

1982

# Utility Shareholder Association of Utah et al v. Public Service Commission of Utah et al : Brief

Utah Supreme Court

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## Recommended Citation

Legal Brief, *Utility Shareholder Association of Utah v. Public Service Commission of Utah*, No. 18286 (Utah Supreme Court, 1982).  
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IN THE SUPREME COURT OF  
THE STATE OF UTAH

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UTILITY SHAREHOLDER ASSOCIATION:  
OF UTAH, ALEX OBLAD AND  
HAROLD BURTON,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF  
UTAH, et al.,

Defendants.

Case No. 18286

---

UTAH DEPARTMENT OF ADMINI-  
STRATIVE SERVICES,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF  
UTAH, et al.,

Defendants.

Case No. 18304

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UTAH STATE COALITION OF SENIOR  
CITIZENS,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF  
UTAH, et al.,

Defendants.

Case No. 18303

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MOUNTAIN FUEL SUPPLY COMPANY;  
WEXPRO COMPANY; UTAH DEPARTMENT:  
OF BUSINESS REGULATION,  
DIVISION OF PUBLIC UTILITIES;  
and UTAH COMMITTEE OF CONSUMER  
SERVICES,

Intervenors.

**FILED**

JUL 26 1982

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Clerk, Supreme Court, Utah

ANSWERING BRIEF OF UTILITY SHAREHOLDER ASSOCIATION OF UTAH,  
ALEX ABLAD AND HAROLD BURTON

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

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This Brief is submitted by the Utility Shareholder Association of Utah, Alex Oblad and Harold Burton, shareholders of Mountain Fuel Supply Company, all of which are collectively referred to herein as the "Plaintiffs", in answer to the brief of the Utah Department of Administrative Services ("Department") and the brief of the Utah State Coalition of Senior Citizens ("Coalition") in support of their petitions for a writ of certiorari to set aside the Report and Order issued by the Public Service Commission of Utah ("Commission") on December 31, 1981 ("Order") adopting a stipulation and agreement ("Agreement").<sup>1</sup>

SUMMARY OF ARGUMENTS OF THE  
COALITION AND THE DEPARTMENT

It is apparent from the briefs of the Department and Coalition that their principal objection to the Order is that it is in violation of this Court's decision in Committee of Consumer Services v. Public Service Commission, 595 P.2d 871

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<sup>1</sup> The following abbreviations are used for the purpose of citation in this brief: (1) "Dept. Br." refers to the brief of the Utah Department of Administrative Services; (2) "Coalition Br." refers to the brief of the Utah State Coalition of Senior Citizens; (3) "Ord." refers to the Report and Order on Stipulation and Agreement issued by the Public Service Commission of Utah on December 31, 1981; (4) "Tr." refers to the transcript of the evidentiary hearings before the Commission commencing October 14, 1981.

(Utah 1979), hereinafter referred to as the "Wexpro Decision". (Dept. Br. at 71-76; Coalition Br. at 2-23.)<sup>2</sup>

The Department contends that the Order violates the Wexpro Decision mandate because: 1) the Court ordered an evidentiary hearing but the only hearing conducted by the Commission was on the Agreement; 2) the Court said to conduct a hearing to classify properties as utility or non-utility, but there was no hearing; 3) the Court said that any transfer must be for fair market value and in the public interest, but there was no "reasoned determination" in that regard. (Dept. Br. at 11.) The Department says the Order is defective because it is the result of a "compromise--plain and simple". (Dept. Br. at 12.)

The Coalition objects to the Order for similar reasons. It says the Commission failed to conduct an evidentiary hearing to classify properties and failed to conduct a hearing to determine the fair market value of properties. (Coalition Br. at 5, 6.) The Coalition states that the only way to arrive at a fair market value is to place an actual monetary value on properties transferred and that fair market value can only be arrived at through litigation.

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<sup>2</sup> The Department contends that the Order is in "wholesale violation" of the Wexpro Decision (Dept. Br. at 71-75.). Likewise, the Coalition argues that the Order "violates", and is "per se incompatible" and "inconsistent" with the Wexpro Decision. (Coalition Br. at 7-23.)

Furthermore, both the Coalition and Department assert that each of the legal principles enunciated in the Wexpro Decision may only be resolved through litigation. Because an agency has a duty to comply with a reviewing court's mandate, the Coalition and Department argue, controversies on remand cannot be resolved through settlement. (Dept. Br. at 72; Coalition Br. at 14-19.)

