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MUNICIPAL LIGHTING OF LOGAN CITY

By

Maya Margretha Fennesbeck

B. S. (U. A. C.) 1928

**A Thesis
Submitted in partial fulfillment
of the requirement for the Degree of**

MASTER OF SCIENCE

IN

POLITICAL SCIENCE

in the

**Graduate School of the
Utah State Agricultural College**

1929

PREFACE

Municipal lighting in Logan City is a contemporary development of municipal lighting in other American cities, because it has involved public opinion and law suits and competition between a private corporation and a municipality owning and operating an electric light plant. It is perhaps one of the most eventful and serious conflicts between owners of a public utility which has come before public and legal observation in the State of Utah. The case of Logan City vs. Utah Power & Light Company was brought before the Utah State Utilities Commission and the Utah State Supreme Court and the Court decided that the Utilities Commission did not have the jurisdiction to regulate the rates and the policies of municipally owned utilities. This case will have a bearing on future conflicts between municipally owned and privately owned public utilities operating within the State of Utah.

To become acquainted with municipal lighting in this locality is to become familiar with the basic problems of this question as it exists in other states and in the nation. The details are different and

peculiar to Logan City alone, but the principles involved are similar. Information was asked by the Federal Trade Commission at Washington, D. C. regarding the litigation resorted to between Logan City and the Utah Power & Light Company, for consideration in its nation-wide investigation, which was answered by the City Attorney of Logan City on January 16, 1929.

It is interesting to note that President Hoover said in his inaugural address, "the election has again confirmed the determination of the American people that regulation of private enterprise and not governmental ownership or operation is the course rightly to be pursued in our relation to business."

A great deal of material of both a scientific and an advertising nature has been written on "electrical power" and on "business controlled by the State or by individual factions". In preparing this thesis, I do not attempt to add a contribution to these scholastic or propagating compositions, but I desire to present this situation as I perceive it to have occurred in Logan City.

In case that I should be criticized and in case that this thesis should be censured as being biased against the Utah Power & Light Company and unduly favorable toward the Municipal Electric Light Plant

and so consequently considered not a fair and truthful presentation of the question and the facts it involved, may I say that I obtained all the material which was available from the various proceedings which took place before the Utah State Public Utilities Commission and the courts. There is a possibility, however, that there are other facts which would give a different viewpoint upon the subject I have discussed. If there are such other facts, they did not come into my observation either because of my own lack of research or because such information was denied. It is also possible that a student of this subject writing in the future will not arrive at the same conclusions that I have made because more will be known about the subject and then the two power companies are still in competition with each other.

M. Margretha Fønnesbeck

January 26, 1929.

TABLE OF CONTENTS

Preface -----page 1
Two Power Companies -----page 5
Politics -----page 8
Rate Rivalry-----page 11
State Utilities Commission -----page 18
Economic Efficiency -----page 42
Before the State Supreme Court -----page 64
Water Litigation -----page 86
Sociological Effect-----page 99
Bibliography -----page 110

TWO POWER COMPANIES

Two power companies have operated and distributed electricity to the inhabitants of Logan City for twenty-five years. A privately owned utility operated an electric generating plant on the outskirts of Logan City, in the mouth of Logan river, in the year, 1903. In that same year, a slight majority of the citizens of Logan City felt that the charges of this privately owned company, known as the Logan Power Company, were unreasonable and began a movement for the installation of a municipally owned plant that would furnish electricity for municipal and private consumption at a much cheaper rate. This movement materialized and the voters and the taxpayers voted to bond the city for the erection and operation of a Municipal Power Plant to be constructed three miles above the power plant belonging to the Logan Power Company in Logan Canyon. In 1904, when this Municipal Plant began to furnish light, heat and power to the inhabitants of Logan City, the business of the two companies became conflicting.

The Utah Power & Light Company, the present competitor of the Municipal Plant is a successor of the above named Logan Power Company. Another of its predecessors is the

6

Hercules Power Company, which was a successor to the Logan Power Company, and was granted a franchise by Logan City, whereby it and its successors and assigns were given the streets, lanes and alleys of Logan City for the purpose of serving citizens and residents of said City with electrical energy for heating, lighting and general power purposes, for a term of forty years.

In 1909, the privately owned company was known as the Telluride Company. In 1912, the Utah Power & Light Company acquired the interest of the Telluride Company.

And so in 1929, we have Logan City, a municipal corporation of Cache County, State of Utah, duly organized and existing pursuant to the constitution and the laws of the State of Utah, being the owner and engaged in operating an electrical power and distributing system for the purpose of generating and distributing electrical energy for light and power purposes to the inhabitants of Logan City, and the Utah Power & Light Company, a private corporation duly organized and existing under the laws of the State of Maine, authorized to operate and to do business in the State of Utah. It is the owner of an electrical power system operating throughout the States of Utah and Idaho and it is engaged in supplying its customers with electrical energy for hire, including a large number of the citizens of Logan City.

It is a unit of the Electric Light & Power Company producing 744,200,000 K. W. H. of its 1.5 billion K. W. H. production. Its head offices are in New York City. These two power companies are in constant competition with each other, because their distributive systems parallel each other in the streets of Logan and serve about the same number of citizens and customers within that City.

POLITICS

In 1925, considerable agitation took place in Logan City about the condition of the Municipal Electric Light Plant. This discussion was particularly prominent in the Chamber of Commerce, where the Utah Power & Light Company had gained a great deal of influence. It was contended that the Municipal Electric Light Plant was not a paying institution and should be sold. An Advisory Committee was asked to investigate the existing circumstances of the plant and to give a report to the Chamber of Commerce. Mr. A. G. Lundstrom was chairman of the Advisory Committee which reported that the Municipal Plant could be made a self-supporting and a paying institution and that it would be beneficial to the taxpayers and the residents of Logan City. Regardless of this report, the Chamber of Commerce remained unfavorable to the City's Plant. Another special committee, with Luther Howell as chairman, put out a later report stating that the Municipal Electric Light Plant was a failure and that it would be a failure in the future because it would be a constant expense to the taxpayers of Logan City. His committee recommended that the Municipal Electric Light Plant should be sold to ^{the} privately owned company. It is interesting to note, that Mr. Howell was the land lord of the building leased by the Utah Power & Light Company.

A Welfare Association was organized for the purpose of promoting just treatment and for soliciting support for the Municipal Electric Light Plant. Mr. Lundstrom, as a prominent member of this Welfare Association, took exception to the method used by the Utah Power & Light Company to put over their disposition of the Municipal Electric Light Plant and offered himself as a candidate for mayor of Logan City and used "municipal lighting" as an issue in the city election of November 1925. Mr. Lundstrom and his running mate N. W. Merkley were elected by over ninety per cent of the votes of the city on a non-partisan ticket.

In November 1927, these same officials were re-elected on a non-partisan ticket without much opposition. Only one candidate competed with Mr. Lundstrom in this election. The other candidate was Mr. Wm Edwards and he intended to withdraw, but his withdrawal notice arrived in the recorder's office after the ballots had been printed. Many of the voters placed the words "fifty-six" opposite his name as if to remind him of the prominent part he had played against the City Officials in the petition of intervention to the Public Utilities Commission by fifty-six citizens of Logan known as the Fifty-Six Intervenors.

The Welfare Association remained active and interested in the welfare of the Municipal Electric Light Plant after the election of Mr. Lundstrom as mayor. On January 7, 1928,

the executive committee of the Welfare Association attended the meeting held by the City Commission to inquire if the Commission had decided to oppose the decision of the Utah State Utilities Commission which prescribed rates at which the Municipal Electric Light Plant should serve its patrons with electrical current. It was the opinion of the Welfare Association and of the City Commissioners that inasmuch as the Municipal Electric Light Plant had been constructed for the purpose of furnishing electrical current for only taxpayers and citizens residing within the City, that it was not in the same position as a private or commercial power company and was not subject to the decision of the Utah State Utilities Commission in the matter of rates to be charged to its own citizens and patrons. It was decided at this meeting that Logan City should file an appeal in the Utah State Supreme Court against the Utah State Public Utilities Commission for the purpose of setting aside the order of the Commission.

Mayor Lundstrom and his administration were elected and re-elected on a non-partisan ticket because the Municipal Electric Light Plant was an issue of these elections.

The information of this chapter was derived from "The Logan Journal" and from the City Attorney's Report to the Federal Trade Commission of January 1929.

RATE RIVALRY

Rate rivalry between the Municipal Electric Light Plant and the Utah Power & Light Company is now apparently settled and it is questionable whether it shall ever again become as important as it was in the year of 1927-28. During this time, it was perhaps the main point in public discussions on the light question in Logan City and the factor responsible for bringing the light competitors into the courts.

#Briefly, the charges made by the privately owned utility, the Logan Power Company, in 1903 and for sometime prior to that time was 50¢ per 40 watt lamp per month on a flat rate service with continuous burning. In 1904, during the construction of the City Plant, this Company raised its rates in Logan City to 74¢ for the first light and 50¢ for each additional light on flat rate service. The Logan City Plant was constructed on a promise to the people to furnish three lights (40 watt lamps) for a dollar. As soon as the Municipal Plant commenced operation, the privately owned plant dropped its charge to 10¢ per 40 watt light per month and other lamps, heat and power in proportion and this reduction was promptly met by the Municipal Plant.

