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1. [Taylor v. PSC, 2005 Utah App. LEXIS 146](#)

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Taylor v. PSC

Court of Appeals of Utah

March 17, 2005, Filed

Case No. 20030694-CA

Reporter

2005 Utah App. LEXIS 146; 2005 UT App 121

Bryan Taylor, Petitioner, v. Public Service Commission and PacifiCorp, Respondents.

Notice: [*1] NOT FOR OFFICIAL PUBLICATION

Disposition: Court declined to disturb Public Service Commission's order.

Core Terms

trimming, circumstances, public utility, guidelines, supervise, issues

Case Summary

Procedural Posture

Petitioner homeowner challenged a tree trimming proposal of respondent power company in an administrative setting before respondent Utah Public Service Commission (PSC), but he was denied relief. On appeal, the homeowner argued that his due process rights were violated in multiple ways during the course of the proceedings before the PSC.

Overview

The homeowner alleged that the burden of proof was on the power company to demonstrate that its proposed trimming was reasonable under the circumstances, that the PSC erred by refusing to grant his petition for a rehearing, that the PSC's order was not supported by substantial evidence, and that the PSC erred by declining to address whether the power company had an easement over his property. The appellate court noted that in a typical challenge to agency action, the party challenging the action carried the burden of demonstrating its impropriety. The appellate court held that the homeowner provided no explanation as to why the "new" evidence or similar evidence was not available at his PSC hearing, or why he could not have introduced that material during the hearing, and that substantial evidence supported the PSC's determination that the electric company's guidelines and proposed trimming plans were objectively reasonable under all the circumstances. The appellate court concluded that a decision regarding the existence of an easement over the homeowner's property was not within the jurisdiction of the PSC.

Outcome

The judgment of the PSC was affirmed.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > General Overview

Evidence > Burdens of Proof > General Overview

HN1 In the typical challenge to agency action, the party challenging the action carries the burden of demonstrating its impropriety.

Administrative Law > Judicial Review > Reviewability > Factual Determinations

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Civil Procedure > Appeals > Standards of Review > De Novo Review

Energy & Utilities Law > Administrative Proceedings > Judicial Review > General Overview

Energy & Utilities Law > ... > Public Utility Commissions > Hearings & Orders > Judicial Review

HN2 An appellate court does not review the Utah Public Service Commission's findings de novo or reweigh the evidence.

Energy & Utilities Law > Regulators > Public Utility Commissions > General Overview

Energy & Utilities Law > Regulators > Public Utility Commissions > Authorities & Powers

Energy & Utilities Law > Utility Companies > General Overview

HN3 Under [Utah Code Ann. § 54-4-1](#) (2000), the Utah Public Service Commission is vested with power and jurisdiction to supervise and regulate every public utility in Utah, and to supervise all of the business of every such public utility in the state.

Counsel: Bryan Taylor, Petitioner, Pro se, Salt Lake City.

Gregory B. Monson, David L. Elmont, and Sander J. Mooy, Salt Lake City, for Respondents.

Judges: Gregory K. Orme, Judge. WE CONCUR: Judith M. Billings, Presiding Judge, Norman H. Jackson, Judge.

Opinion by: Gregory K. Orme

Opinion

MEMORANDUM DECISION

Original Proceeding in this Court.

ORME, Judge:

We have determined that "the facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." [Utah R. App. P. 29\(a\)\(3\)](#). Moreover, the issues presented are readily resolved under applicable law.

Taylor asserts that his due process rights were violated in multiple ways during the course of the proceedings before the Public Service Commission. Even assuming Taylor properly preserved these issues for appeal, his arguments fail on their merits.

We reject Taylor's argument that "any and all burden of proof should be on PacifiCorp" to demonstrate that its proposed trimming was reasonable under the circumstances. **HN1** "In the typical challenge [*2] to agency action, the party challenging the action carries the burden of demonstrating its impropriety." [SEMECO Indus. v. Utah State Tax Comm'n](#), 849 P.2d 1167, 1174 (Utah 1993) (Durham, J., dissenting). See [Kelly v. Salt Lake City Civil Serv. Comm'n](#), 2000 UT App 235, P30, 8 P.3d 1048 (favorably quoting Justice Durham's dissent).

We also refuse to find that the PSC erred in denying Taylor's petition for a rehearing. Taylor provided no explanation as to why the "new" evidence or similar evidence was not available at the May 29, 2003 hearing, or why he could not have introduced this material during the May hearing.

Moreover, Taylor's contention that the PSC gave undue deference to PacifiCorp's evidence during the hearing is not supported by the record. He fails to demonstrate that the PSC exhibited bias in favor of PacifiCorp.

Taylor also has not demonstrated that the PSC's order was "not supported by substantial evidence when viewed in light of the whole record before the court." Utah Code Ann. § 63-46b-16(4)(g) (1997). **HN2** "We do not review the Commission's findings de novo or reweigh the evidence." [*Lucas v. Murray City Civil Serv. Comm'n*, 949 P.2d 746, 758 \(Utah Ct. App. 1997\)](#). [*3] The PSC's findings that PacifiCorp has the legal right to trim "to the extent necessary to avoid interference with the Company's lines and to protect public safety," and that the proposed trimming is reasonable under these circumstances, is supported by the National Electric Safety Code trimming guidelines, the Approved American National Standard A300 standards, and the testimony of PacifiCorp's Assistant Forester, Randy Miller. Thus, while Taylor has understandably strong views and some evidence to the contrary, we are persuaded that substantial evidence supports the PSC's determination that PacifiCorp's guidelines and proposed trimming plans are objectively reasonable under all the circumstances.

Finally, we agree with the PSC that a decision regarding the existence of an easement over Taylor's property is not within the jurisdiction of the PSC. See [*Utah Code Ann. § 54-4-1*](#) (2000) (stating that **HN3** PSC is "vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state"). Cf. [*Kearns-Tribune Corp. v. Public Serv. Comm'n*, 682 P.2d 858, 859 \(Utah 1984\)](#) [*4] (setting aside PSC action and rule where no explicit statutory authority for rule).

Accordingly, we decline to disturb the PSC's order.

Gregory K. Orme, Judge

WE CONCUR:

Judith M. Billings,

Presiding Judge

Norman H. Jackson, Judge

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