
In the Commonwealth Court of Pennsylvania

Nos. 630, 631 and 632 C.D., 1971

PENNSYLVANIA HUMAN RELATIONS COMMISSION

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

No. 630—Appeal of The National Association for the Advance-
ment of Colored People, Inc.

No. 631—Appeal of Pennsylvania Human Relations Commission
and Alvin E. Echols, Jr.

No. 632—Appeal of Pennsylvania Human Relations Commission

BRIEF FOR APPELLANT, PENNSYLVANIA HUMAN RELATIONS COMMISSION

Appeals From the Order of the Pennsylvania Public Utility Com-
mission at Complaint Docket Nos. 19107 and 19114.

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INDEX TO BRIEF

	PAGE
Statement of Jurisdiction	1
Statement of Questions	2
History of the Case	3
Argument:	
I. The statutory provisions of the Public Utility Law give the PUC the authority and power to consider whether the Philadelphia Electric Company is engaged in unlawful discriminatory employment practices	5
II. Under its general powers to act in the public interest the PUC has the authority and power to hold a hearing pursuant to rate increase proceedings to consider the allegations of the PHRC complaint	13
III. The PUC is obligated by the Constitution of the United States and the Constitution of the Commonwealth to declare Philadelphia electric's rate increase unlawful	17
Conclusion	21

TABLE OF CITATIONS

CASES:

Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 379 (1959)	15
---	----

Ethridge v. Rhodes, 268 F. Supp. 83 (S.D. Ohio, 1967)	19
Federal Communications Commission v. American Broadcasting, 347 U.S. 190 (1954)	14
Federal Communications Commission v. Pottsville, 309 U.S. 134 (1940)	16
Federal Maritime Commission v. Svenska Amerika Linien, 389 U.S. 816 (1968)	15
Federal Communications Commission v. WOFO, Inc., 329 U.S. 223 (1946)	14
Hall v. Werthan Bag, 251 F. Supp. 184 (M.D. Tenn., 1966)	18
Henderson v. United States, 339 U.S. 816 (1950)	16
Henry v. Federal Communications Commission, 302 F. 2d 191 (C.A. D.C., 1962), cert. den. 371 U.S. 822 (1962)	16
Hughes Tool Co. v. National Labor Relations Board, 147 NLRB, 1573, 56 LRRM 1288 (1964)	16
Interstate Commerce Commission v. Railway Labor Executive Association, 315 U.S. 373 (1942)	15, 16
Irvis v. Scott, 318 F. Supp. 1246 (M.D. Pa., 1970)	19
James v. Ogilvie, 310 F. Supp. 661 (N.D. Ill., 1970)	19
Jenkins v. United Gas Corp., 400 F. 2d 28 (C.A. 5, 1968)	15, 18, 20
Local 12, United Rubber Workers v. National Labor Relations Board, 368 F. 2d 12 (C.A. 5, 1966), cert. den. 389 U.S. 837 (1967)	17

Bowe v. Colgate Palmolive, 416 F. 2d 711 (C.A. 7, 1969)	20
Boynton v. Commonwealth of Virginia, 364 U.S. 464 (1960)	16
Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)	19
Citizens Water Co. v. Public Utilities Commission, 181 Pa. Superior Ct. 301, 124 A. 2d 123 (1956)	13
Citta v. Delaware Valley Memorial Hospital, 313 F. Supp. 301 (E.D. Pa., 1970)	19
City of Pittsburgh v. Federal Power Commission, 237 F. 2d 741 (C.A. DC.)	15
Colorado Anti-Discrimination Commission v. Continental Airlines, 372 U.S. 714 (1963)	17
Commonwealth Edison Co., Case No. 55149 (1970)	16
Coplay Cement Mfg. Co. v. Public Service Commission, 271 Pa. 58, 114 A. 649 (1921)	8
Day v. Public Service Commission, 312 Pa. 381, 167 A. 565 (1933)	7
Discrimination in Operation of Interstate Motor Carriers of Passengers, 86 I.C.C. (M.C. Cases) 743 (1961)	16
Duquesne Light Co. v. Penna. Public Utility Commission, 164 Pa. Superior Ct. 166, 63 A. 2d 466 (1949)	7
Eric Lighting Co. v. Penna. Public Utility Commission, 131 Pa. Superior Ct. 190, 198 A. 901 (1938)	11