#In 1909, a sort of gentleman's agreement was had between

#Facts were taken from the City Attorney's Report to the Federal Trade Commission on January 16, 1929.

the City and the privately owned company, then known as the Telluride Company, that the charge for lights should be raised gradually until the charge was 25¢ per 40 watt lamp per month. The City made the first step by charging its customers 15¢ per 40 watt lamp per month, but the Telluride Company remained on the 10¢ charge in spite of the agreement. The City stayed on the 15¢ charge from 1909 until 1925 and lost many of its customers because of the cheaper rates of its competitor. In 1925, the City dropped to the 10¢ rate, charging this price through a period of agitation wherein both companies knew and admitted that they were losing money on the flat rate charge of 10¢ per 40 watt lamp, other lamps, heat and power in proportion, with continuous burning.

#On September 1st, 1927, Logan City began using meter service at 5¢ for the first 30 K. W. H. per month, 30¢ for the next 90 K. W. H. and 3¢ for consumption over 270 K. W. H. per month. The Utah Power & Light Company remained on the 10¢ flat rate, although they had promised in official meetings to go on a meter basis with the City.

The Public Utilities Commission of the State of Utah ordered the Municipal Plant and the Utah Power & Light

#Facts were obtained from the City Attorney's Brief presented before the State Supreme Court in February, 1928.

Company to go on a meter basis on March 1st, 1928, and to charge 10¢ per K. W. H. for the first 250 K. W. H. and 8¢ per K. W. H. for the next 250 K. W. H. all of monthly consumption. This order was complied with by both light companies until the final State Supreme Court decision in June 1928, when the City began operating on its present rates. The Utah Power & Light Company stayed on the meter rates as given in the Order of Public Utilities Commission until December 1928 when it was allowed by special permission to operate temporarily on the same rates as the City until February 1st, 1929, when it began putting out service on its present standardized rates which are the same as those charged in its other places of business in this section of their business territory.

The residential and commercial lighting meter rate charges that were ordered by the Utilities Commission to become operative on March 1st, 1928, for both companies at the appeal of the Utah Power & Light Company, were:

10¢ per K. W. H. for first 250 K. W. H. of monthly consumption.
 9¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 8¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 7¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 6¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 5¢ per K. W. H. for all K. W. H. of monthly consumption in excess of 1250 K. W. H. Etc.

This rate schedule which was just quoted was typical of the charges made by the Utah Power & Light Company in its places of business in other localities before February 1st, 1929.

The new low meter rate charges for commercial lighting of the Utah Power & Light Company at net charges are:

\$1.00 each month will entitle the customer to use 11 K. W. H.
 8.0¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 7.5¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 7.0¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 6.5¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 6.0¢ per K. W. H. for next 250 K. W. H. of monthly consumption.
 4.5¢ per K. W. H. for additional consumption.

The present rates for commercial lighting of Logan City at meter rate charges are:

50¢ each month will entitle the customer to use 10 K. W. H.
 5.0¢ per K. W. H. for next 40 K. W. H. of monthly consumption.
 4.0¢ per K. W. H. for next 150 K. W. H. of monthly consumption.
 3.0¢ per K. W. H. for all additional consumption.

#The average commercial customer in Logan will consume approximately 800 K. W. H. per month. Applying the rates of the Utah Power & Light Company, the charge for such consumption will be \$59.78, while the charge made by the City will be only \$25.85.

The present residential lighting meter rates of the Utah Power & Light Company at net charges are:

\$1.00 each month will entitle the customer to use 11 K. W. H.
 8.0¢ per K. W. H. for additional consumption.

The residential lighting meter rates of Logan City are:

#Figuring done and given by H. C. Maughan, Supt. of City Plant
 (The word "present" means at the time this thesis is being written in the spring of 1929.)

50¢ each month will entitle the customer to use 10 K. W. H.
 5.0¢ per K. W. H. for next 40 K. W. H. of monthly consumption.
 4.0¢ per K. W. H. for next 150 K. W. H. of monthly consumption.
 3.0¢ per K. W. H. for all additional consumption.

#The average residential customer in Logan consumes approximately 60 K. W. H. for lighting purposes only, for which the Utah Power & Light Company will charge \$4.92, while the City will charge for the same service \$2.61.

The Utah Power & Light Company has combination meter rates which are at net charges:

\$1.25 per month for four rooms or less.
 20¢ per month for each additional room.
 2.5¢ per K. W. H.
 Water heating services:
 80¢ per month additional
 1.5¢ per K. W. H. for all consumption in excess of 250 K. W. H.

The residential combination rates of the Municipal Plant are:

75¢ per month for four rooms or less including 15 K. W. H.
 20¢ per month for each additional room, including 5 K. W. H. per room.
 2¢ per K. W. H. for all in excess.

#Residence customers who are served on the combination rate schedule consume monthly approximately 280 K. W. H. This schedule if offered to customers having ranges, and other electric cooking devices, refrigerators, etc. will cost \$8.25 from the Utah Power & Light Company. The same service from the Municipal Plant will cost \$5.45.

#Figuring done and given by Supt. H. C. Maughan of the City Plant.

The charges of the Utah Power & Light Company are net as published and if they are not paid within a discount period, they are subject to a 10 per cent increase. All lighting and heating schedules of the Municipal Plant are subject to a 10 per cent discount if they are paid within a ten-day discount period.

The City claims that it operated its plant on the flat rate system because the privately owned company refused to serve on a more reasonable basis and that for nine years, it operated its plant on a rate five cents higher per 40 watt lamp per month than the charge made by the Power Company which incurred a loss of customers for the Municipal Plant. The Municipal plant was constructed to meet the monopoly prices of the privately owned company in 1904.

The deficits caused by operating on the flat rate system was met by the Utah Power & Light Company by revenue from successful business in other localities. The City paid its deficiency with an income from taxation. This fiscal condition has been corrected by the present system of rates charges by both companies. The Utah Power & Light Company will apparently do a paying business on the same scale and on the same schedules as it does in other localities, but under the jurisdiction of the State Utilities

Commission because it is a private corporation. Logan City will only charge the rates which it shall determine reasonable and profitable enough to meet the expenses and the bonded indebtedness with interest of the Municipal Plant, because according to the decision of the State Supreme Court, which was an outcome of the rate situation, the Utah State Utilities Commission cannot regulate the rates for a public utility owned and operated by a municipality.

#During a personal interview with him, a local official of the Utah Power & Light Company claimed that the Power Company could not be held responsible for the rates of its predecessors and that it stayed on the low rates of 10¢ per 40 watt lamp per month with continuous burning until 1928, at a great loss, not for competitive purposes, while they charged 10¢ and 11¢ per K. W. H. for the first 250 K. W. H. per month on meter rate service in other localities, but merely because the situation existed when they took over the privately owned plant.

PUBLIC UTILITIES COMMISSION

#On January 11, 1927, the City Commissioners of Logan City authorized the Mayor to execute contracts for the installation of meters by which to measure electric current in the residences and places of business of its customers. These contracts specified the rates to be charged for lighting, heating and power service. Approximately 1350 of these contracts were duly signed and executed by and on behalf of Logan City and with the residents and users of electric current in the City. The Logan City Officials accordingly went to the State Utilities Commission of the State of Utah, in the spring of 1927 and advised this Commission that Logan City desired to do business on meter rates and inquired if the Utah Power & Light Company would be required to install meters for its customers if Logan City's Municipal Plant installed meters by which to measure the current used by its customers. The Commission assured the City Officials, that the Utah Power & Light Company would be asked to install meters and further stated that this Company had made known to the Commission that it desired to do business on meter rates in Logan City, as it was doing in other localities in the State, but had

These facts and information was obtained by direct conversation with the City Attorney.

been unable to do so because Logan City was doing business on the flat rate charges.

#During February 1927, the officials of Logan City held a conference with the official representatives of the Utah Power & Light Company in Salt Lake City for the purpose of arriving at a mutual understanding about abandoning the flat rate service in Logan City and serving their customers in Logan on a meter rate basis. The City Officials were willing that their competitor should adopt their fixed 5¢ meter rates. At this meeting, they granted the officials of the Utah Power & Light Company the time they asked for in order to consider the matter with the officials at their New York office. The representatives of the Power Company also asked if Logan City would buy their distribution system and so end the competitive situation existing in Logan. Mayor Lundstrom answered that Logan City would buy their distribution system at a fair price determined by a neutral committee.

#A final meeting was held between these same parties on April 7th, 1927, in the City offices at Logan, where the Utah Power & Light Company agreed to voluntarily

#Facts obtained directly from the City Attorney.

abandon its flat rate system, install meters and do business on a meter rate basis after September 1st, 1927, at the same time and at the same charges as the Municipal Plant. They also stated that the Utah Power & Light Company felt that Logan City did not have sufficient funds to pay cash by May 1st, 1927, for its ^{and} plant, so it no longer desired to sell its distributing system to Logan City, but would continue to operate in Logan City in competition with the Municipal Plant. In pursuance of this understanding, the City enlarged its plant and distributing system and installed meters in the residences and places of business of its patrons, who had contracted for meter rate service.

