utah State Coalition of Senior Citizens adopts pages 2-9 of the Brief of the Utah Department of Administrative Services.

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ARGUMENT

I

THE COMMISSION'S ORDER MUST COMPLY WITH THIS COURT'S DIRECTION ON REMAND

The central issue confronting this Court on this second appearance of these parties before it is whether the Commission's Report and Order of December 31, 1981 satisfies this Court's Order on remand in Committee of Consumer Services. The Commission's failure to comply with this Court's mandate moots all other collateral issues including the res judicata status of the Order which is the centerpiece of the Utility Shareholders claims on appeal. The principle that the Order and mandate on remand must be congruent is beyond question. This Court, in Powerine Co. v. Zion's Sav. Bank & Trust Co., 148 P.2d 807, 808 (Utah 1944) held that inferior tribunals may not redetermine an issue in a manner inconsistent with an appellate court ruling. This Court's instructions on remand became the law of the case.

> However wise a man may be, however sound his judgment, and however accurate his knowledge and understanding; nevertheless, he is bound to subordinate to the wisdom, judgment, knowledge and understanding of a superior court, whose order is the law of the case, until modified or until reversed by a higher authority. (quoting Kelsch v. Dickson, 71 N.D. 430, 1 NW 2d 347, 349).

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Similarly, the United States Supreme Court stated in _Briggs v. Pennsylvania Railroad Co._, 334 U.S. 304, 306, (1948):

> In its earliest day this Court consistently held that an inferior court has no power or authority to deviate from the mandate issued by an appellate court...the rule...has been uniformly followed...(citations omitted).

Decisions of administrative agencies, like those of inferior courts, are constrained by appellate court mandates: _FCC v. Pottsville Broadcasting Co._, 309 U.S. 134 (1940); _Chicago and North Western Transportation Co. v. United States_, 574 F.2d 926 (7th Cir. 1978); _Morand Bros. Beverage Co. v. National Labor Rel. Bd._, 204 F.2d 529 (7th Cir. 1953).

While all parties to this action concede that the Commission's Order must be consistent with this Court's instructions on remand (see MFS Br. 20.), they diverge over the content and scope of the mandate.

In _Committee of Consumer Services_, this Court reversed the Commission's Order of April 11, 1978 and remanded "for a hearing in accordance with the principles set forth in this opinion." _Committee of Consumer Services_ at 873. The majority opinion there was clear in its articulation of these principles and their method of implementation with the goal of ending 40 years of "regulatory outrage." Throughout the

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Commission's "hearing" on the settlement proposal, Mountain Fuel, Wexpro and the Utility Shareholders stridently sought to characterize virtually every principle announced in Committee of Consumer Services as dicta and thus not binding on the Commission. (Tr. at 1910-1911). It is well established that an inferior Court may consult the opinion of the remanding Court for guidance in ascertaining the scope of the mandate. In re Sanford Fork and Tool Co., 160 U.S. 247 (1895). Having made such a review, however, the Court on remand must adopt as the law of the case everything decided above "either expressly or by necessary implication" Cherokee Nation v. State of Oklahoma, 461 F.2d 674, 678 (10th Cir. 1972), quoting Munro v. Post, 102 F.2d 686, 688 (2nd Cir. 1939). The duty to embrace both issues decided expressly and those decided by necessary implication as the law of the case was extended to remands to administrative agencies in City of Cleveland, Ohio v. Federal Power Commission, 561 F.2d 344 (D.C. Cir. 1977). There, the Court held that an administrative agency "is without power to do anything which is contrary to either the letter or spirit of the mandate construed in the light of the opinion of [the] Court deciding the case". City of Cleveland at 346 quoting Thornton v. Carter, 109 F.2d 316, 320 (8th Cir. 1940).

The standard for review adopted in Cherokee Nation and City of Cleveland suggests that the terms "holding" and

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"dictum" are less relevant in the context of appellate remand orders where the law of the case is at issue. The traditional holding versus dictum dichotomy is most applicable where the court is rendering a final adjudication of disputed issues between litigants. In this setting, there exists a more substantial need to carefully distinguish statements of the Court which fix the rights of the parties and which merit stare decisis status from more gratuitous utterances. Where, in contrast to a ruling which terminates an action, a court's opinion remands for further proceedings, the Court's opinion occupies a more active role in guiding the ongoing litigation to the proper result, thereby making appropriate reference by the inferior court to both "express decisions" and those "necessarily inferred".