McLean Trucking Co. v. United States, 321 U.S. 67	15	Washington Gas Light Co. v. Virginia Elec. Power Co., F. 2d (C.A. 4, No. 14, 605, Feb. 12, 1971)	11
National Broadcasting Co. v. United States, 319 U.S. 190 (1943)	15	Womeldorf Consol. Water Co. v. Penna. Public Utility Commission, 160 Pa. Superior Ct. 298, 50 A. 2d 548 (1947)	10
Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968)	15	Wright v. Brighton, F. 2d 39 LW 2551 (C.A. 5, 1971)	19
Niagra Mohawk Power Corp. v. Federal Power Commission, 379 F. 2d 153 (C.A. D.C., 1967)	14	Pa. Constitution, Article I:	
Office of Communications of the United Church of Christ v. FCC, 359 F. 2d 994 (C.A. D.C., 1966)	16	Section 1	20
Penna. Ry. Co. v. P.U.C., 187 Pa. Superior Ct. 590, 146 A. 2d 352 (1959)	7	Section 26	20
Potomac Elec. P. Co. v. Public Service Commission of the Dist. of Columbia, C.A. No. 2382-71	6, 7, 13	Section 27	20, 21
Reading & Southwestern St. Rwy. Co. v. Public Utility Commission, 168 Pa. Superior Ct. 61, 77 A. 2d 102 (1951)	13	14th Amendment to the Constitution of the United States	11, 18, 20, 21
Rosen v. Public Service Elec. Co., 409 F. 2d 775 (C.A. 3, 1969)	20	Civil Rights Act, Title VII, 1964	11
Scenic Hudson v. Federal Power Commission, 354 F. 2d 608	14, 15	Penna. Human Relations Act, 42 U.S.C. 1981	11
Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (C.A. 4, 1963)	19	Report on Establishment of Uniform Policy in Connection With Violations by an Applicant of Laws of the United States, 1 Pike & Fisher, Radio Regulation, Part Three 91:32	14
Sonafelt v. Penna. Public Utility Commission, 175 Pa. Superior Ct. 164, 103 A. 2d 442 (1954)	10	MISCELLANEOUS:	
Washington Gas Light Co. v. Baker, 188 F. 2d 11 (C.A. D.C., 1950), cert. den. 340 U.S. 959 (1951)	16	Public Utility Law, Article IX:	
		66 P.S. 1122, Sec. 202	9
		66 P.S. 1141, Sec. 301	13
		66 P.S. 1183, Sec. 413	11, 12
		66 P.S. 1342, Sec. 902	8, 12
		66 P.S. 1343, Sec. 903	8, 10, 12
		66 P.S. 1354, Sec. 914	10
		66 P.S. 1357, Sec. 917	10
		66 P.S. 1439, Sec. 1109	9

STATEMENT OF JURISDICTION

Jurisdiction is based on Section 403(1) of the Appellate Court Jurisdiction Act of 1970, July 31, 1970, P. L. 223, which provides for direct appeals from administrative agencies.

STATEMENT OF QUESTIONS

I. Did the statutory provisions of the Public Utility Act give the Public Utility Commission the authority and power to consider whether the Philadelphia Electric Company is engaged in unlawful discriminatory employment practices?

II. Did the Public Utility Commission have the authority and power to hold a hearing pursuant to rate increase proceedings under its general powers to act in the public interest to consider the allegations of the complaint filed by the Human Relations Commission?

III. Is the Public Utility Commission obligated by the Constitution of the United States and the Constitution of the Commonwealth to declare Philadelphia Electric's rate increase unlawful?

On November 19, 1970, Philadelphia Electric Company applied to the Public Utilities Commission (hereinafter PUC) for a rate increase. Subsequently, the Pennsylvania Human Relations Commission (hereinafter PHRC), Alvin E. Echols, Jr. and Andrew G. Freeman, individuals and Commissioners of PHRC filed a complaint opposing such rate increase on the ground that the Company was in violation of state and federal laws prohibiting discrimination in employment, and was thereby acting contrary to the Public Utility Law of the Commonwealth of Pennsylvania. On or about February 11, 1971, the Company filed a motion to dismiss the complaint of PHRC to which PHRC filed an answer on or about March 5, 1971.

