

# ATTACHMENT 2

Judges and Attorneys

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.

**Bryan TAYLOR, Petitioner,**  
**v.**  
**PUBLIC SERVICE COMMISSION and PacifiCorp,**  
**Respondents.**

No. 20030694-CA.

March 17, 2005.

Original Proceeding in this Court.

Bryan Taylor, Salt Lake City, Petitioner Pro Se.

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

Before Judges BILLINGS, JACKSON, and ORME.

**MEMORANDUM DECISION (Not For Official Publication)**

**ORME, Judge:**

\*1 We have determined that “[t]he 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. “In the typical

challenge 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, ¶ 30, 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). “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). 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 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) (setting aside PSC action and rule where no explicit statutory authority for rule).

\*2 Accordingly, we decline to disturb the PSC's order.

**WE CONCUR: JUDITH M. BILLINGS, Presiding Judge and NORMAN H. JACKSON, Judge.**

Utah App.,2005.

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Not Reported in P.3d, 2005 WL 615164 (Utah App.), 2005 UT App 121