A common sense analysis of the arguments presented by the Coalition and the Department points out the fallacy therein. For example, the Department and Coalition would have this Commission spend its valuable time and resources conducting a hearing to classify properties as utility or non-utility because the Wexpro Decision under the facts then before the Court, instructs the Commission to do so for the purpose of determining whether or not the properties must be transferred for fair market value. 595 P.2d at 878. It is obviously unnecessary for the Commission to conduct such a hearing inasmuch as the properties which are the subject of the Agreement are treated in the Agreement as utility properties, i.e., all transfers are made for fair market value. The Department and Coalition's argument that fair market value can only be arrived at through full litigation is wholly without foundation. To say that adverse parties, calling upon their own and other's expertise, cannot during the course of an arm's-length transaction arrive at fair market value, is

absurd. This happens in every day business transactions between individuals seeking to protect their personal interests. However, it is not necessary to debate whether or not it was possible for the parties, through negotiations, to determine fair market value inasmuch as the record establishes through testimony of numerous expert witnesses that the consideration provided for in the agreement constitutes fair market value which is customary in the industry.<sup>3</sup> Furthermore, the Commission found, based on competent evidence, that the Agreement conforms to the legal principles set forth in the Wexpro Decision.

#### ARGUMENT

##### I. THE COMMISSION DID NOT ERR BY ENTERING AN ORDER BASED UPON A SETTLEMENT AGREEMENT.

The thrust of the Coalition and Department's objection to the Order is that it is based upon a settlement. As pointed

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<sup>3</sup> Herman G. Roseman testified for the Committee and the Division that royalty payments allowed in the stipulation and agreement are fair market consideration which is standard in the industry given the difficulty and expense of determining the actual value of oil and gas reserves. (Tr. 1026, 1029, 1045, 1046, and 1047.) Howard Ritzma also testified for the Division and the Committee that the consideration provided for in the stipulation and agreement constitute fair market consideration which is customary in the industry. (Tr. 1250, 1251, 1252) Mr. Ritzma further testified that it is essentially impossible to arrive at the value of oil and gas in unexplored properties and that it is not practice in the industry to convey such properties for actual dollar values. (Tr. 1263 and 1274). R. D. Cash, Ralph Kirsch, Lyle Hale provided similar testimony. (Tr. 1502, 1515, 1520, 1331, 1333 - 1335.)

out above, that objection, on its face, is flawed. This is particularly true given the fact that the Commission did not adopt the Agreement without first giving it very careful scrutiny. The Order contains specific findings of fact and conclusions of law which are amply supported in the record of the Commission proceedings, that the Agreement is in the public interest, provides for fair market consideration and is otherwise consistent with the Wexpro Decision.<sup>4</sup>

Additionally, the Commission properly concluded in the Order that it has jurisdiction to resolve the pending controversies by negotiated settlement (Ord. at 20) and further recognized that it was with the encouragement of the Commission, that the parties engaged in settlement negotiations which ultimately resulted in the Agreement. (Ord. at 14.) Indeed, as part of its broad discretionary authority to regulate the business of utilities, the Commission enjoys specific statutory authority to resolve this and other controversies through settlement.

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<sup>4</sup> After eight days of hearings during which the Commission received the evidence of renowned experts in utility law and carefully scrutinized the Agreement, the Commission found each aspect of the Agreement to conform with the Wexpro Decision. Specifically, the Commission made findings of fact that the division of properties contained in the Agreement is for fair market value as typically determined in the industry (Ord. at 19; Findings 10 and 11) and that the Agreement is in the public interest. (Ord. at 19.) The Commission made similar conclusions of law, i.e., the Agreement is in the public interest (Ord. at 21; Conclusions 4, 5, and 6) and that any transfers are for fair market value. (Ord. at 21.)

- A. The Commission is Vested with Express Statutory Authority to Adopt a Settlement Agreement; the Fact that a Controversy is Terminated by Settlement Cannot, By Itself, Serve As the Basis for Setting Aside a Commission Order.