#Along in the following summer, the Utah Power & Light Company failed to install meters and serve its customers on the meter rate charges as it had promised to do by September first. And so, on August 4th, 1927, Logan City filed a complaint with the Public Utilities Commission and asked for an Order from it directing the Utah Power & Light Company to install meters and serve its customers on the meter rate basis. In this complaint, the City presented several historical and

#Facts obtained from Plaintiff's abstract of pleadings before the Supreme Court of the State of Utah.

economical items pertaining to its competition with the Power Company. First, it showed that for many years prior to March 1925, the rate charged by the Municipal Plant was 15 cents per month per 40 watt lamp, but that it was compelled to reduce its charge to 10 cents per month for 40 watt lamp with continuous burning and other lamps in proportion, in order to keep its customers. Second, it stated that the said flat rate service was conducive to an extravagant and wasteful use of electricity and did not produce a sufficient revenue to make a fair return on invested capital for either company. Third, it presented a copy of the contracts it had made with its patrons and citizens of Logan for electric service on the 5¢ meter rates. Fourth, it stated that approximately 1350 of the said contracts were duly executed and signed by consumers of electric energy in Logan City as second parties with Logan City as first party. Fifth, that on the 7th day of April, 1927, the Power Company's officers and agents met with the City Commissioners of Logan City in the City Offices at Logan City and informed the Mayor and the City Commissioners that the Power Company would voluntarily abandon its flat rate charges and would proceed to install meters with its customers on meter rates at the

same time as Logan City commenced serving its customers on meter rates. Sixth, that Logan City relying upon the said understanding and agreement with the officials of the Utah Power & Light Company, diligently proceeded to install meters in the homes and places of business of its patrons, spending approximately \$107,000.00 so as to be in a position to commence meter rate service by September 1st 1927. Seventh, that although the Utah Power & Light Company agreed to install meters, it failed and neglected to do so, but was continuing to serve its patrons and customers in Logan City on the unmeasured flat rate basis, and it would continue to so unless restrained or otherwise ordered by the Public Utilities Commission. Eighth, that the flat rate charge now maintained by the defendant was unjust, unreasonable, discriminatory and unlawful and in violation of the provisions of the statute particular section 4783, 4784, 4787, 4788, 4789 and 4790 of the Compiled Laws of Utah for 1927. Ninth, that the Utah Power & Light Company served all of its customers and patrons in the State of Utah outside of Logan City on measured meter rates, but that in Logan City it was operating and maintaining its competitive unmeasured flat rate service. Tenth, that if the Utah

Power & Light Company was allowed to continue to use its said flat rates, the damage done to the Municipal Plant by a decrease in the number of its customers could not be measured and was irreparable. Eleventh, that the Utah Power & Light Company was maintaining its unmeasured flat rate charge in Logan City for the purpose of competing with and destroying the Municipal Plant, because the City would lose a large number of its customers and patrons when it put its meter rates into effect on September 1st, 1927.

"On the 9th day of August, 1927, the defendant, the Utah Power & Light Company, filed its objections to the City's Complaint in which it stated:

"1. It appears from the complaint that the purpose thereof is not to procure the establishment of reasonable rates for electrical service to be observed by plaintiff and defendant, but to compel the defendant to establish a schedule or schedules of rates higher than those established by the plaintiff.

"2. It does not appear that plaintiff Logan City has ever taken the action required by Statute, particularly Sections 4784, 4785, 4830 of the Public Utilities Act, to make effective the schedule of rates set forth in paragraph 16, of its complaint and that the said rates have not become legally effective.

#Direct quotation copied from Plaintiff's brief and abstract of pleadings before the Supreme Court of the State of Utah.

"3. That there is no allegation in the complaint that the rates purposed to be charged by Logan City, -- -- are reasonable rates for electrical service in said City.

"4. The purpose and object of the complaint is to procure from this Commission an Order affecting the rates and charges of the defendant which would destroy the defendant's business and property in Logan, and which would deprive the defendant of its property without due process of law, and deny defendant the equal protection of the law, in violation of the 14th Amendment to the Constitution of the United States and in violation of Sec. 7 of Article 1, of the Constitution of Utah.

"5. The complaint does not show, and the plaintiff should be required to show, the revenue which it is receiving from the present flat rates and the revenues reasonably estimated to be derived from the purported rates.

"Wherefore, defendant requests the Commission to issue an Order requiring the plaintiff to so amend its complaint herein as to meet the objections herein stated.

"Thereafter on the 25th day of August, 1927, defendant filed its answer to the complaint in which it alleged as follows:

"1. Admits the allegations of the complaint not otherwise denied.

"2. Denies on information and belief that on or about March 1st, 1925, the plaintiff was compelled to reduce its rate charge for light from 15 cents per month for 40 watt lamp to 10 cents per month for 40 watt lamp and on larger lamps in direct proportion because of competition with defendant.

"3. Denies on information and belief that the patrons of the Logan City Plant have gradually become more negligent and wasteful each year in the use of electrical energy under the flat rate system; denies that on account of said waste, or due to competition of defendant, the plaintiff has

from time to time lost various or diverse members of its patrons.

"4. Denies allegations of paragraph 17 (alleging the conferences between the Officials and the defendant by which the defendant agreed to abandon its flat rate service and voluntarily go on the meter service when Logan City did.) Admits that at various times there have been informal conferences between the representatives of Logan City and representatives of the defendant; that the defendant has always maintained in these conferences that the said flat rates were wasteful and unreasonably low for the service rendered, and that defendant was willing to abandon said rates and substitute reasonable meter rates when the plaintiff City would take like action. Defendant has never agreed, and denies that allegations of this paragraph, that it would establish those general meter rates regardless of the rates to be charged by Logan City.

"6. Denies on information and belief that plaintiff is in position to commence its meter rate service by September 1st, 1927. Denies that the flat rate charges for electric energy maintained by defendant in Logan City, are discriminatory or unlawful or unjust or unreasonable so long as Logan City maintains said rates; of the Statute; denies that the maintenance of such flat difference as to rates or charges to customers in Logan City for electric current. In this connection defendant admits that the flat rate charges are wasteful and unreasonably low, but alleges that defendant has maintained such charges solely because of the fact that similar rate have been until now maintained by Logan City, and because to have abolished the said charges so long as plaintiff Logan City maintained the same would have resulted in the loss to the defendant of the value of its property and business in Logan City.

"7. Denies that if defendant is allowed to continue under its flat rate charges after September 1st, the plaintiff will lose a large number of its customers and patrons on the Municipal Plant.

"8. Denies that said loss and damage to the plaintiff can not be measured and is irreparable. Denies that it is impossible to estimate the loss which the plaintiff will sustain if defendant is allowed to continue its flat rate charges; denies that defendant has maintained said unmeasured flat rate charges for the purpose of competing with or destroying the Municipal Plant of the plaintiff Logan City, but alleges on the contrary that it is maintaining said charges because Logan City has heretofore maintained the same and to meet the competition of Logan City.

"9. Alleges upon information and belief that the meter rates purposed to be charged by plaintiff will result in an aggregate lower billing than the flat rates now charged.

"10. Defendant again admits that the flat rates are unreasonable and wasteful, but alleges that the rates purported to be established by plaintiff are at least equally unreasonable.

"By way of further and separate answer, defendant alleging:

"6. Defendant is informed and believes that it is not the purpose or intention of Logan City to get from the proposed rates the charges of operating its system, including the interest on the capital invested in or general value of the said system and sinking fund or depreciation charges, or to fix less than just and reasonable rates, and less than adequate rates to meet the cost of operation as aforesaid, and to require the defendant to establish materially higher rates for its service in Logan City, with the result that plaintiff will thereby acquire the business of the defendant.

"7. That the purpose of the Utilities Act is that just and reasonable rates, adequate to meet the costs of service shall be fixed and charged for such service, and that unless the Commission fix just and reasonable rates it has no jurisdiction to fix a rate which will destroy the property and business of the defendant by compelling it to serve either at an unreasonably low rate on the one hand, or at a rate higher than the rate charged by the plaintiff on the other hand, thereby causing in either case the destruction of the value of the defendant's property and business.

"8. That any order of this Commission which would require this defendant to render electric service in Logan City at rates higher than those charged by its competitor Logan City, or any order which would fix less than reasonable rates for the service, based upon the total costs of such service to the plaintiff meeting all litigant charges against such service would deprive this defendant of its property without due process of law, and denies to it equal protection of the laws, in violation of the Federal and State Constitutions."

Logan City then filed a demurrer to this answer by the Utah Power & Light Company, upon the grounds that it did not state sufficient facts to constitute a defense.

#"That on the 13th day of August, 1927, 56 residents and taxpayers, S. S. Eccles et al, of Logan City filed Petition in Intervention in the above cause, alleging on information and belief that the proposed schedule of meter rates by Logan City will be inadequate to pay the cost of operating and maintaining the City Plant, and to provide

#Direct quotation copied from Plaintiff's brief and abstract of pleadings before the Supreme Court of the State of Utah.

for interest on bonds floated for the construction of the plant and to establish a sinking fund for the retirement of the bonds.

"That for many years petitioners, as taxpayers in Logan City have been taxed to maintain the City Plant and to make up the deficit caused by the operation of the plant on the flat rates. Petitioners believe that if the Commission establishes the rates proposed by Logan City, there will constantly result a large deficit from the operation of the plant which will have to be met from taxation.

"Wherefore petitioner pray that the Commission establish rates which will be fair, reasonable and adequate to pay for the proper and economical operation of the plant, together with the payment of interest, to your Commission seem meet and proper.

"That thereafter on the -- day of August, 1927, 760 residents and taxpayers of Logan City, filed a Counter Petition in Intervention in the above cause, alleging that for more than 20 years the plaintiff had generated distributed electric energy to the residents and consumers in Logan City on a flat rate system as alleged in the complaint; and that said flat rate system is conducive to a highly wasteful, extravagant and negligent use of electric current, as no charge is made under said system depending on the amount of energy consumed each month. That said flat rate system has resulted in large loss of revenue both to the plaintiff and the defendant.

"That to remedy this condition the City Commissioners on January 11th, 1927, passed a Resolution authorizing the Mayor to execute contracts on behalf of Logan City and with the residents and users of electric current in the city, including a large number of your petitioners herein.