It was unnecessary for the Commission to journey as far as the realm of implication to locate its instructions from this Court. At minimum this Court directed the Commission to:

(1) Identify and replace in Mountain Fuel accounts utility properties wrongfully transferred to Wexpro as of January 1, 1977 under the Amended Purchase and Sale Agreement.

(2) Identify and replace in Mountain Fuel accounts utility properties wrongfully transferred to

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Wexpro after January 1, 1977 under the Amended Joint Exploration Agreement.

(3) Approve a transfer of a utility asset only when it is found to be in the public interest, not detrimental to the ratepayer, and for fair market value.

Moreover, this Court expressly enumerated three "basic principles" which were to infuse the Commission's proceedings on remand. These included:

(1) The principle that Mountain Fuel's duty, as a public utility, is to provide its customers the most favorable rate reasonably possible, consistent with its relationship of trust with its customers;

(2) The principle that gain follows risk; and

(3) The principle that profits paid by a public utility to an affiliate may not be included in the rate base - the "no profits to affiliates" rule.

It is against this standard, including both the Commission's duty to follow this Court's mandate and to properly assess the scope of that mandate that the Commission's Order and the settlement adopted in it must be measured.

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II.

THE SETTLEMENT RATIFIED BY THE COMMISSION IN ITS ORDER VIOLATES THIS COURT'S ORDER ON REMAND.

The fact that subsequent to this Court's decision in Committee of Consumer Services several of the contestants compromised their claims and presented the Commission with a settlement agreement did not permit the Commission to disregard its remand mandate. The Utah legislature has granted the Commission the authority to adopt "any settlement proposal of the parties and (2) enter an Order based upon such proposal if it deems such action proper." Utah Code Ann. §54-7-10(1), (Supp. 1981). This statute does not, however, give the Commission a blank check to approve settlements. For example, although the statute states that the Commission may assess a proposed settlement against its self-defined standard of propriety, the Commission is clearly foreclosed from approving a settlement which would violate or change the law or bind a party contrary to law. Gorgoza v. Utah State Road Commission, 553 P.2d 413 (Utah 1976). Likewise, the Commission may not adopt a settlement which is incompatible with the law of the case.

Appropriately, the United States Supreme Court's clearest expression of the principle that parties may not use

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a settlement to avoid a court's mandate on remand involved the Utah Public Service Commission. Utah Public Service Commission v. El Paso Natural Gas Co., et al., 395 U.S. 364, (1969). This action was a protracted government anti-trust suit alleging that El Paso had violated Section 7 of the Clayton Act by acquiring the stock and assets of Pacific Northwest Pipeline. In the case's first review by the Supreme Court, under the name United States v. El Paso Natural Gas Co., 376 U.S. 651, 662, (1964), the court had ordered El Paso to divest itself of Pacific Northwest "without delay." The United States later agreed to settle the case. The matter reached the Supreme Court a second time in Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, (1967). With respect to the consent decree then pending as settlement of the case, Justice Douglas said:

> We do not question the authority of the Attorney General to settle suits after, as well as before, they reach here. The Department of Justice, however, by stipulation or otherwise, has no authority to circumscribe the power of the courts to see that our mandate is carried out. No one, except this court, has the authority to alter or modify our mandate. (citations omitted)

386 U.S. at 136.

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The Supreme Court set aside the proposed consent decree and remanded for additional findings and a new solution to accomplish its mandate of total divestiture. On remand, the District Court approved a divestiture plan which featured the creation of a "New Company" in which El Paso would retain 5,000,000 shares of non-voting stock which would be convertible into common stock at the end of five years. The new company would also assume $170,000,000 of El Paso's bond and debenture indebtedness. The Utah Public Service Commission appealed the District Court's order, filing a jurisdictional statement with the Supreme Court in which it urged that the decree did not meet the requirements of the court's mandate. When the Commission later sought to dismiss its appeal, it was opposed by a "consumer spokesman" and several _amici curiae_. In rejecting the Commission's Motion to Dismiss, Chief Justice Warren stated:

> Our mandate directed complete divestiture. The District Court did not, however, direct complete divestiture. Neither appellant nor any party supporting the dismissal argues that the District Court did so. Rather they argue that the disposition made by the District Court was the best that might be made without complete divestiture. Clearly this does not comply with our mandate.

