

SUPREME COURT OF UNITED STATES

Wichita R. & Light Co.

Vs.

Public Utilities Commission of The State of Kansas (Kansas Gas & Electric CO., Intervener).

13.11.1922

The Wichita Railroad & Light Company, a corporation of West Virginia, is an electric street railroad and light furnishing company doing business in Wichita, Kan., and will be known as the Wichita Company. The Kansas Gas & Electric Company, also a West Virginia corporation, and to be known as the Kansas Company, is engaged in the business of furnishing electrical light and power to consumers in Kansas. In 1910, the two companies made a contract by which the Kansas Company agreed to furnish, and the Wichita Company agreed to accept and pay for, electrical energy at certain rates until 1930, and the contract was fulfilled by both 1918. Then the Kansas Company filed a petition with the Public Utilities Commission of Kansas, to be known as the Commission, in which it alleged that on account of the increase in the cost of production and distribution——

'the net income of your petitioner for the year ending December 31, 1917, was approximately \$190,000 less than it would and should have been if your petitioner had been able to operate under the normal conditions that existed in 1914, at which time its said rates were first installed as aforesaid; that if said rates are continued in effect hereafter, the result hereof will be disastrous to your petitioner, depriving it of a reasonable return upon the value of its said property, and making it impossible to find a market for the securities it must issue and sell in order to provide funds with which to make improvements, additions and betterments which are necessary if it is to furnish proper and adequate service to the communities in which it operates.'

The petition further recited that in December, 1916, being of opinion that it could reduce its rates for residential and commercial lighting, it proposed a gradual reduction and filed a schedule for the purpose, which the Commission had not acted on; that in January, 1917, it did reduce its rates, but that if a further reduction under the schedule for 1918 were made, the loss of net earnings to the petitioner would be \$220,000.

The petition continued:

'Your petitioner is of the opinion that in order to meet this situation, and in order to increase the net earnings of your petitioner in an amount sufficient to offset the loss resulting to it from the conditions above stated, an order should be entered by the Commission, authorizing petitioner to add to its existing rates the surcharge hereinafter set out. There are approximately 19,900 consumers now served by your petitioner; the proposed surcharge does not affect consumers using 100 kilowatt hours or less per month, and therefore 17,000 of said total of 19,000 consumers are not affected. In apportioning the surcharge equitably among the remainder of said consumers, your petitioner has taken into consideration the fact that, in the generation of electrical energy for large power consumers, fuel is approximately 75 per cent. of the cost of generation, and that therefore a surcharge which has for its purpose the reimbursement of the utility company for increase in the cost of fuel should be so adjusted that the surcharge should increase in proportion to the amount of energy consumed. The percentage of increase fixed by such surcharge over existing rates is therefore increased in proportion to the amount of consumption. The last step in said surcharge schedule affects 6 consumers, and the last two steps 38 consumers.

'Wherefore your petitioner asks that an order be made by your honorable Commission, authorizing your petitioner to add to its existing rates for electricity in the state of Kansas, and until the further order of the Commission, the following surcharges:

'For the first 100 KWH per month, no surcharge.

'For the next 1,000 KWH per month, 12 mills net per KWH.

'For the next 10,000 KWH per month, 9.5 mills net per KWH.

'For the next 1,000 KWH per month, 8 mills net per KWH.

'For all excess KWH per month 3.5 mills net per KWH.'

The order of the Commission upon this petition recited that it——

'came duly on for order by the Commission upon the pleadings of the respective parties and the evidence introduced thereunder; and the Commission upon consideration of said pleadings and

evidence and being duly advised in the premises, finds that the Kansas Gas & Electric Company should be authorized and permitted to add to its existing rates for electricity supplied by it to consumers in the state of Kansas until the further order of the Commission, the following net surcharge:

'For the first 100 KWH per month, no surcharge.

'For the next 14,900 KWH per month, 1 mill surcharge per KWH.

'For the next 20,000 KWH per month, 2 mills surcharge per KWH.

'For all excess over 35,000 KWH per month, 3 mills surcharge per KWH.'

The rates thus fixed were substantially higher than the contract rates.