The National Association for the Advancement of Colored People (hereinafter referred to as NAACP) filed a petition to intervene and motion to reject application for rate increase on or about April 28, 1971. Thereafter, on or about May 7, 1971, NAACP filed an amended petition and motion to reject application. The Philadelphia Electric Company filed a motion to dismiss the NAACP petition to intervene on or about May 19, 1971.

Pursuant to the procedures set forth in the Pennsylvania Human Relations Act, PHRC also initiated two complaints against the Philadelphia Electric Company. The first complaint, which is styled

PHRC v. Philadelphia Electric Company, Docket No. E-4153 (1971), alleges employment discrimination. The second complaint, PHRC v. Philadelphia Electric Company, Docket No. P-750 (1971), alleges discrimination in service under the public accommodations provisions of the Human Relations Act.

PHRC requested that the PUC hold a hearing at which the PHRC would present evidence in support of its complaint. By order dated June 21, 1971, the PUC dismissed without prejudice the complaint of PHRC and denied the NAACP petition to intervene without a hearing or oral argument. The order of the PUC dismissing the complaint of PHRC makes no determination regarding the jurisdiction of the PUC, and indicates that consideration of the issues of the PHRC complaint would be considered only if the Human Relations Commission should, in fact, determine whether Philadelphia Electric has committed unlawful discrimination in its own proceedings.

The PHRC, Alvin E. Echols, Jr. and NAACP filed exceptions to the PUC adjudication in this Court on July 30, 1971.

 ARGUMENT

 I.

The Statutory Provisions of the Public Utility Law Give the PUC the Authority and Power To Consider Whether the Philadelphia Electric Company Is Engaged in Unlawful Discriminatory Employment Practices

It is self-evident that a regulated public utility, like any other business, is required to operate in a lawful manner. Among the laws which such a utility must obey are the state and federal laws which prohibit discrimination in employment, based upon race, religion, national origin and sex. In dismissing the PHRC complaint, the PUC did not deny that the Philadelphia Electric Company was subject to the state and federal antidiscrimination laws, nor did it deny that the Company was engaged in such discrimination. Rather, it dismissed the complaint on the ground that the issues presented would be disposed of before the Human Relations Commission pursuant to the proceedings prior to the termination of the PUC rate increase proceedings.

This disposition is nonresponsive and completely unrelated to the issues raised by PHRC's complaint before the PUC.

The PHRC is well aware of its authority to administer and enforce the Human Relations Act.¹ The PHRC is also aware, however, that the Pennsylvania Public Utility Commission is empowered to administer and enforce the Public Utility Law, and that as part of its powers and duties under that law the PUC is required to assure that regulated utilities operate in a lawful manner. Thus, the complaint filed by the PHRC calls upon the PUC to enforce the Public Utility Law by requiring Philadelphia Electric to eliminate unlawful employment discrimination prior to the granting of a requested rate increase. Nevertheless, PUC dismissed the complaint without making any determination of its legal authority to determine whether the Company was in violation of the Human Relations Act. The order of the Commission cites no authorities nor does it address itself to the provisions of the Public Utility Law which compel the opposite result.

Recently, in *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia, C.A.*

¹ The Human Relations Commission has initiated a complaint against the Philadelphia Electric Company which is currently pending. It should be noted, however, that the form of relief to remedy any unlawful discrimination under the Human Relations Act differs considerably from the relief which PHRC seeks before the Public Utilities Commission. Under the Human Relations Act the Commission can order a respondent to cease and desist from any unlawful discriminatory practices and to take such affirmative action as will effectuate the purposes of the Act. Such remedial power does not include denial of a rate increase which is within the statutory authority of the Public Utilities Commission and which PHRC seeks as a complainant before PUC.

No. 2382-70 (decided on February 23, 1971), the Federal District Court for the District of Columbia held:

“Because PEPCO is a private utility, pursuing an essentially governmental function, guaranteed a stated rate of return on its investment, and regulated in the public interest, the Court concludes that the Commission had the authority and the power to examine PEPCO’s employment practices, either as a part of a rate proceeding or as an independent matter.”