395 U.S. 464, 470.

The "Memorandum of Law and the Commission's Scope of

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Hearing of Proposed Settlement" dated October 19, 1981, (Memorandum) filed by counsel for the Utah Division of Public Utilities and the Utah Committee of Consumer Services suggests that the Commission should be "guided" in its deliberations on the propriety of the proposed settlement by the example of the "Drug Case" settlements, State of West Virginia et al., v. Charles Pfizer & Co., et al., 314 F. Supp. 710, (S.D. New York 1970), aff'd 440 F.2d 1079 (2nd Cir. 1971). The Memorandum contends that the "Drug Cases" are instructive because they identify the proper criteria for settling complicated class actions, emphasizing such factors as the likelihood of success, the risks and costs of further litigation, etc. These "criteria of Examination" assume, however, that because the drug cases and the so-called Wexpro matter share complexity and litigant endurance they are therefore analogous for the purpose of involving settlement criteria. This is not the case. One very fundamental fact distinguishes the drug cases from the Wexpro matter: unlike Wexpro, the "Drug Cases" did not involve remand from an appellate court. The Memorandum states misleadingly that:

> Similar to Wexpro, the drug cases had wound their way for several years through various hearings, FTC administrative proceedings, and several appeals up and back from the Sixth Circuit Court of Appeals. Criminal proceedings were also instituted prior

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> to the settlement against several of the Defendants pursuant to grand jury indictment. Memorandum at 2.

A more accurate rendition of the history of the "Drug Case" anti-trust litigation reveals the existence of three independent actions: An FTC administrative complaint and order which was appealed to the Sixth Circuit; criminal proceedings against certain officers of the Defendant corporations which were appealed to the Second Circuit; and a legion of private anti-trust actions which were consolidated into the temporary national class and which were settled pursuant to the criteria enumerated in the Memorandum. Significantly, the District Court which ratified the "Drug Case" settlement was confronted with no mandate from an appellate court to which it was compelled to conform its ruling. It was free to exercise its discretion because no appellate court had limited it through instructions on remand.

The contrast between the El Paso precedent and those of the Drug Cases illustrates in sharp relief the first of two fundamental and compelling reasons why the settlement incorporated in the Order is fatally incongruent to this Court's mandate on remand. The Memorandum quotes with emphasis from one of the Drug Cases the proposition that

> ...the very uncertainties of outcome in litigation as well as the avoidance of wasteful litigation and expense, lay

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> behind the Congressional infusion of a power to compromise. 440 F.2d 1085. (quoting from Florida Trailer and Equipment Co. v. Deal, 284 F.2d 567 (5th Cir. 1960. (Memorandum at 3.)

Throughout the Commission's hearing, the settlement was lauded because it would end the lengthy Wexpro litigation. The litigation to be avoided through settlement was of two types; (1) that initiated by Mountain Fuel in federal forums, and (2) proceedings before the Commission pursuant to this Court's remand Order.

The first class of litigation was stimulated by Mountain Fuel's unwillingness to face the consequences of this Court's termination of the "regulatory outrage" that permitted Mountain Fuel and its Shareholders to plunder its ratepayers for more than three decades. Doubtless shocked by the prospect of having to keep faith with its ratepayers in a relationship of trust, Mountain Fuel elected to act more in character by scorning its ratepayers, the Commission and this Court by filing applications with the Federal Energy Regulatory Commission ("FERC") and initiating an action, since dismissed, in the United States District Court for the District of Utah, Mountain Fuel Supply Co. v. Public Service Commission of Utah, Civil No. C80-0710J. While Mountain Fuel clearly had the right to seek relief from both FERC and in federal court, its activities in those forums were not

