

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

)
In the Matter of the Petition of Sierra Adler,)
et al for a Rule Change to Adopt a)
Greenhouse Gas Reduction Plan in Order to)
Maintain the Integrity of the Atmosphere, a)
Public Trust Resource)
)

DOCKET NO. 11-999-06

ORDER DENYING
PETITION FOR RULE CHANGE

ISSUED: June 30, 2011

SYNOPSIS

The Petitioners' request that the Commission adopt rules governing greenhouse gas emissions reduction by public utilities is beyond the jurisdiction of the Commission and is not appropriate to the powers of the Commission. The Commission denies the Petition and request for a hearing.

BACKGROUND

By the Commission:

This matter is before the Commission on the Petition of Siera Adler, Kathy Adbury, Bill Barron, Pamela Lewis, Sara Ma, Scott McLeod, Sara Melnicoff, Douglas J. Roberts, Mathias Sanyer, Rebekah Sosa, Claire Uno, Kevin Uno, John Weisheit, Paul Wickelson, Shea Wickelson, Robert Wilson, Lauren Wood, Steven Wood, and Nathan Zick-Smith for a Rule Change.

The Petition contains several pages of allegations serving as the basis for the relief the Petitioners seek from numerous agencies. In summary, Petitioners ask this Commission to: 1) "evaluate and propose any changes to Utah laws and regulations necessary to achieve 6% annual GHG emission reductions"; 2) adopt a rule whereby public utilities operating in Utah are required to reduce their "CO₂ emissions by 6% annually" (GHG Reduction Plan

Rule), *Id.* at ¶ IV.8.a.,p.45, and 3) adopt a rule requiring the “publication of a [report] comparing the GHG Reduction Plan with the annual emissions” so the public can determine how Utah is “protect[ing] the atmosphere.” (Effectiveness Report Rule) *Id.*

Petitioners also seek a public hearing on their proposed rules, pursuant to Utah Code Ann. § 63G-3-302(2)(b)(i), which states in part: “Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if: (b) (i) . . . 10 interested persons, . . . request a public hearing” Because there are more than 10 interested persons named in the Petition, Petitioners claim they are entitled to a hearing.

ANALYSIS

The Petition is made pursuant to Utah Code Ann. § 63G-3-601(2) which states: “An interested person may petition an agency to request the making, amendment, or repeal of a rule.” The statute also states: “A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.” *Utah Code Ann. § 63G-601(4)*. Utah Code Ann. § 63G-3-102(16)(a) defines a rule: “‘Rule’ means an agency’s written statement that: (i) is explicitly or implicitly required by state or federal statute or other applicable law; (ii) implements or interprets a state or federal legal mandate; and (iii) applies to a class of persons or another agency.”

Petitioners have not demonstrated the Commission has jurisdiction to evaluate Utah laws and regulations pertaining to GHG emissions, to propose laws and regulations necessary to achieve 6% annual reductions, and to adopt the various rules for Utah public

utilities that would implement the requirements of laws that are currently non-existent. The Commission's jurisdiction to regulate public utilities is limited to those powers conferred in the statutes that define the scope of its duties. "It needs no citation of authorities that where a specific power is conferred by statute upon a tribunal, board, or commission with limited powers, the powers are limited to such as are specifically mentioned." *Bamberger E.R. Co. v. Public Utils. Comm'n*, 204 P.314, 320 (Utah 1922). The Commission has neither the statutory authority nor the expertise and resources necessary to conduct the requested evaluation and rule making.¹ In fact, Petitioners do not, and cannot, identify an existing "state or federal statute or other applicable law", or "state or federal legal mandate" that explicitly or implicitly gives the Commission jurisdiction to make the requested rules ordering a specified annual level of CO₂ emissions reductions. A rule stems from a statute giving the Commission a legal mandate. A rule cannot be made independent of statute or applicable law.

In an apparent attempt to satisfy Utah Code Ann. § 63G-601(4), Petitioners refer to the Commission's statutory "power and jurisdiction to supervise and regulate every public utility in this state" *Petition*, ¶ IV.8.a.,p.45 (citing Utah Code Ann. § 54-4-1). Petitioners further note the Commission's statutory mandate to "engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources." *Id.* They then allege: "Because it would be impossible to 'facilitate well-planned development and conservation of utility resources' without acknowledging and responding to the risks posed by climate change, the request for a GHG Reduction Plan that best

¹ The Commission is essentially an economic regulator of public utilities, charged with assuring utility rates are just and reasonable and that utility services are adequate and reliable. Neither the commissioners nor their limited professional staff have expertise in the environmental sciences

reflects the best available science is within the authority of the PSC.” *Id.* This perfunctory and unsupported assertion does not supply the requisite statutory authority. Rather, it ignores the statutes which define the Commission’s regulatory powers and the Utah Supreme Court’s decisions confining the Commission’s authority to that which has been expressly or impliedly granted.² Consequently, even assuming all the Petitioners’ factual allegations are true, the statutes cited by Petitioners do not give the Commission authority to evaluate current laws affecting GHG Emissions by public utilities and to, in effect, legislate additional requirements. Even if the rules the Petitioners seek are based on sound public policy, “public policy goals standing alone cannot support” Commission rules or orders. *Mountain States Tel. & Tel. Co. v Public Serv. Comm’n*, 754 P.2d 928, 933 (Utah 1988). “Without clear statutory authority, the Commission cannot pursue even worthy objectives for the public good.” *Id.* The Commission lacks jurisdiction to implement the rules or take the other actions petitioners request. For the foregoing reasons, the Commission must deny the Petition. The request for a hearing is moot.

ORDER

1. The Petition is denied;
2. The request for hearing is denied;
3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request

² See *Heber Light and Power v. Utah Pub. Svc. Comm’n*, 2010 UT 27, ¶17 (holding “‘It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute.’” Quoting *Hi-Country Estates Homeowners Ass’n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995)); see also *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 754 P.2d 928, 930 (Utah 1988) (holding that “‘When a ‘specific power is conferred by statute upon a . . . commission with limited powers, the powers are limited to such as are specifically mentioned.’ Accordingly, to ensure that the administrative powers of the [Commission] are not overextended, any reasonable doubt of the existence of any power must be resolved against the exercise thereof.” (internal quotation marks omitted)).

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with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 30th day of June, 2011.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 30th day of June 2011, as the Order Denying
Petition for Rule Change of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
DH#207614