Utah Code Ann. § 54-4-1 (Supp. 1981) vests the Commission with power and jurisdiction to "supervise all of the business of every . . . public utility in this state . . . .", and in exercise of that authority to do all things that are "necessary or convenient." In carrying out its functions, the Commission enjoys a wide latitude of discretion. This Court has repeatedly stressed the broad discretionary powers of the Commission and administrative agencies generally. Williams v. Public Service Commission, 645 P.2d 600. (Utah 1982); Utah Gas Service Co. v. Mountain Fuel Supply, 18 Utah 2d 310, 422 P.2d 530 (1967); Petty v. Utah State Board of Regents, 595 P.2d 1299 (Utah 1979); Mantua Town v. Carr, 584 P.2d 912 (Utah 1978). However, it is not necessary to look to the Commission's general and broad discretionary powers to find its authority to enter an order based upon settlement. That authority is expressly granted in a recent enactment of the Utah Legislature. Utah Code Ann. § 54-7-10(1) (Supp. 1981) provides as follows:

At any time before or during a hearing or proceeding before the commission the parties

between themselves or with the commission or any commissioner, may engage in settlement conferences and negotiations. The commission may at its sole discretion adopt any settlement proposal of the parties and enter an order based upon such proposal if it deems such action proper. (Emphasis added.)

The Legislature has further provided that "no informality of any proceeding . . . shall invalidate any order . . . made by the commission." Utah Code Ann. § 54-7-1 (Supp. 1981).

Thus the Utah Legislature has expressly endowed the Commission with the authority and jurisdiction to adopt a settlement proposal "at any time" if the Commission finds "in its sole discretion", that the proposal is proper. The Legislature has not qualified its grant of authority to the Commission with a requirement that the Commission only allow a settlement of those matters which are not on remand from this Court. In fact, by statutory mandate, it is impermissible to set aside a commission order for the simple reason that it is based on a settlement proposal.

Where legislative intent is clear and unambiguous, "the courts have only the simple and obvious duty to enforce the law according to its terms." (Citation omitted.) Mountain States Tel. & Tel. Co. v. Public Service Commission, 107 Utah 502, 155 P.2d 184, 185 (1945). Plaintiffs do not contend that



in making a determination that a settlement is proper the Commission can ignore the legal principles enunciated by this Court. The Commission must do so and has done so. After eight days of hearings and careful scrutiny of the Agreement and examination of expert witnesses presented by the parties to the Agreement as well as by the Coalition, the Commission found the settlement to be consistent with and not in violation of the legal principles set forth by this Court in the Wexpro Decision.

- B. The Function of This Court Upon Review of a Commission Decision is to Determine Whether or Not the Commission Regularly Pursued its Authority; Judicial Action Cannot Supplant the Discretionary Authority of the Commission.

The Coalition acknowledges that the Commission has broad statutory authority to adopt settlement proposals, but states that that authority does not give the Commission "a blank check to approve settlements." (Coalition Br. at 7.) Plaintiffs, as stated above, do not dispute that the Commission in approving the Agreement must follow the legal principles set forth by this Court in the Wexpro Decision. Plaintiffs disagree with the conclusion of the Coalition, however, that it follows from the proposition that the Commission cannot adopt a settlement which is incompatible with law or incompatible with the "law of the case" that it cannot properly adopt the Agreement.

Simply stated, it is the function of a court to point out to an agency its legal errors, and once that agency has corrected those errors it may proceed to carry out its legislative charge as it chooses within the bounds of its statutory authority. K. Davis, Administrative Law, § 18.12 (1974); FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940); SEC v. Chenery Corp., 332 U.S. 194 (1947); FPC v. Idaho Power Co., 344 U.S. 17 (1952); NLRB v. Food Store Employees, 417 U.S. 1 (1974). While a lower court may be required to strictly adhere to a superior court's instructions on remand, an administrative agency is not so bound. The reason is that courts and agencies derive from different origins and have diverse responsibilities. FCC v. Pottsville Broadcasting Co., 309 U.S. at 141, 142. The Commission, for example, is an extension of the legislative branch of government and possesses certain statutory prerogatives separate and distinct from the prerogatives of the judiciary. FCC v. Pottsville Broadcasting Co., 309 U.S. at 141; Mountain States Tel. & Tel. Co. v. Public Service Commission, 155 P.2d at 188. The judiciary must observe the proper distribution of powers between the executive, legislative and judicial branch of governments and may not usurp the discretionary authority of the Commission in its regulation of the business of public utilities. Utah Light & Traction Co. v. Public Service Commission, 101 Utah 99, 118 P.2d 683 (Utah 1941).