"That in pursuance of the terms and provisions of the said contracts so executed, Logan City has installed meters in a large number of homes and places of business of the citizens and taxpayers of Logan City, to-wit: in excess of 1400 up to the present time.

#Direct quotation copied from Plaintiff's brief and abstract of pleadings before the Supreme Court of the State of Utah

"Your petitioners believe and therefore state that the rates specified in said contracts, which Logan City offers, are reasonable and ample to meet operating expenses of the City Plant and the interest and principal on the serial bonds, if Logan City has the full patronage of the citizens and taxpayers of the community.

"That you petitioners do not desire to have the rates offered by Logan City increased or altered in any respect. That it is the desire of the great majority of the citizens and taxpayers of Logan City that Logan City shall be permitted to carry out its said agreements; and that the said meter rates as offered by Logan City shall go into effect on September 1, 1927. That it is for the best interest of the people of Logan and necessary for the successful operation of the Municipal Plant, that the said plant should go on meter basis and on the rates as fixed by Logan City. That the action taken by the Honorable Board of City Commissioners represent the will and mandate of over 90 per cent of the voters and taxpayers of Logan City. That the said petition in intervention by S. S. Eccles and others, was filed for the purpose of hindering and obstructing the program of Logan City and for no other purpose.

"Wherefore you petitioners pray that the Petition of Intervention by S. S. Eccles and others be dismissed and that the defendant Utah Power & Light Company be ordered to cease its discriminatory rates now and heretofore maintained in Logan City."

A hearing was had upon the matter in Logan, Utah on the 15th and 16th days of September, 1927, and evidence duly submitted and taken and arguments made by officials of the respective parties. On December 23, 1927, the Public Utilities Commission of Utah issued its report, findings and Order, which Findings are in substance as follows:

#Direct quotation copied from Plaintiff's abstract of pleadings before the Supreme Court of the State of Utah.

"6. That more especially for the last three years, in order to meet the deficit created in the operation of the Logan City Plant, and in meeting payments on bonded indebtedness for the plant, complainant, under said flat rate system of charging for electrical energy, has had to tax the property owners in Logan City approximately \$25,000 each year, the larger portion of which has been born by about six hundred taxpayers of Logan City among whom are included the protesting citizens and taxpayers herein.

"7-A. That on the 7th day of April, 1927, the defendant, Utah Power & Light Company met with the City Commissioners of Logan City in the city offices of Logan City, Utah and then and there, informed the City Commission that the defendant would voluntarily abandon its said "flat" rate system then and there-fore maintained in Logan City, Utah, and would proceed to install meters preparatory to serving its customers in Logan City on the meter rates, at the same time as complainant would commence serving its customers on meter rates, at a date to be fixed by the complainant, Logan City; then on the 22nd day of April, 1927, in pursuance to said understanding the City Commissioners of Logan City passed a resolution to the effect that it would proceed to serve its patrons under a metered system on and after September 1, 1927.

"Throughout the hearing and investigation of this case, the complainant has contended that the Public Utilities Commission has had no jurisdiction to receive testimony bearing upon the question of the reasonableness of the rates of the Logan City Plant, as fixed and determined by the City Commissioners of Logan City, while at the same time it has contended that it is the duty of the Utilities Act to require the defendant to serve its customers at reasonable rates, to be fixed and determined by us, upon a metered basis.

"As the record herein shows, the complainant, on the 1st day of September, 1927, proceeded to serve its customers in Logan City upon a metered basis, at rates fixed and determined by the City Commissioners. These rates ~~are~~ challenged, not only by the defendant but also on the part and in behalf of a large number of citizens and heavy taxpayers of Logan City, as being insufficient to meet the financial requirements of the Logan City Plant.

#Direct quotation copied from Plaintiff's abstract of pleadings before the Supreme Court of the State of Utah.

Logan

"That the Public Utilities Commission is charged with the duty of regulating the practices, rates, and charges of the municipally owned as well as privately owned public utilities operating for hire in this State, is so clearly expressed in the provisions of our Public Utilities Act and so explicitly confirmed by our Supreme Court decisions, that it would seem the position taken by Logan City with respect to its City Commissioners having the right to arbitrarily fix and maintain rates after their reasonableness has been challenged in proper proceedings under the Public Act, irrespective of any action taken on the part of the Utilities Commission is hardly worthy of even passing notice.

"The objections, therefore, of the complainant to the jurisdiction of the Commission to rule and pass upon the reasonableness of the rates as sought to be established by its Commissioners, cannot be sustained.

"It should be kept in mind, as a matter of law, that when a city or other municipal corporation goes into a commercial business, and the maintenance and operation of an electric plant for furnishing electric energy for hire affords an apt illustration, it takes concern, and to that extent ceases to function in its governmental capacity, that is to say, just to the extent it engages in a commercial enterprise or business, it acts in a proprietary capacity as distinguished from a governmental one.

"In the consideration of this case upon its merits, we are met at the threshold with a competitive situation. It appears that Logan City has two power plants, either one of which is capable of serving the present needs of consumers of electric energy, efficiently and well; one privately, the other municipally owned and operated. The privately owned plant of the defendant was first in point of time. Whether its service charges, to begin with, were so excessive or its service so inefficient as to justify the complainant, Logan City, in constructing a power plant, we need not express an opinion. It is admitted that the flat rate service heretofore rendered in Logan City by the public utilities now under consideration, has proved wasteful and has resulted in heavy losses of operating revenues to both parties. For years the taxpaying citizens of Logan City have been heavily assessed and taxed, to meet the maintenance and operating requirements of the complainant's, Logan City, power plant. That so long as these taxpayers will be required to continue to pay taxes in Logan City to

maintain and operate the complainant's plant, in order that its patrons may be served with electric energy below cost to it, the rates of complainant will remain unjust, unreasonable, and in violation of law. Consumers of electric energy have neither moral nor legal right to be served at unreasonable rates by a public utility, it matters not whether it be municipally or privately owned. The intervening taxpayers of Logan City, who in this case pray that the reasonableness of the proposed meter rates as adopted by the City Commissioners of Logan City be investigated, and, if found unreasonable, that just and reasonable rates be established as near as may be and as the laws of this State require, are justly entitled to the consideration they ask. The equities of this case are with them.

"The rates as fixed and determined for the complainant's plant by the City Commission are clearly shown by the evidence in the record of this case to be the financial requirements of its power plant. The flat rates continued to be charged by the defendant likewise are shown to be insufficient and unreasonable and a burden not only upon itself but discriminatory as to its rate-payers generally throughout the State.

"As to which of these competing public utilities may receive the greater patronage under a metered system of charging that is a matter to be more properly taken care of by their selling agents, and with which this Commission should not be concerned.

"Therefore, for the present, at least, under the acts found in this case, we think they should be placed on equal footing, both as to the matter of their charges and as to rules applicable to service. Further, by reason of the competitive situation and the uncertainty of consumption which exists in Logan City, we feel that the orders of the Public Utilities Commission herein with respect to rates for electric service should not be at this time made permanent; not so regarded by any interested party, but as merely temporary and for a test period of one year only. If at the end of the one year period it has been demonstrated and a proper showing is made by either party that it is capable, under the laws of the State, of serving consumers of electrical energy in Logan City at lower rates than those which are now thought to be just and reasonable under present conditions, it may be expected the Utilities Commission will make further findings and enter its order in accordance therewith. Meanwhile, both the complainant and the defendant should be required to keep accurate books of account and report with respect to public utility affairs, in accordance with the rules of this Commission."

#Direct quotation copied from Plaintiff's abstract of pleadings before the Supreme Court of the State of Utah.

On December 23rd, 1927, the Public Utilities Commission of the State of Utah ordered the Utah Power & Light Company and the Logan Electric Light Plant to install meters in the residences and places of business of their respective customers and to charge higher meter rates than the ones that were fixed by the City Commissioners for the customers of the Municipal Plant.[#] It further ordered that the contracts made between Logan City, as first party and its citizens and patrons of the Municipal Plant, as second parties were null and void.

Logan City sent a petition for a rehearing to the Utilities Commission on January 14th, 1928, but a denial was returned on January sixteenth saying, that the Final Order of the Commission must stand.

It was a rule of the Public Utilities Commission, the Utah Power & Light Company and Logan City, that the consumers should pay for all wiring done for the meter system in their residences or places of business and that the company should furnish the meter. When the Utah Power & Light Company was directed to install meters with its customers, it offered to do free of charge all the meter wiring of their homes or their places of business to the consumers of electrical current in Logan, if they would agree to take the service of the Utah Power & Light Company for a period of one year.

[#]See chapter "Rate Rivalry".

In doing this, it seemed to the officials of Logan City that the Power Company desired to prevent the revenue from as many customers as possible from going to the Municipal Plant, since it had been put upon a trial basis to see if its revenue would be sufficient, at the 10¢ meter rates ordered by the Utilities Commission, to meet all operating expenses, interest and principal on its bonded indebtedness, and if its revenue proved insufficient for such fiscal requirements at the end of one year, it was likely that the Utilities Commission would order another increase in rates.