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cognizable by the Commission when confronted by a remand order of this Court. Had the Commission not been confronted with this Court's remand order, it, like the courts in the Drug Cases, could have approved the settlement based on any of a passel of rationales, including that to do so would have ended litigation in other forums. It would have enjoyed the breadth of discretion contained in its statutory grant of authority to approve settlements. Our legislature, however, has also empowered this Court to review orders of the Commission. Utah Code Ann. §54-7-1, (Supp. 1981). It is this Court, in turn, which speaks to the Commission with judicial finality. Utah Code Ann. §54-7-16. It is _this Court's_ judicial voice _alone_ that the Commission must heed. And, indeed, this Court did speak to the Commission in _Committee of Consumer Services_ with a firm voice which should have deafened the Commission to the occasional murmurings from other forums. Mountain Fuel's decision to initiate multiforum litigation, like its decision to suspend exploration on its leasehold acreage, both in the wake of _Committee of Consumer Services_ is a demonstration of its corporate arrogance and an affront to this Court and to the Company's ratepayers. These actions served no end other than to compel the Division, Committee, and Commission to retreat from the well considered principles announced by this Court in _Committee of Consumer Services_.

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Simply stated, the only Wexpro litigation that mattered to the Commission was that remanded to it by this Court. By adopting the settlement, the Commission, like the Division and Committee, forsook its proper judicial role and surrendered to Mountain Fuel's strategy of litigation through real politik.

The claimed benefit derived by Mountain Fuel's ratepayers from the end of litigation before the Commission was illusory, because the Commission's task on remand was merely to conduct a ministerial proceeding to clarify transferred properties as utility or non-utility in accordance with the three criteria set forth in Committee on Consumer Services and to determine net profits derived from properties designated as utility and declare that those profits will reduce rates. The limited scope of the Commission's review on remand was acknowledged by Mr. Justice Wilkins in his dissent to this Court's decision when he stated:

> What alarms me, inter alia, is that the Court today has actually determined, I believe, that the transferred property is utility property, notwithstanding its decision to remand this case for an evidentiary hearing at which criteria for classification, in the form of three questions are to be employed. Just a facial reading of the majority opinion with these listed criteria and the undisputed evidence in this case convince me that the Court has

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> determined today, without further hearing, that the subject property is utility. Why then, I ask, even though I think the Court is in error, prolong the judicial process by requiring that further hearing.
>
> Committee of Consumer Services, supra, at 890-91 (emphasis added).

Mountain Fuel, Wexpro and the Utility Shareholders all conceded the validity of Mr. Justice Wilkins' analysis in their joint Petition for Certiorari to the United States Supreme Court. These parties declared that "all that remains is an accounting proceeding." "Nothing remains to be done except the implementation of the judgment by the Utah Utilities Commission..." Writ of Certiorari to the Supreme Court of the State of Utah, in Mountain Fuel Supply Company, et al. v. Utah Committee of Consumer Services, et al., Case No. 79-604, before the Supreme Court of the United States, 17, n7. For Mountain Fuel, Wexpro, and the Utility Shareholders to then suggest to the Commission that it would be spared protracted litigation of the Wexpro matter if it would embrace the settlement is further evidence that these parties are not above resorting to duplicity to eviscerate the will of this Court.

POINT III

THE SETTLEMENT ADOPTED BY THE COMMISSION IS PER SE INCOMPATIBLE WITH THIS COURT'S MANDATE ON REMAND.

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The preceeding point urges that the Commission's ratification of the Settlement was improper because there was simply nothing to settle apart from those issues which might intrude on the Commission's accounting of transferred properties. In short, the adversarial dynamics which stimulate settlements were irrelevant to the Commission's responsibilities under the Wexpro remand order. As the distinction between the _El Paso_ case and the "Drug Cases" illustrates, Courts and administrative agencies may not rely upon one universally applicable set of criteria for deciding on the propriety of a Settlement Proposal. The discretion to accept settlements is subject to the limitations imposed by superior tribunals. In this case, the settlement adopted by the Commission must be rejected because it is fundamentally repugnant to the judicial processes of this State and the specific mandate of this Court.

A second intrinsic flaw in the very nature of the settlement appears upon assaying whether Mountain Fuel and its ratepayes received fair market value consideration for the utility properties transferred pursuant to the agreement.

This Court's opinion in _Committee of Consumer Services_ states:

> Any transfer of a utility asset should be for fair market value so an appropriate benefit therefrom will

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> redound to the credit of the ratepayers. Furthermore, before approving the transfer of a utility asset, the Commission should determine whether the transaction is detrimental to the ratepayer and whether it is in the public interest.