The cases cited by the Department and the Coalition for the proposition that the Commission must literally comply with the directions contained in the Wexpro Decision either support the principle stated herein or are clearly distinguishable and not applicable.<sup>5</sup> Both the Department and the Coalition place considerable reliance in support of their contention upon the United States Supreme Court decision, Utah Public Service Commission v. El Paso Natural Gas Co., 395 U.S. 464 (1969), wherein, in the context of anti-trust litigation, the Supreme Court ordered the United States District Court for the District of Utah to comply with its previous mandate that a decree be entered requiring a company to divest itself of

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<sup>5</sup> FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940); Chicago and Northwestern Transportation Co. v. United States, 574 F.2d 926; Morand Bros. Beverage Co. v. NLRB, 204 F.2d 529 (7th Cir. 1953); and City of Cleveland, Ohio v. FPC, 561 F.2d 344 (D.C. Cir. 1977) are cited by the Coalition in support of its argument that the Commission must follow the mandate of a reviewing court. (Coalition Br. at 3-5.) Each of these cases recognize, however, that the mandate of a court to an agency can go no further than to point out the legal error of the agency, leaving the agency free, once it has corrected the error, to proceed to carry out its legislative charge. Accord, Ithaca College v. NLRB, 623 F.2d 224 (2nd Cir. 1980) (Dept. Br. at 73.) Other cases cited by the Department and Coalition are not pertinent because they speak of the duty of a court to respect the mandate of another court. Utah Public Service Comm'n v. El Paso Natural Gas Co., 395 U.S. 364 (1969); United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964); Cascade Natural Gas Co. v. El Paso Natural Gas Co., 386 U.S. 129 (1967); Briggs v. Pennsylvania Railroad Co., 334 U.S. 304 (1948); Tovrea v. Superior Court, 101 Ariz. 195, 419 P.2d 79 (1966) (Coalition Br. at 3, 8; Dept. Br. at 73, 74).

another company. In this case the Supreme Court obviously enforced its mandate beyond the requirement that the District Court correct its errors of law. However, this case is not pertinent to the pending matter inasmuch as it involves the directions of a court to another court. As pointed out above, there is a great and respected distinction between the extent to which a court can compel another court to follow instructions on remand and the extent to which a court can compel an administrative agency, as an arm of the legislature, to take specific actions which fall within its regulatory jurisdiction.

The discrete and different responsibilities of the Commission and the judiciary are found in statutory law and have been faithfully respected by this Court. Utah Code Ann. § 54-7-16 (1973) provides in pertinent part that the Supreme Court's review of a Commission decision 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 the State of Utah." It is not within the province of the judiciary to issue specific instructions to the Commission as to how it must carry out its regulatory functions. That is made clear in Mountain States Tel. & Tel. Company v. Public Service

Commission, 107 Utah 502, 155 P.2d 184 (1945) where this Court considered the effect of its earlier decision setting aside and remanding an order of the Commission. The Court disagreed with the contention of the Commission that the court held in its earlier review proceedings that certain utility charges were discriminatory, and in so doing discussed the limited functions of the Supreme Court in reviewing a Commission order. The court stated:

It is urged by the Commission that this court did not sustain the charges made by the utility pending review; that we in fact held that such charges were discriminatory. This position misconceives the function of this court in reviewing an order of the Commission. We, of course, in rendering our decision, acted within the scope of our authority. Consequently, we determined merely that the Commission had not regularly pursued its authority. Everything else stated in our opinion was in response to contentions of the plaintiff relative to confiscatory rates, arbitrary action by the Commission in respects other than those by us sustained, etc. But because we in the rationale of the opinion found that such contentions should be overruled, it does not follow that we determined that the rates charged by the utility were unjust, unreasonable or confiscatory. We did not so determine simply because that is not our function. Indeed, it is not a judicial function. It is legislative and is to be exercised by the arm of the legislature--the Public Service Commission. (Emphasis added.)