In a similar manner, it is submitted that the Pennsylvania Public Utility Law provides the necessary authority to confer jurisdiction on the PUC to determine the issues raised in the PHRC complaint pursuant to the rate increase proceedings:

The powers of the PUC are derived from those which are expressly granted by statute or those which may be necessary and proper to carry out those specifically declared.² In regard to the regulation of every regulated utility’s service and facilities and the fixing of just and reasonable rates therefor, the authority conferred on the Commission includes the powers as may be necessary and proper in addition to those specifically declared in the act.³ In determining whether the exercise of a right by a regulated public utility offends against the regulatory control

² 66 P.S. §1341.

³ See e.g. *Pennsylvania Ry. Co. v. PUC*, 187 Pa. Superior Ct. 590, 146 A. 2d 352 (1959); *Day v. Public Service Commission*, 312 Pa. 381, 167 A. 565 (1933); *Duquesne Light Co. v. Pennsylvania Public Utility Commission*, 164 Pa. Superior Ct. 166, 63 A. 2d 466 (1949).

necessary for such corporation, the authority given the Commission should be liberally construed, and that which is incidentally necessary to a full exposition of the legislative intent must be upheld as germane to the law.⁴

Article IX, Section 902, of the Public Utility Law (66 P.S. 1342) provides:

“In addition to any powers hereinbefore expressly enumerated in this act, the commission shall have full power and authority, *and it shall be its duty*, to enforce, execute, *and carry out*, by its regulations, orders, or otherwise, all and singular the provisions of the Act, and the full intent thereof; . . .” (Emphasis supplied.)

In Section 903 of the same article the statute provides that the Commission may institute proceedings in court to compel compliance with the law (66 P.S. §1343). Enforcement proceedings may be commenced whenever a regulated utility.

“is violating, or is about to violate any provisions of this Act; or has done, or is about to do, *any act, matter, or thing herein prohibited or declared to be unlawful*; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse, to perform any duty enjoined upon it by this act, or has failed, neglected, omitted or refused, or is about to fail, neglect, omit, or refuse *to obey any lawful requirement, . . .*” (Emphasis added.)

⁴ *Coplay Cement Mfg. Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921).

The Public Utility Law spells out for the Commission, the broadest possible range of powers and responsibilities. These powers and responsibilities are not limited to the provisions set forth in the act itself, but incorporate all other laws and regulations to which a public utility may be subject.

Article XI, Section 1109 (66 P.S. 1439), provides for special appeal procedures in cases which involve “the construction or application of the Constitution of the United States or of any statute or treaty of the United States, or if the case involves the construction or application of the Constitution of Pennsylvania, . . .” In Article II, Section 202 (66 P.S. 1122), obtaining a certificate of public convenience is conditioned, *inter alia*, “upon compliance with existing laws. . . .” This requirement is perforce continuing and must be constantly subject to Commission review. Otherwise, a certificate, once obtained would become a license for unlawful conduct. Further reference to requirements placed upon public utilities by state and federal laws in addition to the Public Utility Law which this Commission has the power and the duty to enforce under the provisions of Article IX, may be found in Section 301, Section 414, Section 501, Section 504, Section 905 and Section 914 of the Act.

In this fashion the statute itself makes it clear beyond serious dispute that the legislature granted the PUC the authority and charged it with the responsibility for comprehensively regulating the activities of public utilities. That such regulation would necessarily involve matters not treated specifically or in detail in the Public Utility Law was recognized by the legislature, which in granting the broadest

kind of regulatory authority to the Commission, directed the Commission's attention specifically and generally to other statutes. The legislature provided the Commission with the power and the duty to compel compliance with such other laws to the extent that those laws applied to regulated utilities. No other meaning can be given to the fact that in carrying out its certifying function the Commission must be assured that the applicant is in "compliance with existing laws." No other meaning can be given to the provisions of Article IX, Section 917 (66 P.S. 1357) which preserves all "obligations, duties or liabilities . . . under the existing common or statutory law of the Commonwealth," or Section 914 (66 P.S. 1354) which empowers the Commission to investigate and remedy "violations of any Federal law. . ." Finally, the appeals provisions of Section 903 make no sense whatsoever except when it is understood that the normal activities of the Commission may involve questions arising under federal statutes, treaties or the federal or state constitution. Indeed, none of the many references to state and federal laws and regulations respecting public utilities make any sense unless the legislature intended that the Commission be conscious of such laws and apply them in its own regulatory activities.