Logan City complained of this unfair competition to the Utilities Commission. Commissioner E. E. Corfman and Thomas McKay of the Commission heard the City's charge against the Utah Power & Light Company. Free wiring in the homes and places of business of the consumers was a considerable item since it amounted to approximately \$20.00 per house in the entire city. Three of the witnesses testified as follows:

"Mr. P. C. Nielson, stated that the Utah Power & Light Company was doing some wiring in one of his residences, occupied by one of his tenants, but he inquired as to what authority this wiring was being done, and told the parties working there that he wanted the City meter service. An official of the Utah Power & Light Company came to Mr. Nielson and stated that the wiring would actually cost \$18.00 if the City did the wiring, but that the Utah Power & Light Company was doing it free of charge. Mr. Nielson said that this tenant was an old lady and would not use much

Direct quotation copied from the report made by the City Attorney to the Federal Trade Commission on January 16th, 1929.

current, not over the minimum of \$1.00 per month, and says he "You mean to say that the Utah Power & Light Company are thus paying an \$18.00 wiring bill in order to get back \$12.00 in current?" And the Power Company official responded that that was the case. Mr. Nielson, however, ordered the Utah Power & Light Company to take its wire and meter out, stating that he wanted Logan City service. The Utilities Commission ruled this evidence out on the ground that the act of free wiring had not been completed.

"In another case, Julius Stender testified that he was running a small produce business, and that the meter in his place of business had cost \$45.00 which had been done by Logan City. That the Utah Power & Light Company's agents had approached him and offered to pay this \$45.00 wiring bill, if he would take the service of the Utah Power & Light Company for the period of one year, but that he had refused to do so, stating that he did not intend to go back on his agreement with Logan City. The Utilities Commission ruled this out on the ground that it was mere talk and that the offer had not been accepted by Mr. Stender.

" Mr. Hess testified that he was operating a tobacco and soft drink store in Logan City, and that the Utah Power & Light Company had two men working for a period of two days doing a great deal of wiring and conduit work in his building, and that this had been done free of charge. The Utilities Commission ruled this evidence out on the ground that possibly the Utah Power & Light Company might yet send Mr. Hess a bill for this wiring."

Attorney J. T. MacLane acting for the Utah Power & Light Company asked that the complaint should be dismissed because of insufficient evidence to cause a complaint of unfair competition against the Power Company. The Commissioners ruled that the complaint should be

#Facts taken from the Logan Journal.

taken under advisement. Judge Corfman advised the parties to get together on the question of schedules and to make the charges of all service rendered to patrons in the city uniform and if this could not be done, who of course the Commission would then endeavor to settle the question.

It is true that throughout the hearing and investigation of the case before the Utilities Commission, the City maintained that the Commission did not have jurisdiction under the provisions of the Utilities Act to fix and determine rates for the Municipal Plant. Neither the City nor the Utilities Commission were certain of the jurisdiction of the Commission over public utilities owned and operated by municipalities until after the question was decided by the State Supreme Court.

The Utilities Commission held that Logan City, in operating and conducting its plant, was a public utility within the meaning of the Public Utilities Act and subject to the same supervision, regulation, and control by the Commission as was any private or public utility company or corporation. (See the Chapter "Before the State Supreme Court")

#Evidence was given before the Utilities Commission by Logan City to show the necessity of the City to build and operate its Municipal Plant to protect its citizens and consumers of electrical current against what it claimed to be excessive charges; that the flat rate service

#Facts obtained from 271 Pacific Reporter page 964.

practiced by both the City and the Company resulted in waste and in an extravagant use of electrical current with a loss of revenue to both the City and the Company; that an agreement had been entered into between the City and the Company to abandon the flat rate service and to go on a meter system basis; that the City Commission had adopted a resolution that the Municipal Plant should operate on a meter rate basis; that the City had incurred expenses in installing meters and in improving its distributing system to adapt it for operation on meter basis; that the City had entered into numerous contracts with its citizens and taxpayers to furnish them with electrical current for a period of three years at a specified rate; and that a few of the customers of the Municipal Plant had refused to go on with their agreement as made in the contract between them and the City because the Power Company had not made preparations to go on a meter rate basis.

That no counter evidence to the majority of those allegation was offered may, however, be assumed was largely because of the views urged by the Power Company that all such matters were immaterial and that the rate fixed by the City and the contracts entered into between it and its customers were in so far as the Public Utilities Commission was authorized to fix, reasonable rates, of no binding effect and could be wholly disregarded although

neither party to any of the contracts was complaining with respect to any of the terms of the contract.

Logan City argued before the Commission that the meter rates fixed for the Municipal Plant would raise sufficient revenue to pay the operating expenses and the interest on the bonds of the Municipal Plant and provide a sinking fund with which to pay the principal of the bonds when they matured if the Municipal Plant served all of the consumers of electrical energy in Logan, but that if the adoption of such rates would result in a deficit because of the present number of customers patronizing the municipal service, to meet such a deficit by taxation would be justifiable because the plant belonged to all the taxpayers and not only to the taxpayers who were loyal to it.

The Commission found that the annual revenue of the Municipal Plant based on the number of its customers as of September 1, 1927, and on its proposed meter rates would be only about \$21,819.18 and that its operating expenses would be approximately \$37,642.16 leaving too small a sum for depreciation, interest on the bonded indebtedness, and for a sinking fund by which to pay the bonded indebtedness. The Utah Power & Light Company, and especially the intervening taxpayers, among whom were some of the largest taxpayers of the City, urged

the Commission to fix a rate to be charged by the City that would produce for the Municipal Electric Light Plant a sufficient revenue with which to pay all operating expenses and interest on its bonds, to provide for a sinking fund to pay the principal of the bonds when they matured, and to make a reasonable allowance for the depreciation of the Municipal Plant, so that there would be no necessity for the City, in the future, to levy or collect any taxes for any such purposes.

The Commission found that the City was required to do so and that the rate proposed by it would not meet such requirements. It found that the equities of the case were with the contention of the intervening customers of the Company, and that so long as taxpayers were required to continue to pay taxes to maintain and operate the Municipal Plant in order that its customers might be served with electrical current below cost to the City, the rates established by the City were unjust, unreasonable, and in violation of law. It further found that the flat rate service was extravagant and wasteful and not an economical or a proper method of service as was conceded by both companies. The Commission thus ordered that both the City and the Company should abandon the flat rate service and adopt a meter rate service.

Evidence was also heard by the Commission and find-

ings were made by it as to the amount of capital invested by the City in its plant, the amount involved in its bonded indebtedness, the amount required for annual interest payments on the bonded indebtedness, what would be a reasonable amount to allow for depreciation of the Plant, and what the annual operating expenses of the Plant would be.

No evidence was given and no findings were made with respect to such matters as to the Power Company. While the Commission also fixed a rate to be charged by the Power Company, it received no evidence as to the amount of capital invested in its plant at Logan City, nor as to its operating expenses and depreciation allowance which should be considered in fixing a rate for a public utility. In fixing the same rate for both the City and the Company, the Commission just took the standard rates which the Power Company charged throughout the State. It made no finding that under all the conditions and circumstances such rates were fair and reasonable rates to be charged by the Power Company.

That the rates so fixed by the Commission were the standard rates of the Power Company wasn't disputed. But that such rates were unreasonable rates for the Municipal Plant and necessary to meet the requirements of the Municipal Plant even as found by the Commission was

disputed. Nor did the Commission find that a lower rate or charge would not meet all such requirements of the Municipal Plant. It did not have any specific figures as to the fiscal ability of the Municipal Plant when operating on meter rates. It did not find nor consider whether a municipality owning and operating a public utility for its own use and for the use of its inhabitants, and not for gain and profit, but only at cost and free from taxation, franchise and license fees might not be able to furnish this utility at lower rates than a privately owned company owning and operating a public utility for gain and profit and required to pay taxes on its property, costs of franchises and license privileges.

The Public Utilities Commission Of the State of Utah showed partiality to the Utah Power & Light Company when it failed to make any definite investigation, in the free wiring case, as to whether or not the Power Company had actually offered or done free wiring for meter systems in the homes and the places of business of consumers of electrical current in Logan on a condition that they would become customers of the Utah Power & Light Company.

The Utah Power & Light Company sent out a general letter offering free wiring to all the consumers of electrical energy in Logan. One of these letters was presented at the hearing before the Utilities Commission but the Commission entirely ignored this evidence.

ECONOMIC EFFICIENCY

The Utah Power & Light Company maintains and did maintain throughout the light controversy in 1927-28, that neither the Power Company nor the Municipal Plant could operate on the 5¢ meter rates proposed by the City Commission for the Municipal Plant. The Power Company claims that it would not be profitable for it to do business with the same rates as its competitor is serving at because it has to pay interest on its investments to the various stockholders. It has to pay taxes on its property and holdings, while the City does not. It has to pay a license tax to the City in order to do business within Logan. These are undeniable facts and should be considered in comparing the rates of the Utah Power & Light Company with the rates of the Municipal Electric Light Plant. The Public Utilities Commission found that for years the taxpayers of Logan City had been heavily taxed in order to meet the maintenance and operating requirements of the Municipal Plant. But the condition which had existed in the past under the flat rate system, under which the City received less than 1¢ per K. W. H. per month for electrical current was no criterion by which to judge the earning of the Municipal Electric Light Plant in the future under the 5¢ meter rates as established by the

City Commissioners. It shall be the purpose of this chapter to show that the 5¢ meter rates of the Municipal Plant are reasonable rates for electrical current produced by the Municipal Plant.

The following comparison of revenues received monthly before and after going on the meter rates by the Municipal Plant was ascertained by P. E. Peterson, a certified Public Accountant in December 31, 1927. This brief statement of revenues shows that the change from the flat rates to the 5¢ meter rates meant a considerable raise in the amount of revenue obtained by the Municipal Plant.