Committee of Consumer Services at 878

This language is immediately preceeded by the Court's three-fold criteria which the Commission was to use to identify utility property. Logically, before a Mountain Fuel asset may be transferred, it must be classified by the Court's criteria. The settlement does not apply the Court's criteria to the property transferred by its terms, nor did the Commission attempt to clarify the status of the transferred property as utility or non-utility.

Fair market value consideration is the price which property would bring if sold to a willing buyer under normal selling conditions. Utah Assets Corp. v. Dooley Bros. Assoc., 70 P.2d 738 (Utah 1937). The very term, fair market value, implies that the forces that influence value are those of the marketplace. Specifically, the "fair" marketplace. The judicial system is not the marketplace. Indeed, most lawsuits can be traced to mishaps in the marketplace. Similarly, parties to litigation have elected to abandon the procedural and substantive rules, e.g. bargaining and contract, in favor of the procedure and law of the courts. Settlements of

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litigation, however welcome as they may be, always arise from conflict and are spawned by the willingness of the disputants to compromise. In the context of the Wexpro dispute, the inability of the parties to satisfactorily compromise their claims prior to May 10, 1979, resulted in a judicial resolution to the controversy. Unwilling to abide this Court's ruling, Mountain Fuel sought to perpetuate its discredited claims and the climate of conflict between the parties solely for the purpose of persuading the parties whose claims were vindicated before this Court to abandon their hard-won victory. Because settlements, by definition, assume concessions by the parties to them, the proponents of the settlement of the Wexpro case cannot be taken seriously when they assert that Mountain Fuel ratepayers will reap the benefits of fair market value for transferred utility assets. The interjection of litigation related forces hopelessly distorts the ecology of the marketplace, with the result that fair market values undergo mutations to become fair litigation values. Still, any transfers of utility property must be for fair market value consideration. Nothing less will comply with this Court's mandate - certainly not fair market value discounted by the value of Mountain Fuel's promise of litigation peace nor the value of retracting its threat to permit valuable leases expire rather than to continue

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exploration as a regulated utility.

Consequently, the very existence of the Settlement assumes an adversarial environment hostile to the concept of fair market value. By creating this environment, Mountain Fuel convincingly demonstrated that even after this Court's bold and considered decision in Committee of Consumer Services it was prepared to employ every judicial and extra-judicial weapon in its arsenal in the cause of its relentless depradation of its ratepayers.

POINT IV

THE ORDER AND SETTLEMENT ARE INCONSISTENT WITH THE REMAND ORDER OF THIS COURT AND PUBLIC UTILITY LAW REGARDING THE FAIR MARKET VALUE OF TRANSFERRED UTILITY PROPERTY.

This Court allowed Mountain Fuel a number of options to choose among once the transferred assets had been classified as utility or non-utility property. Even without this classification, since Mountain Fuel has now chosen one of these options, transferring the utility property to another company, the transfer must be done for fair market value. See Committee of Consumer Services at 878. In this case this means the value of the gas on the property, not merely a nominal sum for the leasehold interest. This transfer, as

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accomplished by the settlement and approved without modification by the Commission, is merely a broken-record replay of the transfer condemned by this Court in its prior opinion. There this Court stated:

> The classification of this property is of utmost importance, since this property is being transferred to Wexpro at a depreciated book value of $33.1 million. The claimed gross revenue from this property for 1976 was approximately $39 million. An expert from Mountain Fuel estimated the fair market value of the property at $150 million. If, in fact, after a hearing the property should be classified as a utility asset, the ratepayers by this transfer, would be deprived of benefits to which they are entitled.

595 P.2d at 877.

This statement by this Court is clear: there is a fair market value ascertainable on the property in question, this value is likely to be far in excess of depreciated book value, and the ratepayers are entitled to the benefit of this higher amount. The attempt to pacify the ratepayers by the complicated formula adopted in the Commission's Order is nothing more than a more sophisticated attempt to avoid the transfer of this benefit to ratepayers and to shelter it for the stockholders, all contrary to this Court's prior analysis and directive.