The Legislature intended to give broad powers to the Commission to carry out the purpose of such law.⁵ In order to do so, the Legislature laid down

⁵ *Sonafelt v. Pennsylvania Public Utility Commission*, 175 Pa. Superior Ct. 164, 103 A. 2d 442 (1954); *Womcledorf Consol. Water Co. v. Pennsylvania Public Utility Commission*, 160 Pa. Superior Ct. 298, 50 A. 2d 548 (1947).

the general principles which control the actions of the Commission. It is up to the PUC to apply these general principles to particular fact situations so that the declared purpose of the Legislature is accomplished.⁶

The application of this principle to the question of employment discrimination leads inescapably to the conclusion that the state and federal laws prohibiting employment discrimination are among those laws with which the Commission must be concerned. The Company is subject to the provisions of both the Pennsylvania Human Relations Act, 42 U.S.C. 1981, and Title VII of the Civil Rights Act of 1964.⁷ These laws prohibit employment discrimination based upon race, national origin and sex. The complaint filed by the PHRC alleges that the Company is engaged in widespread violations of these laws. The Commission must come to grips with these allegations, for the Public Utility Law specifically regulates the employment practices of utilities. Thus, Section 413 (66 P.S. 1183) requires all regulated utilities to provide safe, adequate, sufficient service. That section also states that any "violation of this act" constitutes improper service. The word service itself as defined in Article I, Section 20 (66 P.S. 1120),

⁶ *Eric Lighting Co. v. Pennsylvania Public Utility Commission*, 131 Pa. Superior Ct. 190, 198 A. 901 (1938).

⁷ The Company may also be subject to the provisions of the 14th Amendment to the Constitution of the United States and the provisions of 42 USC 1983, in the event the Company is deemed to be quasi-governmental in character. See, *Washington Gas Light Co. v. Virginia Electric Power Co.*, F. 2d (C.A. 4, No. 14,605, February 12, 1971).

to include, "... any and all acts done, rendered, or performed, . . . by public utilities . . . in the performance of their duties under this act to their . . . employees. . . ." Acting against employees because of their race, sex or national origin cannot be deemed to be anything other than improper service within the meaning of Section 413.

In sum, the Public Utility Law requires all regulated utilities to conduct their operations in a law-abiding fashion. That law also empowers and requires the Commission to compel obedience to all applicable state and federal statutes. Appellant PHRC asserts in its complaint that Philadelphia Electric Company is violating the provisions of the Pennsylvania Human Relations Act by engaging in widespread discriminatory employment practices. Such unlawful conduct is prohibited by the Public Utility Law. Accordingly, pursuant to the provisions of Sections 901, 902 and 903 of the Public Utility Law, the PUC is under a duty to require the Company to refrain from such unlawful employment practices. The statute provides that public hearings may be held on complaints. The PHRC submits that its complaint raises questions of so serious a nature that a public hearing is required and requests that the Court order the PUC to hold a hearing on the complaint as provided in Section 1003, at which time the PHRC will present evidence in support of its allegations.

II.

Under Its General Powers To Act in the Public Interest the PUC Has the Authority and Power To Hold a Hearing Pursuant to Rate Increase Proceedings To Consider the Allegations of the PHRC Complaint

The Pennsylvania Public Utility Commission is charged with the duties of protecting the rights of the public by regulating in the public interest.⁸ Section 301 (66 P.S. 1141) requires that "every rate made, demanded, or received by and public utility, . . . shall be just and reasonable." The PHRC submits that, because Philadelphia Electric operates in such widespread disregard of equal employment laws, the rate increase granted by PUC is unjust and unreasonable and therefore unlawful. For a rate to be "just and reasonable" it must not offend the public interest and policy prohibiting discrimination in employment.