Month	1927	1928
	Flat Rates	Meter Rates
January-----	\$3 321 57-----	\$5 512 24
February-----	\$4 424 21-----	\$5 534 41

When the City Commission fixed the 5¢ meter rates for the Municipal Plant, it did not base these rates on the number of customers which the Municipal Plant had at that time, but on approximately the total amount of consumption of electrical energy in Logan by all the consumers of electrical energy. The City Commission maintained that the 5¢ meter rates would give ample revenue for all plant purposes, without resorting to any tax levies for the plant at all if all the citizens and electrical power users would patronize the Municipal Plant. But if a portion of the consumers of electrical current in Logan did not support

the Municipal Plant, then the revenue from the 5¢ meter rates might be short of paying the principal and interest on the indebtedness of the Plant as it came due, in addition to paying the operating and maintenance expenses of the Plant. In such an event, a tax assessment would have to be levied in order to meet such payments as provided for by the Statute.¹ In fixing the 5¢ meter rates under these conditions and provisions, the City Commission felt that it was not fair to penalize the patrons, who loyally supported their Municipal Plant by charging high rates to them so that all payments would be met by the Plant earnings. The City Commission felt that the Plant belonged to all the people of Logan and if the earnings of the Plant could not take care of the operating expenses and the interest and the principal on the bonded indebtedness of the Municipal Plant without the help of taxation, then it was only just that all the taxpayers should be assessed for such payments even though they were customers of the Utah Power & Light Company.

Mr. C. O. Roskelley and Mr. Hervin Bunderson, both of Brigham City gathered the following data and put out the following tables on the average annual consumption per customer for the various classes of services in Logan after

1. See Section 794 of the Utah Laws for 1925 or page of this thesis.

investigating the books of the Utah Power & Light Company in districts and cities most nearly resembling the conditions in Logan. It was necessary for them to make conclusions on comparisons with cities and districts outside of Logan because neither the Utah Power & Light Company nor the Municipal Plant had been doing business on meter rates prior to September 1, 1927, in Logan.

#Table No. 1.

Classification	U. P. & L. Co. number of Customers	Logan City number of customers	Total number of customers	Estimated K. W. H. per customers
Residence Light	1046	1554	2600	245
Commercial Light	181	143	324	1500
Residence Fuel	250	86	336	1046
Commercial Fuel	14	--	14	3312
Power	50	36	86	----
Street Lighting	--	1	1	----

(All Customers) #Table No. 2. (5¢ Meter Rates)

Classification	Number of Customers	Total Billing For Customer	Possible Discount	Total Minimum Net Revenue.
Residence Light	2600	\$12.25	\$1.22	\$28,678.00
Commercial Light	324	66.00	6.60	19,245.60
Residence Fuel	336	20.80	1.04	6,988.80
Commercial Fuel	14	66.24	3.31	881.02
Power	86	175.00	8.75	14,097.50
Street Lighting	1	-----	----	12,000.00
Total---				\$81,890.92

Tables were copied from pages 5 and 6 of the report made by a special committee, William Peterson, Ray B. West, and Parley E. Peterson, to D. C. Budge, chairman of the Fact-Finding Committee of the Logan City Electric Light Investigation, about January 1, 1928.

(All Customers)	#Table No. 4.		(10% Meter Rates)	
Classification	Number of Customers	Total Billing For Customer	Possible Discount	Total Minimum Net Revenue.
Residence Light	2600	\$24.50	\$2.45	\$57,330.00
Commercial Light	324	150.00	15.00	43,730.00
Residence Fuel	336	31.38	1.57	10,016.16
Commercial Fuel	14	99.36	4.97	1,321.46
Power	86	175.00	8.75	14,297.50
Street Lighting	1	-----	----	12,000.00
Total-----				\$138,705.12

These tables show the number of customers and their classification with the total minimum revenue per year based on all the business of all the electrical current consumers in Logan on the 5% meter rates adopted by Logan City to be effective for its Municipal Plant on September 1, 1927, and on all business being supplied at the 10% meter rates used by the Utah Power & Light Company outside of Logan and as ordered by the Public Utilities Commission. A special committee made an investigation of the probable minimum production of the Municipal Plant and said on page three of their report to the Fact-Finding Committee of the Logan City Electric Light Investigation, "Your committee is of the opinion that the Logan City Electric Light Plant could serve all of Logan City if served over meters."

Table copied from page 8 of the report made by a special committee, William Peterson, Ray B. West, and Parley E. Peterson, to D. C. Budge, chairman of the Fact-Finding Committee of the Logan City Electric Light Investigation.

(City's Customers Alone) #Table No. 3. (5¢ Meter Rates)

Classification	Number of Customers	Total Billing Per Customer	Possible Discount	Total Minimum Net Revenue
Residence Light	1554	\$12.25	\$1.22	\$17,140.68
Commercial Light	143	66.00	6.60	8,494.20
Residence Fuel	86	20.30	1.04	1,699.36
Commercial Fuel	---	-----	----	-----
Power	36	175.00	8.75	5,985.00
Street Lighting	1	8,500.00	----	12,000.00
Total-----				\$45,419.18

(City's Customers Alone) #Table No. 5. (10¢ Meter Rates)

Classification	Number of Customers	Total Billing Per Customer	Possible Discount	Total Minimum Net Revenue
Residence Light	1554	\$24.50	\$2.45	\$34,285.70
Commercial Light	143	150.00	15.00	19,305.00
Residence Fuel	86	31.38	1.57	2,563.66
Commercial Fuel	----	99.36	4.97	-----
Power	36	175.00	8.75	5,985.00
Street Lighting	1	-----	----	12,000.00
Total-----				\$74,119.36

These two tables show the total minimum revenue per year based on the number of customers of the Municipal Plant as of September 1, 1927; first, on the 5¢ meter rates as fixed for the Municipal Plant by the City Commission; second, on the 10¢ meter rates which the Municipal Plant was ordered to adopt by the Public Utilities Commission.

Tables were copied from pages 7 and 9 of the report made by a special committee to D. C. Budge, chairman of the Fact-Finding Committee of the Logan City Electric Light Investigation.

#The Municipal Plant has a standing indebtedness of \$350,000.00 of which \$15,000.00 were appropriated in 1928, leaving a net bonded indebtedness amounting to \$335,000.00. There are additional floating bonds amounting to \$50,000.00 that are due on December 31, 1929, but they can be retired at any time. The \$15,000.00 paid last year on the principal was paid on two serial bonds, one due in thirteen years and the other one in twenty years. It will take until 1944 for the City to retire its last bonds of the indebtedness on its Electric Light Plant. All the bonds carry an interest of 5% except an amount of \$20,000.00 which demands only 4 $\frac{1}{2}$ per cent.

#The Logan City Electric Light Plant had an operating income of \$68,734.80 in 1928 and a total operating cost of \$32,401.16 leaving \$36,333.64 as a total net income plus other incomes amounting to \$4,876.23, leaving \$41,209.87 available for the retirement of its bonds and their interest. \$15,000.00 were paid on the serial bonds, \$18,025.00 in interest on the bonded indebtedness and \$3,106.80 as interest on the floating bonds totaling to \$36,131.80 to be subtracted from the net income of \$41,209.87 which in turn gave \$5,078.07 to be applied to a sinking fund for the payment of the other bonds as they come due.

#Facts were obtained from H. R. Pedersen, Logan City Auditor.

LOGAN CITY ELECTRIC LIGHT PLANT
OPERATING STATEMENT OF INCOMES AND
EXPENSES FOR THE YEAR 1928.

Operating Incomes-----		\$	68,734.80
OPERATING EXPENSES			
Maintenance Dam and Pipe Line-----		\$	226.19
Operating of Power House, Canyon-----			6291.95
Maintenance of Power House Mach. and Equipment -----			260.21
Operation and Maintenance of Auxiliary Power Plant-----			2014.21
Maintenance Power House Buildings and Grounds -----			191.94
Maintenance Buildings and Grounds Auxiliary Power Plant-----			669.75
Maintenance Transmission Lines -----			390.00
Maintenance Sub Station And Equipment -----			27.01
Maintenance Distribution System -----			5106.04
Maintenance of Meters -----			109.73
Maintenance of Street Lighting Lines -----			1596.86
Operation and Maintenance of Automobiles -----			1680.20
Undistributed Payroll -----			2082.81
Undistributed Freight and Drayage -----			732.83
Consumption Expenses -----			1270.55
Commercial Expenses -----			2273.12
General Expenses -----			7573.75
Total Operating Costs -----			32,401.16
-----			36,333.64
 Net Operating Income			
Add:			
Bank Interest Earned -----			170.37
Net Income From Merchandise -----			2016.58
Miscellaneous Income -----			2889.28
			4,876.23
Income available for retirement of bonds and Interest			41,290.87
Principal amount paid on Light Bonds		15,000.00	
Interest paid on Bonded Debt		18,025.00	
Interest paid on Floating Debt		3,106.80	36,131.80
Net Plant Gain -----			5,078.07

Submitted by:
H. R. Pedersen
Auditor.

If all the consumers of electrical current in Logan were patrons of the Municipal Plant the sum of \$18,214.72 could be added to the operating income of \$68,723.80 raising this item to \$87,939.52 and other figures in proportion.