The Wichita Company thereupon filed a bill in equity in the United States District Court for Kansas seeking to enjoin the Commission from putting the new rates in force as against it. After averring the diverse citizenship of the parties and a sufficient jurisdictional amount involved, the bill alleged that the order impaired the contract which it had with the Kansas Company, in violation of article 1, section 10, of the federal [Constitution](#), that the rates fixed were unjust and unjustly discriminatory as against the complainant, that it was the largest customer of the Kansas Company, and that the increase of its rate as compared with that of others violated every equitable rule of rate-making, and deprived the plaintiff of its property without due process, and denied it the equal protection of the laws, in violation of the Fourteenth Amendment. A temporary injunction was issued. The answer of the Commission averred that the proceedings were regular and authorized by the statute of Kansas, that the Wichita Company had participated in them, and denied that the surcharges were discriminatory or unjust. The Kansas Company then applied for leave to intervene, and leave was granted. It answered the bill much as the Commission did, but with more elaboration, denying that the order was discriminatory or unjust, and averring that the contract of 1910 was necessarily subject to the legitimate exercise of the police power of the state, and that an order of the Commission regularly made in the exercise of that power could not be regarded as working an impairment of the obligation of the contract in the sense of the contract clause of the federal Constitution.

The Wichita Company made a motion for judgment on the pleadings on the ground that the order of the Commission was void on its face——

'but saved and reserved itself all of its rights in the presentation of evidence and proofs and hearing upon the merits of the issues of fact and law, otherwise than as above stated, involved in this cause in the event it should be determined that final judgment and decree should not be entered pursuant to this motion.'

The District Court gave judgment for the Wichita Company on the pleadings, and enjoined the Commission and the Kansas Company from putting into force the increased rates. The Circuit Court of Appeals reversed the decree of the District Court and directed a dismissal of the bill; Judge Sanborn dissenting.

The Wichita Company has appealed to this Court.

Henry I. Green, of Urbana, Ill., and Thomas F. Doran, of Topeka, Kan., for appellant.

H. L. McCune, of Kansas City, Mo., for appellees.

Mr. Chief Justice TAFT, after stating the case as above, delivered the opinion of the Court.

The appellees urged that the concession of the appellant that contracts in respect to the rates to be charged by a public utility are subject to suspension or abrogation by the police power of the state validly exercised through an administrative agency takes out of this case any federal question, because the issue then is only a state question, to wit, whether under the statute statute, the police power was validly exercised. Upon this ground they insist that the bill should have been, and must be now, dismissed for want of jurisdiction and without any inquiry into the other issues of law and fact. The original bill set out two grounds of jurisdiction, first that of diverse citizenship, and, second, that the case arose under the federal [Constitution](#) in that the order violated the contract clause of the federal Constitution, and also the Fourteenth Amendment. The intervention of the Kansas Company, a citizen of the same state as the Wichita Company, its opponent, did not take away the ground of diverse citizenship. That ground existed when the suit was begun and the plaintiff set it forth in the bill as a matter entitling it to go into the District Court. Jurisdiction once acquired on that ground is not divested by a subsequent change in the citizenship of the parties. [Mollan v. Torraine](#), [1807] USSC 8; [9 Wheat. 537](#), 539[1807] USSC 8; , [6 L. Ed. 154](#); [Clarke v. Mathewson](#), [1838] USSC 21; [12 Pet. 164](#), 171[1838] USSC 21; , [9 L. Ed. 1041](#); [Koenigsberger v. Richmond Mining Co.](#), [1895] USSC 129; [158 U. S. 41](#), 49[1895] USSC 129; , [15 Sup. Ct. 751](#) [39 L. Ed. 889](#); [Louisville, etc., Ry. Co. v. Louisville Trust Co.](#), [1899] USSC 113; [174 U. S. 552](#), 566[1899] USSC 113; , [19 Sup. Ct. 817](#), [43 L. Ed. 1081](#).

Much less is such jurisdiction defeated by the intervention, by leave of the court, of a party whose presence is not essential to a decision of the controversy between the original parties. See equity rule 37 (33 Sup. Ct. xxviii); *Adler v. Seaman* (C. C. A.) [266 Fed. 828](#), 841; *King v. Barr* (C. C. A.) [262 Fed. 56](#), 59; *Jennings v. Smith* (D. C.) [242 Fed. 561](#), 564. The Kansas Company, while it had an interest and was a proper party, was not an indispensable party. In *re Engelhard* [\[1914\] USSC 7](#); , [231 U. S. 646](#), [34 Sup. Ct. 258](#), [58 L. Ed. 416](#).