Public utilities are granted special privileges by the community and they are, therefore, much more than ordinary enterprises, held to a standard of service to the public. The instrument for protecting the public interest is the utility commission, and this function generates the authority to act even where there are no specific statutory provisions bearing upon the disputed issue. Thus, as the court pointed out in the *Potomac Electric Power Co.* case, supra, because of

⁸ *Citizens Water Co. v. Public Utilities Commission*, 181 Pa. Superior Ct. 301, 124 A. 2d 123 (1956); *Reading & Southeastern St. Rwy. Co. v. Public Utility Commission*, 168 Pa. Superior Ct. 61, 77 A. 2d 102 (1951).

the privileges granted the power company and the fact that it was "regulated in the public interest . . . the utility Commission had the authority and power to examine PEPCO's employment practices, either as part of a rate proceeding or as an independent matter." The court's conclusion is well founded in law which applies to the instant case.

The United States Court of Appeals for the Second Circuit stated in *Scenic Hudson v. Federal Power Commission*, 354 F. 2d 608, at p. 620 (C.A. 2, 1965), that a regulatory commission is:

" . . . not permitted to act as an umpire blandly calling balls and strikes for adversaries appearing before it. The right of the public must receive active and affirmative protection at the hands of the Commission."

This is true even in those cases where the administrative agency is called upon to protect the public interest by satisfying legislative objectives not specifically included in the agency's enabling legislation.⁹ It is now well established that a federal regulatory agency may consider whether an applicant has violated laws of the United States even though it may not have direct regulatory authority over the offense.¹⁰

⁹ *Niagra Mohawk Power Corporation v. Federal Power Commission*, 379 F. 2d 153, 159 (C.A. D.C., 1967); *Federal Communications Commission v. WOFO, Inc.*, 329 U.S. 223, 227-228 (1946).

¹⁰ *Federal Communications Commission v. American Broadcasting*, 347 U.S. 190, 222, 224 (1954); see also *Report on Establishment of Uniform Policy in Connection with Violations by an Applicant of Laws of the United States*, 1 Pike and Fisher, Radio Regulation, Part Three 91:32.

Indeed, the agency has a duty to do so.¹¹ We can see no basis for not applying these same principles to a state regulatory agency.

Even where no specific violation of another statute has been established, the Commission must act on issues of serious public interest.¹² Such action is required when any of three factors are present.

First, when there is a strong national and state policy regarding a certain issue, an agency must effectuate this policy.¹³ In this regard, the policy of the United States and the Commonwealth of Pennsylvania against discriminatory employment practices could not be stronger.¹⁴ Next, an agency is under a duty to carry out matters of public interest when it

¹¹ *City of Pittsburgh v. Federal Power Commission*, 237 F. 2d 741 (C.A. D.C.); *McLean Trucking Company v. United States*, 321 U.S. 67 (policies of the antitrust laws must be considered by the Federal Power Commission and the Federal Communications Commission in making a public interest determination).

¹² *National Broadcasting Company v. United States*, 319 U.S. 190 (1943); *Atlantic Refining Company v. Public Service Commission of New York*, 360 U.S. 379 (1959).

¹³ *City of Pittsburgh v. Federal Power Commission*, supra; *Interstate Commerce Commission v. Railway Labor Executive Association*, 315 U.S. 373 (1942); *Federal Maritime Commission v. Svenska Amerika Linien*, 389 U.S. 816 (1968); *Scenic Hudson Preservation Conference v. Federal Power Commission*, supra, cert den. 384 U.S. 941 (1966).

¹⁴ Congress has assigned to the vindication of civil rights and the elimination of racial discrimination the highest priority. *Newman v. Piggie Park Enterprises*, 390 U.S. 400 (1968); *Jenkins v. United Gas Corp.*, 400 F. 2d 28 (C.A. 5, 1968).

is performing a legislative function.¹⁵ When regulating rates, the Commission is acting in place of the legislature, and therefore must act as the legislature would.¹⁶ The public or any legislatively protected class has a right to see that the operation of public facilities or the granting of public privileges do not deny protected rights.¹⁷ Finally, an agency must act on issues of public interest when the party whom it regulates is a "public trustee".¹⁸ Since such private parties have "the free and exclusive use of the public domain," the agency must require them to meet the "needs and interests" of the public.¹⁹ Thus, the Courts have held that public agencies must prohibit racial discrimination by such parties.²⁰ A public

¹⁵ *Federal Communications Commission v. Poltsville*, 309 U.S. 134 (1940).