Another aspect of this replay is the choice by

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Mountain Fuel and Wexpro to avoid performing additional geophysical testing on the property so that a fair market value of the property could be ascertained. In Committee of Consumer Services this Court seized on the obvious disparity between the fair market value and the "price" at which the property was transferred to Mountain Fuel's subsidiary. In this second round of "hearings", Mountain Fuel presented no dollar figures on the value of the property transferred, to avoid any second comparison showing that the ratepayers had once again lost a substantial benefit: the dollar value or the quantity of cheap gas which would, of course, be replaced by other more expensive gas at ratepayer's expense. This avoidance of placing a dollar value on the property was maintained in the face of testimony by several witnesses that such value could be estimated and that this land included some of the best oil and gas property in the Rocky Mountain area. Certainly no royalty, particularly a 7% royalty, can compensate ratepayers for the cost of service gas lost by this Commission's Order.

In addition to violating this Court's prior Order, the failure of the Commission to credit the ratepayer with the increased value of the utility property transferred out of rate base violates public policy and the accepted methodology utilized in accounting for gains on utility property disposed

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of. Re Detroit Edison Co., 20 P.U.R. 4th 1, 28 (Mich. PSC 1977); Democratic Cent. Comm. of D.C. v. Washington Metro. Area Transit Comm., 485 F.2d 786, 822 (D.C. Cir. 1973). As a commentator stated: "The majority view holds that the profit or gain on the disposition of items formerly in rate base should inure to benefit ratepayers and not investors". Hamberg, "Gain on Disposition of Utility Land is other Utility Income", Public Utilities Fortnightly, August 13, 1981. In this case the Commission cannot properly determine the amount of this benefit to ratepayers without quantifying the value of the assets involved. Without this quantification no determination of the public interest can possibly be made.

Perhaps this lack of specific valuation was part of the reason that the final error alleged herein occurred: the Commission's failure to make findings sufficient to sustain its Conclusions and Order on this subject. Especially do Findings Nos. 9, 10, and 11 suffer from this infirmity. No basis is given for the "finding" that resolution of pending litigation is in the public interest. No basis is given for the "finding" that the transfer of the properties is for fair market value, nor for the "finding" that "adequate benefits" redound to the benefit of customers, assuming this is synonymous with the fair market value or public interest standards set forth in Committee of Consumer Services.

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Finally, the "consideration" received is found to represent fair market value when none of these terms are defined and no other basis for this determination is given other than "typically determined in the industry". Certainly these vacuous recitations do not constitute the sort of post-hearing determinations of public interest and fair market value which this Court directed be undertaken in its prior Order.

CONCLUSION

Because the Order of the Public Service Commission in these matters is not in accord with this Court's mandate in its prior decision, it cannot be sustained. The Commission's Order should be reversed and the case set down for hearings as previously ordered.

DATED this 21st day of June, 1982.

UTAH LEGAL SERVICES, INC.
Attorneys for Petitioners

By Ron Nehring by Bruce Plenk
RON NEHRING

By Bruce Plenk
BRUCE PLENK

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that two true and correct copies of the foregoing BRIEF OF UTAH STATE COALITION OF SENIOR CITIZENS was mailed first-class postage prepaid this 21st day of June, 1982, to the following:

Donald B. Holbrook, Esq.
Elizabeth M. Haslam, Esq.
Jones, Waldo, Holbrook & McDonough
800 Walker Building
Salt Lake City, Utah 84111

Edward W. Clyde, Esq.
Clyde, Pratt, Gibbs & Cahoon
77 West 200 South, Suite 200
Salt Lake City, Utah 84101

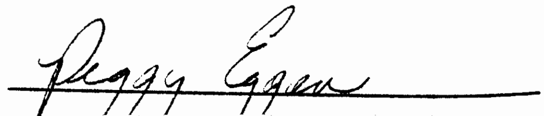
Robert S. Campbell, Esq.
Gregory B. Monson, Esq.
Watkiss & Campbell
310 South Main St., #1200
Salt Lake City, Utah 84101

Calvin L. Rampton, Esq.
Jones, Waldo, Holbrook & McDonough
800 Walker Building
Salt Lake City, Utah 84111

Thomas A. Quinn, Esq.
Ray, Quinney & Nebeker
79 South Main, Suite 400
Salt Lake City, Utah 84111

Jay D. Gurmankin, Esq.
Stephen H. Blum, Esq.
Giauque & Williams
500 Kearns Building
Salt Lake City, Utah 84101

Stephen H. Anderson, Esq.
Merlin O. Baker, Esq.
A. Robert Thorup, Esq.
Ray, Quinney & Nebeker
79 South Main, Suite 400
Salt Lake City, Utah 84111



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