155 P.2d at 187, 188.

The court noted that its limited function with respect to Commission decisions is founded in Section 76-6-16 of the Utah Code cited above, stating:

Ample authority exists in the Commission to determine reasonable rates. The authority comes from the legislature not from this court. It must be clear that we did not thus offhandedly assume authority which this court has consistently asserted was not by the legislature conferred upon it. Nor does the fact that by the provisions of Sec. 76-3-1, U.C.A. 1943 every unjust and unreasonable charge made by a utility for services is prohibited and made unlawful, confer authority upon this court to modify an order of the Commission or to uphold an order in part and set it aside in part. This for the reason that the determination of whether a rate or charge is unreasonable or is unjust is placed by law in the Commission and not in the courts. (Emphasis added.)

Id. at 188.

Justice Wolfe, in his concurring opinion, made it clear that a court reviewing does not issue instructions:

We never, by affirmance or vacation of the Commission's order, approve or disapprove of a rate order. We only determine whether it has been arrived at by a regular pursuit of the Commission's authority and whether there is evidence to sustain it.

\* \* \*

There is no middle ground. We cannot modify. We cannot remand with directions to fix a certain rate. We "set aside" which leaves the Commission free properly to find

the rate level which it did not do before.  
(Emphasis added.)

Id. at 190.

Justice Wolfe stressed the importance that the judiciary not invade the legislative realm and offered the following guidance to his fellow members of the judiciary:

But where he does not think that reasonable minds could differ, as on the question of whether what we are asked to do is really legislation, it is his duty to stay within the province of the judiciary and restrain from invading the province of the legislature despite his personal longings for a different result.

Id. at 191. In accord, Williams v. Public Service Commission, 645 P.2d 600 (Utah, 1982); PBI Freight Service v. Public Service Commission, 626 P.2d 408 (Utah 1981); Utah Light & Traction Co. v. Public Service Commission, 101 Utah 99, 118 P.2d 683 (1941) (In reviewing an order of the Commission, judicial action cannot supplant the discretionary authority of the Commission); Los Angeles & S.L.R. Co. v. Public Utilities Commission, 80 Utah 455, 15 P.2d 358 (1932); Mulcahy v. Public Service Commission, 101 Utah 245, 117 P.2d 298 (1941); Union Pacific R. Co. v. Public Service Commission, 102 Utah 465, 132 P.2d 128 (1942); Goodrich v. Public Service Commission, 114 Utah 296, 198 P.2d 975 (1948); Lakeshore Motor Coach Lines, Inc. v. Welling, 9 Utah 2d 114, 339 P.2d 1011 (1959).

In its most recent discussion of the limitation of its authority to review a Commission decision, this Court upheld the Commission's exparte dismissal of a complaint upon its finding that there was no violation of Utah law. Giving due respect to the authority of the Commission to dispose of matters in a summary fashion, this Court stated:

These statutes enabled Industrial to bring its complaint against the Mobile corporations and allowed the PSC to consider it exparte. Rule 13 of the PSC's Rules of Procedure allows the Commission to dispose of the complaint without a hearing. Under this rule the contesting party may lodge a protest stating why a hearing should be held and have the protest reviewed by the Commission. In this instance because it appeared to the PSC that there was no violation of Utah law, the Commission concluded that a hearing on Industrial's complaint was unnecessary and followed its Rule 13 by dismissing the complaint. Although Industrial petitioned for a rehearing, it was considered by the PSC but denied. In so doing, the Commission acted within the scope of its own rules and statutory authority. (Emphasis added.)

Williams v. Public Service Commission, 645 P.2d at 601 (Utah 1982).

The distinctions between the responsibility of the judiciary and the Commission must be observed. It is the Commission's province to regulate the business of utilities and the judiciary's function to review the lawfulness of Commission decisions. Just as it is not appropriate for courts to



instruct the Commission as to what is a "reasonable rate", it is beyond the judicial province to direct the Commission as to how it must deal with a utility proposal for the division of property and allocation of benefits. That is a statutory prerogative of the Commission subject only to the limitation that its decision be made in the regular pursuit of its authority.