¹⁶ *Washington Gas Light Co. v. Baker*, 188 F. 2d 11 (C.A. D.C., 1950), cert. den. 340 U.S. 952 (1951).

¹⁷ *Interstate Commerce Commission v. Railway Labor Executives Association*, 315 U.S. 373, 378 (1942).

¹⁸ *Office of Communications of the United Church of Christ v. FCC*, 359 F. 2d 994 (C.A. D.C., 1966). Order of Illinois Commerce Commission; *Re: Commonwealth Edison Co.*, Case No. 55149 (1970).

¹⁹ *Henry v. Federal Communications Commission*, 302 F. 2d 191 (C.A. D.C., 1962), cert. den., 371 U.S. 822 (1962).

²⁰ *Boynnton v. Commonwealth of Virginia*, 364 U.S. 464 (1960). Interstate Commerce Commission must integrate restaurants in bus terminals serving interstate bus passengers; *Henderson v. United States*, 339 U.S. 816 (1950). Interstate Commerce Commission may not allow railroads to maintain segregated dining cars. *Discrimination in Operation of Interstate Motor Carriers of Passengers*, 86 I.C.C. (M.C. Cases) 743 (1961); *Inghes Tool Company v. National Labor Relations Board*, 147 NLRB 1573, 56 LRRM 1288 (1964). The National Labor Relations Board cannot certify a union

utility is a public trustee, and the PUC must require Philadelphia Electric Company to make every effort to meet public "needs and interests" including the policy against discrimination. As Judge Skelly Wright has said in this respect:

"A public utility exercises an extraordinary privilege and occupies a privileged position because of the franchise granted to it by governmental authority. In the circumstances public service of the highest order is the solemn obligation, and must be required of such a public utility".²¹

III.

The PUC Is Obligated by the Constitution of the United States and the Constitution of the Commonwealth To Declare Philadelphia Electric's Rate Increase Unlawful

As we have seen the Commission has specific authority to investigate and eliminate the Company's

which excludes employees from membership on racial grounds; *Local 12, United Rubber Workers v. National Labor Relations Board*, 368 F. 2d 12 (C.A. 5, 1966), cert. den. 389 U.S. 837 (1967). National Labor Relations Board properly ruled that union failing to process grievances concern employer's racial policies filed by Negro members interfered with members bargaining rights. Cf. *Colorado Anti-Discrimination Commission v. Continental Airlines*, 372 U.S. 714 (1963).

²¹ *Utilities and the Urban Poor*, Address to the Federal Bar Association Briefing Conference by Judge Skelly Wright.

unlawful employment practices, and it also has inherent authority to do so in the protection of the public interest. Appellant further submits that the Commission may not constitutionally fail to take such action.

The Fourteenth Amendment to the Constitution of the United States requires that the states refrain from denying a class of citizens substantial rights without a valid purpose.²² Here the PHRC complaint asserts that citizens of the Commonwealth of Pennsylvania are being denied equal employment opportunity because of their race, sex and national origin. It is plain that such criteria are not a valid basis for the denial of equal employment opportunities. Nor can it be disputed that the element of state participation in the denial of employment is present in this case.

It is the State which has granted the Company a monopoly on the sale of electricity and has guaranteed it a generous rate of return on its investment. And it is the State which has undertaken to regulate the activities of the Company. Therefore, it is the State, in this case the State's instrument, the Public Utility Commission, which is to be held responsible for the discriminatory practices of the Company under the

²² There can be no doubt that discrimination on the basis of race, national origin or sex is discrimination against a class. See, *Hall v. Werthan Bag*, 251 F. Supp. 184 (M.D. Tenn., 1966); *Jenkins v. United Gas*, 400 F. 2d 28 (C.A. 5, 1968). Nor can there be any doubt that denial of employment is a substantial right. See, *Jenkins v. United Gas*, supra.

Fourteenth Amendment.²³ Thus, the Equal Protection Clause has been held to bar a state from entering into construction contracts with contractors who do their hiring through unions that bar Negroes from membership. *Ethridge v. Rhodes*, supra. There, a state's interest in its contracts and its relationship to the private contractors provided the state action requirement necessary to reach the practices of the unions with which its contractors deal.