There can be found a difference in the figures of the tables made by Mr. Roskelley and Mr. Bunderson in their report on about January 1, 1928. and those submitted by Auditor Pedersen on January 1, 1929. On page 10 of the Roskelley-Bunderson report to the Fact-Finding Committee, a table is given showing the estimated annual operating expenses of the Municipal Plant to be \$28,075.96 and which was assumed to be constant. According to the auditor's statement, the actual total operating costs for the Municipal Plant for the year 1928 was \$32,501.16. In table No. 3 of the Roskelley-Bunderson report the annual net revenue to the Municipal Plant, as based on the number of customers the Municipal Plant served on the 5¢ meter rates as of September 1, 1927, was \$45,319.18, while the actual operating income of the Municipal Plant proved to be \$68,734.80. The difference between the estimated annual operating expenses and the annual revenue and the actual operating costs and operating incomes can be accredited to a number of things. It can be noted that the operating expenses are not as high as they were estimated to be and that the operating income was much higher than estimated. These tables were compiled

on data taken from the business of the Utah Power & Light Company in other cities and from the Municipal Electric Light Plant of Brigham City operating on meter rates and not on the actual operation of the Municipal Plant of Logan on meter rates, because the flat rate system had been in force in Logan until September 1, 1927. The Municipal Plant of Logan operated on the 10¢ meter rates as ordered by the Utah State Utilities Commission from March 1, 1928 until July 1, 1928 and the revenue taken in during these four months would be material in raising the operating income for the Logan Municipal Electric Light Plant for the year 1928 to a figure higher than the one estimated by the Roskelley-Bunderson report based on the 5¢ meter rates. Also, the customers of the Logan Municipal Plant have increased since January 1, 1928.

#On February 1st, 1929, the Municipal Plant of Logan had 2,087 connected customers; 2,487 classified customers; 2,544 installed meters for all classes; 225 metered electric ranges; and 691 Horse Power in motors. On March 18, 1929, there were 2,597 classified customers making an increase of 110 classified customers since February first.

In collecting data for the Roskelley-Bunderson report, it was noticed that the consumption of electrical energy in Brigham City at the 5¢ meter rates used by its Municipal

#Facts were obtained from Heber C. Maughan Supt. of the Municipal Plant.

Plant was not higher per capita or per customer than the consumption of electrical energy in other cities on the 10¢ meter rates by the patronage of the Utah Power & Light Company. It was the contention of Logan City, that the customers of the Logan Municipal Plant could afford to use and would use more electrical energy at the 5¢ meter rates than at the 10¢ meter rates. This contention has proven to be correct. The following data given by H. C. Maughan will show the difference in the average consumption per customer during comparative months, using current at 10 cents per K. W. H. and also at 5 cents per K. W. H.

COMPARABLE MONTHS	K. W. H. CONSUMPTION	CLASSIFIED CUSTOMERS	WATTS CONSUMPTION PER CUSTOMER	TOTAL INCREASE IN CURRENT FOR MONTH
March, 1928-10¢	88587	2320	38.	
March, 1929-05¢	119282	2597	49.8	30644.6
April, 1928-10¢	90280	2329	38.	
April, 1929-05¢	120163	2731	47.6	26217.6
July, 1928-10¢	88283	2386	37.	
June, 1929-05¢	123563	2389	61.7	35119.3

Up to the time of the operation of the Diesel engine, the Municipal Plant purchased power from the Utah Power & Light Company in case of an emergency, repair of its plant or when its power became insufficient to meet its patrons' demand. This emergency hook-up was transacted on

a contract of a minimum charge of \$85.00 per month, which the Municipal Plant had to pay to the Utah Power & Light Company regardless of whether or not it needed or used any of its power. The rate of this present break-down contract, for the purchase of auxiliary power which was taken for a period of ten years is:

#For service up to 100 K. W. -----	\$50.00	per KWH per year
From 100 to 200 K. W. -----	\$47.50	per KWH per year
From 200 to 300 K. W. -----	\$45.00	per KWH per year
From 300 to 400 K. W. -----	\$42.50	per KWH per year
All over 400 K. W. -----	\$40.00	per KWH per year

#The City paid at the rate of 105 K. W. for five minutes.

For the use of 432 K. W. it paid \$1648.32:

For the first 100 K. W. -----	\$416.67
For the second 100 K. W. -----	\$395.83
For the third 100 K. W. -----	\$375.00
For the fourth 100 K. W. -----	\$354.65
and for the 32 K. W. -----	\$106.65

\$1648.32

#Logan City paid \$1,698.00 to the Utah Power & Light Company for purchased power for the month of December 1927. If the Municipal Plant used 105 K. W. for five minutes, it would be charged for that amount at that peak for the entire month. On Friday January 31, 1928, it became necessary to shut down the canyon plant of the Municipal Plant to make a test of the underground cables and generator leads, and the Diesel Engine took the load of 305 K. W. for two hours and the consumers did not know that the canyon plant was not operating. Although, the City does not buy auxiliary power

#Facts were obtained from H. C. Maughan, Supt. of the Municipal Plant.

at the present time, it still has to pay \$85.00 per month as agreed in its contract until May 1929.

#In April 1927, Logan City bought a Diesel Engine to be used as an auxiliary generating plant to the hydro-electric plant in Logan Canyon. This Diesel Engine has 675 Brake Horse Power. The grounds on which it and its buildings are situated cost \$1,322.66; the buildings cost \$11,313.86 and other equipment cost \$50,454.55 making a total cost of \$63,091.07. In April 1929, the City bought another Diesel Engine of 1,200 Brake Horse Power. This engine will be installed with electric generator, switch-board, exciter and all necessary piping and wiring for the sum of \$70,840.00. This engine was bought as an insurance to provide reserve electrical current for the demand upon the Municipal Electric Light Plant. The City Officials feel that this new addition to the Auxiliary Plant is necessary since consumers of electrical current will not patronize an electric light company producing a commodity like electricity unless they know that such a company is capable of serving the commodity whenever it is needed. During the low water period, the hydro-electric generating plant in Logan Canyon produces approximately 550 kilowatt hours of electricity and the first Diesel Engine has a capacity to produce 500 kilowatt hours of electricity. Logan City expects a peak demand of approximately 1,000 kilowatt hours on its Municipal Plant when all the consumers of electrical current in Logan become its customers. The patronage of the

#Facts were obtained from H. C. Maughan, Supt. of the Municipal Plant.

Municipal Plant is increasing at the present time and seemingly the City expects a continual increase and so it is making preparations for such a contingency. In case of a break-down or a low water period at the hydro-electric plant in the canyon there is only one source outside of the Diesel Engines from which the Municipal Plant can ~~secure~~ auxiliary power and that is from the Utah Power & Light Company. So if the City had not installed the Diesel Engines as an auxiliary plant, it would have had to buy emergency electrical current from the Utah Power & Light Company, in order to meet the demand of its customers at a contract price based upon a yearly peak. For instance if the Municipal Plant used 500 kilowatt hours of electrical current from the Utah Power & Light Company for only five minutes during the year the City would have to pay for that amount of electrical current as if they had used it continuously at that peak for one year. This example is not given to show any unreasonableness on the part of the Utah Power & Light Company, but to show that the Diesel Engines are necessary as auxiliary plants to the hydro-electric plant. The Utah Power & Light Company is justified in making a charge for any electrical current it may sell to the Municipal Plant in case of an emergency on a contract price, because it has invested capital for equipment in generating plants capable of producing auxiliary power to the Municipal Plant and such equipment is almost as expensive while it is idle as when it is in operation.

The Utah Power & Light Company has several generating plants which are inter-connected and capable of serving each other as auxiliary plants, so there is no need for it to invest in Diesel Engines as the City has done. It is estimated that the new Diesel Engine will pay for itself when it is remember that during seven and one-half years at the number of customers the Municipal Plant had in the past, the City paid \$92,000.00 to the Utah Power & Light Company for auxiliary power and the new Engine costs \$60,840.00.

According to the special committee which made a report to the Fact-Finding Committee of the Logan City Electric Light Investigation, there are two well accepted views of municipal ownership of electric light plants. Under the first view, all that a municipal electric light plant is expected to do is to pay all operating expenses, to meet the interest on the bonded indebtedness of the plant as it falls due and to pay off the bonded indebtedness during the normal life period of the plant. Under this viewpoint, the amount put in a sinking fund or paid off on the bonded indebtedness of the Municipal Plant takes the place of the depreciation fund ordinarily provided for by a privately owned electric light plant or by any other private business concern. Using such a system, it is possible for a municipal plant to furnish service at the lowest possible cost.

#The Committee prepared five financial plans by which

#See pages 15, 16, and 17 of the Special Report given to the Fact-Finding Committee by William Peterson, Ray E. West and Parley E. Peterson.

the bonded indebtedness of the Municipal Plant could be paid from the net operating expenses of the Plant. The first plan was based on the assumption that the Municipal Plant would have all the customers of electrical energy in Logan City at the 5¢ meter rates and would leave \$268,115.64 after twenty years as a balance surplus to take care of the increasing maintenance of the Plant. The second plan was based on the assumption that the Municipal Plant should serve only its own customers of electrical current as of September 1, 1928, on the 5¢ meter rates and would leave an accumulated deficiency of \$463,319.16 after the bonded indebtedness had been paid in twenty years. According to the third plan, a surplus of \$1,404,399.64 would be accumulated after twenty years provided the Municipal Plant served the entire community at the 10¢ meter rates approved by the Utilities Commission. After twenty years under the fourth plan of using the 10¢ meter rates and serving only the customers of the Municipal Plant as of September 1, 1927, \$113,690.44 would be available as a surplus. The second plan is estimated according to the revenue of the Municipal Plant in Table No. 3 and on the estimated annual operating expenses of the Municipal Plant amounting to \$38,075.96. The fact that it is shown, by this second plan, that the Municipal Plant would have an accumulated deficiency of \$463,319.16 at the

end of twenty years after paying the annual operating expenses, the interest and the bonded indebtedness of the Municipal Plant is not decisive. Under this plan, only \$7,243.22 was estimated as the annual net income available to meet the interest on the bonds of the Municipal Plant and to pay them off as they came due. It is shown by the report of the City Auditor that \$1,209.87 was the actual net revenue available in 1928 for the retirement of the bonds of the Municipal Plant with interest. It is evident that if the Municipal Plant had all the customers of electrical current in Logan City at the 5¢ meter rates or operated on the 10¢ meter rates, it would be doing more than was expected of it, by adding a good profit to the financial condition of the City.