This Court's recognition of the separate responsibilities of the Commission and the judiciary is important in two respects. It is instructive as to the meaning and operative effect of the Wexpro Decision and offers guidance in the review of the Order which is on appeal. It is clear that the impact of the Wexpro Decision is to point out the legal deficiency in the Commission's earlier order approving a purchase and sale agreement and joint exploration agreement between Wexpro and Mountain Fuel Supply Company, and to offer guidance to be observed by the Commission in reconsidering those matters. The scope of review in the matter at hand is the same. This Court, however, is not asked to rule upon the propriety of the purchase and sale agreement and joint exploration and development agreement which were the subject of the Commission's former order, but is asked to look at a wholly new transaction. The question before the court now is whether

the Commission regularly pursued its authority in approving the Agreement which the Commission found after eight days of hearings and careful scrutiny to be in the public interest and consistent with the legal principles enunciated in the Wexpro Decision. In making this determination, full recognition must be given to the Utah statutory law which provides the Commission with broad discretionary authority to adopt settlement proposals. The Order may not be set aside for the sole reason that it is based on a settlement.

II. SETTLEMENT OF DISPUTES INVOLVING  
UTILITIES ARE IN THE PUBLIC INTEREST  
AND SHOULD BE ENCOURAGED.

The Coalition and Department stress the fact that the Agreement was entered solely for the purpose of avoiding litigation and for that reason the Order is inherently deficient. (Dept. Br. at 61; Coalition Br. at 12-15.) Plaintiffs do not contend that the termination of lengthy litigation was not an important goal of the parties to the Agreement. Plaintiffs further concede that it has supported the Agreement on the basis that stability and certainty would at last prevail. In fact, the importance of obtaining certainty through a final resolution of this matter is the subject of Plaintiffs' petition in these proceedings. The termination of costly litigation and the achievement of

certainty are recognized to be important benefits of settlement which serve the public interest and should not be denigrated in these proceedings.

In Pennsylvania Gas & Water Co. v. FPC, 463 F.2d 1242 (D.C. Cir. 1972), the Court refused to set aside an order of the Federal Power Commission approving a "stipulation and agreement" with respect to rate issues and in so doing noted that all parties do not have to consent to a settlement if the agency reviewing the settlement finds that its terms are equitable. 463 F.2d at 1246. Settlement carries a different meaning and connotation in administrative law than it does in court actions. While a court resolves only those issues that are presented by litigants and can allow the matter to be resolved through settlement only if all parties agree, regulatory agencies have a broader scope of responsibility to make decisions in the public interest. As does Utah statutory law, the federal law provides an administrative agency with specific authority to resolve a matter through settlement. Administrative Procedure Act § 554(c) (5 U.S.C. § 554 (c)). The Pennsylvania decision emphasized the importance of the settlement prerogative as follows:

Only by exercising such . . . "administrative settlement" procedures when called for can the usual interminable length of regulatory agency proceedings be brought within the bounds of reason and the agencies' competence to deal with them.

Id. at 1246.

The legislative history of § 554(c) recognizes, said the Pennsylvania court, that it is "of greatest importance to the functioning of the administrative process" and it is further the whole purpose of the informal settlement provision:

to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own which the appropriate agency finds compatible with the public interest.

Id. at 1247.

Settlement agreements are encouraged for the distinct purpose of "setting rights, [and] providing for stability in the exercise of those rights . . . ." Continental Oil Co. v. FPC, 373 F.2d 96, 100 (10th Cir. 1967). Informal disposition is the lifeblood of the administrative process. Local 282, International Brotherhood of Teamsters v. NLRB, 339 F.2d 795 (2d Cir. 1964). Cities of Lexington v. FPC, 295 F.2d 109 (4th Cir. 1961). Where an agency finds a settlement proposal to be in the public interest, it need not conduct a formal hearing. New Orleans Public Service, Inc. v. FERC, 659 F.2d 509 (5th Cir. 1981).

The importance of the settlement process to administrative agencies was emphasized, and the liberality of agency discretion in that regard was observed by the court in

Cities of Lexington v. FPC, supra, in response to a party's contention that the Federal Power Commission could not suspend a rate increase and announce that a hearing would be had and thereafter, without the unanimous consent of interested parties adopt a settlement. The Court stated:

[I]t goes without saying that there is no substance to the suggestion that if the Commission at the time of suspension announces that a hearing will be held the hearing must be held no matter how futile or unnecessary it thereafter becomes by reason of a settlement. No court of law would tolerate for a moment the idea that it would be obliged to try a case that had been assigned for hearing notwithstanding the fact that the parties had reached a settlement of the controversy. Much less such a contention be considered here with reference to the ruling of an administrative tribunal where liberality of procedure is essential in the interest of the dispatch of business. (Emphasis added.)