Here, the Commission's relationship with the Company involves an even greater degree of state action than that found in *Ethridge v. Rhodes*, supra. A public utility which supplies electricity to most homes in a large geographic area is performing a more substantial and direct public function than the contractor who builds one state building. An even greater degree of state action is evident when the Company's monopoly position as a supplier of electricity is considered. The Commission, besides setting rates, oversees all aspects of the Company's operation. In so doing, it assumes an increasing responsibility for the discriminatory practices of the Company, for the level of state action rises with the level of state regulation.²⁴ Moreover, in addition to its responsibilities

²³ See, *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Wright v. Brighton*, F. 2d 39 LW 2551 (C.A. 5, 1971); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (C.A. 4, 1963); *Citita v. Delaware Valley Memorial Hospital*, 313 F. Supp. 301 (E.D. Pa., 1970); *Ethridge v. Rhodes*, 268 F. Supp. 83 (S.D. Ohio, 1967); *James v. Ogburn*, 310 F. Supp. 661 (N.D. Ill., 1970).

²⁴ *Ireis v. Scott*, 318 F. Supp. 1246 (M.D. Pa., 1970) three judge court. Supreme Court review granted 1971.

under the Fourteenth Amendment flowing from its participation in the Company's discriminatory employment practices, failure on the part of the Commission to take the necessary steps to eliminate the Company's unlawful practices results in another independent violation of the Fourteenth Amendment. For, where as here, the Commission has the power to act against the discrimination practiced by the Company, a failure to act has the effect of placing the "imprimatur" of state acquiescence on the forbidden conduct. This is itself contrary to the requirements of the Federal Constitution. See, *Jenkins v. United Gas*, supra; *Rosen v. Public Service Electric Co.*, 409 F. 2d 775 (C.A. 3, 1969); of *Bowe v. Colgate Palmolive*, 416 F. 2d 711 (C.A. 7, 1969).

The Constitution of the Commonwealth of Pennsylvania contains several proscriptions against discrimination which PHRC asserts are likewise applicable to the instant case. See Article I, Section 1, 26, and 27, *Pa. Constitution*. The failure of the PUC to examine the employment practices of the Company by dismissing PHRC's complaint, in effect, violates the due process and equal protection provisions of Article I, Section 1.

Section 26 of Article I expressly proscribes discrimination by the Commonwealth. Appellant submits that the dismissal of the PHRC complaint without making a determination of the merits of the allegations violates this section. The PUC is required to determine whether or not it had authority to act, and if so, to treat the complaint like others filed pursuant to the rate increase proceedings by holding a public

hearing. Finally, the recently adopted "Equal Rights Amendment" to the State Constitution (Article I, Section 27) protects against discrimination on account of sex. Thus, the allegations contained in the PHRC complaint reach constitutional dimensions under the Constitution of the Commonwealth. The Commission at the very least, must examine the alleged unlawful employment practices in order to comply with the foregoing constitutional requirements.

In sum, the Company's discriminatory employment practices are the responsibility of the state, and therefore the discrimination goes beyond a simple violation of state and federal law, but rises to the level of a constitutional violation for which the Commission may be held accountable in a federal court. And, because it has the power to prevent employment discrimination, the Commission may not fail to act lest it engage in another violation of the Fourteenth Amendment.

CONCLUSION

For the reasons stated in the foregoing discussion, it is most appropriate and proper for the PUC to examine the alleged discriminatory practices of Philadelphia Electric pursuant to the rate increase proceedings. In fact, to grant the Company an increase and thereby permit it to profit from unlawful employment practices is violative of the Public Utility Law itself and contrary to the Constitutions of the United States and the Commonwealth.

Therefore, Appellant PHRC respectfully requests this Court to order: (1) that the order of the Public Utility Commission of June 21, 1971 be vacated and set aside; (2) that the PUC has the authority and power to consider and resolve the issues raised by the PHRC complaint pursuant to the rate increase proceedings; and (3) that the case be remanded to the PUC with instructions to conduct a hearing at which the issues of the complaint will be considered; and (4) that the PUC readjust any granted rate increase so as to deny the Company any profit until it has been ceased and desisted from committing any discriminatory employment practices and made whole all persons who have been denied equal employment opportunities.

Respectfully submitted,

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