295 F.2d at 121.

That the law favors settlement of disputes is without question. Placid Oil Co. v. FPC, 483 F.2d 880 (5th Cir. 1973); Amoco Production Co. v. FPC, 465 F.2d 1350 (10th Cir. 1972); Continental Oil Co. v. FPC, 373 F.2d 96 (10th Cir. 1967); Texas Eastern Transmission Corp. v. FPC, 306 F.2d 345 (5th Cir. 1962).

The fact that the Agreement was entered in part to terminate costly litigation and to provide certainty with respect to the manner in which properties can be developed

does not detract from the lawfulness of the Order. The importance of these benefits of settlement are universally acknowledged and form the policy considerations which underlie settlement statutes. In enacting § 54-7-10, Utah Code Ann. (Supp. 1981) providing for settlement, the Utah legislature necessarily recognized that resolution of controversy through settlement is in the public interest. The legislature also recognized that in reaching settlement parties may compromise their views. The Department and the Coalition's continued negative reference to the motivations of the parties to the Agreement is deceptive and in conflict with the law.

#### CONCLUSION

Plaintiffs are in complete agreement with the Department and Coalition that the Order should be set aside but for wholly different reasons. The Utility Shareholder Association supported the Commission's approval and adoption of the Agreement based on its understanding that the Commission would render an order that is final and res judicata so that those complex and divisive issues resulting from the Wexpro Decision can at last be put to rest. On the other hand, the Coalition and Department seek to invalidate the Agreement for the purpose of extending the controversy through costly litigation.

The Coalition and Department state that the Commission erred by not precisely following the mandate of this Court in the Wexpro Decision. In fact, the Commission precisely followed that mandate. In rendering the Order, the Commission corrected the legal errors inherent in earlier proceedings involving different transactions and exercised its statutory prerogative to resolve the controversy through settlement.

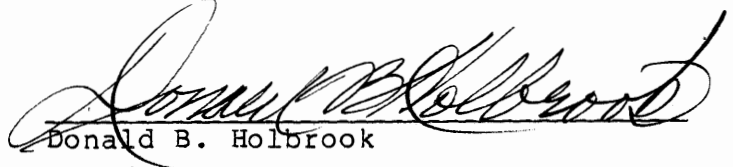
The fact that in arriving at the Agreement, the parties thereto may have compromised their initial positions, does not mean that there has been a compromise of the legal principles announced in the Wexpro Decision. The Commission's findings that the Agreement is consonant with the Wexpro Decision is based upon its independent examination of the Agreement and the evidence presented to it during eight days of hearings. The Coalition participated in those hearings and was not timid in presenting its opposition to the Agreement. The Commission's Order is not based on a one sided view but arises out of an adversarial proceeding. The parties may have compromised their positions but the Commission did not do so.

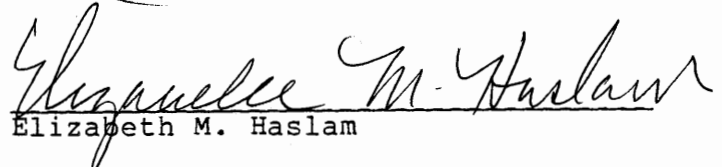
Plaintiffs recognize that this Court should perform a substantial and meaningful review of the Order and encourages it to do so. Silver Beehive Telephone Co. v. Public Service Commission, 30 Utah 2d 44, 512 P.2d 1327 (1973). However, in conducting that review, due respect should be afforded to the

jurisdiction and authority of the Commission to resolve disputes through settlement. Given the underlying and well recognized policy considerations favoring settlement, the Commission should be accorded the widest latitude of discretion.

RESPECTFULLY SUBMITTED this 26 day of July,  
1982.

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CERTIFICATE OF SERVICE

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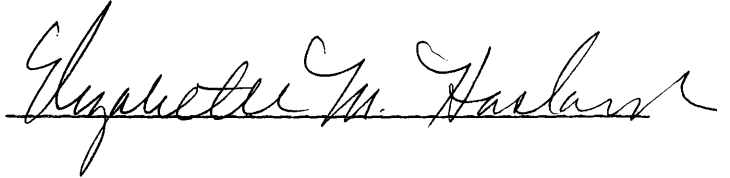
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A handwritten signature in cursive script, appearing to read "Stephen H. Blum", written over a horizontal line.