#The second view of municipal ownership as reported by the Committee argues that since publicly-owned utilities come into direct competition with other privately-owned utilities, that they should be held to the same rules of cost and profit as any privately-owned company. It is believed that the Municipal Plant should pay all operating expenses and allow revenue for a depreciation fund to replace the present plant when it is worn out. This view maintains that the Municipal Plant should yield expenses, interest, depreciation and perhaps a surplus. The Committee estimated that the annual depreciation of the Municipal Plant would

#Facts taken from pages 12 and 19 of the report of the Special Committee to the Fact-Finding Committee of the Logan City Electric Light Investigation.

be \$20,464.78. The report of Auditor Pedersen shows that \$41,209.87 was the net amount available for the retirement of the bonds of the Municipal Plant and their interest in 1928. This actual amount is almost double the estimated amount of depreciation on the Municipal Plant.

When Logan City built its Municipal Plant and when it was reconstructed and enlarged in 1924 and in 1927, the City did not actually take money from its treasury and invest in these constructions. It was necessary for Logan City to borrow the money for the construction and the enlargement of the Municipal Plant. This meant that the Municipal Plant was built and reconstructed on bonds held by outside capital. The capital invested in the Municipal Plant does not literally belong to Logan City, but to other institutions or capitalists. If the Municipal Plant is capable of paying its operating expenses and then producing a net income large enough to pay the interest and the principal of its bonded indebtedness that can be comparable to the ability to make an allowance for interest on invested capital and depreciation by a privately owned electric light plant or any other privately owned business which has invested its capital in some business enterprise. It does not seem necessary for the present Municipal Plant to make enough net income to pay for itself by redeeming its bonded indebtedness with interest

in twenty years and then in addition have a depreciation fund large enough to build a new plant at the end of the twenty years. The present Municipal Plant belongs to this generation although it has made no actual investment, but it is paying off the bonded indebtedness of the Municipal Plant through its patronage and consumption of electrical current. It seems only fair that the next generation should bond for a municipal plant for their use when the present Plant is no longer sufficient for their needs. There seems to be no reason why the present consumers of electrical current should pay high rates for electrical current from the Municipal Plant in order that the future consumers of electrical current might be served by a municipal plant having no bonded indebtedness, but which was paid for by high rates charged to the present customers of the Municipal Plant.

Municipally owned electric light plants have been successful and beneficial to the consumers of electrical current as shall be seen from the following quotations:

The former Mayor Bertha K. Landis of Seattle, Washington was in Logan on a Lyceum program in October 1928 and stated to a reporter of the "Cache Valley Herald", "that the Municipal Electric Light Plant of Seattle had saved the people millions of dollars; the cost of electrical power having been reduced from 22 cents per K. W. H. to 5.5 cents per K. W. H. since the operation of the Municipal Plant there."

George S. Bates in his thesis, "The Possibilities of City Manager Government for Utah Communities", in 1925, made the following observation and report on the Brigham City Municipal Plant:

"Six cents per kilowatt hour for electricity, when the Utah Power & Light Company, the largest scale producer in the West, retails it for eleven cents indicates a real boom to the citizenry of Brigham City---a total saving to them of nearly \$30,000.00 yearly. And further, if the municipality were compelled to purchase power at commercial rates per kilowatt hour or per horse power the result would not only be an increased cost of several thousand dollars annually for the lighting of streets and public buildings, but would no doubt react in the direction of reducing the amount of such illumination, and further, the City now allows a 75% discount to churches and public service clubs for electricity used, and porch lights are allowed free power if the owner will pay separate installation costs, which amounts to only a few dollars. Such liberality would hardly be expected under any regime of private operation of a lighting system."

Mr. Bates found that the Brigham City Electric Light Plant was not wholly self-sustaining, but even with the necessity of some taxation for its interest and principal on bonded indebtedness, it was operated efficiently and was proving a financial saving to that City's consumers of electrical current.

Rauschenbush and Laidler in "Power Control" on page 165 make the following statement:

"In some cases the municipalities have gone into the business not where there was no service, but where regulation of the private company had failed to protect them. In Cleveland, Ohio, the private company charged 10 cents a kwh. for domestic lighting. The Public Service Commission ordered a reduction. The company appealed, demonstrating mathematically that to reduce the price would mean bankruptcy. Then Cleveland went into the electric light and power business itself and started off by cutting the rates in two. The private company was forced to do the same. No bankruptcy ensued. It is carrying on a successful business, only now it is the people of Cleveland, rather than the stockholders of the private company, who are ahead of the game."

Several conclusions can be made from this study of economic efficiency of municipal lighting in Logan City. Logan City's Municipal Electric Light Plant is capable of serving all of the consumers of electrical current in Logan City. The use of the 10¢ meter rates by the Municipal Plant would mean an excess charge to the consumers of electrical current and would yield a surplus net income for the Plant. The 5¢ meter rates are reasonable rates for the Municipal Plant because it seems probable that they are sufficiently high and can yield enough revenue for the Municipal Plant to pay its operating expenses and the interest and the principal of its bonded indebtedness when it falls due, if the patronage of the Municipal Plant continues to increase. It seems possible that it will not be necessary to assess the taxpayers in the future for the maintenance of the Municipal Plant. The patronage of the Municipal Plant is increasing. The Diesel Engines are an asset to the Municipal Plant because it will not longer be necessary for it to buy auxiliary power from the Utah Power & Light Company and will insure against emergencies that may arise to close down the hydro-electric plant. The amount of consumption of electrical energy by the consumers of electrical current from the Municipal Plant is higher under the 5¢ meter rates than under the 10¢ meter rates. It is not necessary for the Municipal Plant to produce sufficient revenue to establish

a depreciation fund in addition to paying off its bonded indebtedness. It is the contention of the Utah Power & Light Company that it cannot operate its plant in Logan on the same 5¢ meter rates at which the Municipal Electric Light Plant is now operating. The Municipal Plant has been instrumental in showing along with the municipal plants of Brigham City, Seattle, Cleveland and other cities, that municipal ownership of the electrical utility is successful.

An article entitled "Handsome Profit Made by Utah Power & Light Company" appeared in the "Logan Journal" for April 8, 1929:

"The net income for the Utah Power & Light Company for the year ending December 31, 1928, was \$3,949,365.34 an increase of \$241,135.43 over the profit shown for the preceding year, according to the Company's annual report submitted Saturday to the Utah Public Utilities Commission.

"In addition, the company paid out \$2,819,724 in dividends during 1928, the report showed.

"Revenues from operation amounted to \$10,451,226.03, as compared to total operating expenses of \$2,928,518.96. Taxes in the amount of \$1,419,291.28 were paid."

BEFORE THE STATE SUPREME COURT

#The case of Logan City vs. Public Utilities Commission and the Utah Power & Light Company, which came before the Supreme Court in February 1928 and again for a rehearing on November 24, 1928 was really a controversy between the City and the Company. At the first hearing, four members sat on the bench. A decision was rendered wherein three of them agreed that the Utah State Public Utilities Commission did not have jurisdiction to regulate the rates for the Municipal Electric Light Plant of Logan City. A rehearing was granted because the first judgment was rendered by only three judges and the Power Company desired a hearing before a complete Court. Mr. Justice Thurman was disqualified so a District Judge was asked to take his place at the rehearing. Justice Straup wrote the decision of the rehearing.

The question at issue was whether or not the authority to fix the rates for public utilities owned and operated by a municipality belonged to the State Utilities Commission or had been granted to the City Commission by the State Legislature. The Utah State Public Utilities Commission and the Utah Power & Light Company relied upon the provisions of sections 4782, 4783, 4784, 4798 and 4800 of the Public Utilities Act for its authority to regulate the rates of a municipal electric light plant, and

#Facts were taken from page 961 of 271 Pacific Reporter. Justice Hansen agreed entirely with Justice Straup. Justice Gideon and Judge Wooley concurred with the opinion in the majority of the points, but Justice Cherry dissented.

also upon the case of City of St. George vs. Public Utilities Commission, 220 Pacific Reporter page 720, and upon the case of Public Utilities Commission vs. City of Helena, 159 Pacific Reporter page 24. Logan City used Section 794 as it is amended in Chapter 63, 1925 Utah Laws and the reasoning of the Colorado Supreme Court in the case of Town of Holyoke vs. Smith, 226 Pacific Reporter page 158, in supporting the view that the Utah State Utilities Commission did not have jurisdiction over municipally owned utilities.

There were three major considerations involved in the question as to whether or not the Utah Public Utilities Commission had authority to regulate the rates and the charges to be made by a municipally owned public utility in the State of Utah. First, had this question ever been decided upon by the Utah Supreme Court before? Second, did the statutes of the State specifically delegate the power to regulate the rates of municipally owned utilities to the Utah State Utilities Commission? Third, how had the Supreme Courts reasoned on this question in other states having constitutional provisions and Public Utilities Acts similar to the constitutional provision and the Public Utilities Act of Utah?

If the State Supreme Court had at any time in the consideration of some other case prior to the hearing of this case decided that the Public Utilities Commission did have jurisdiction to regulate the rates of a municipally owned utility, the cause of Logan City would probably have been lost. If a Supreme Court

once decides on a question involving statutory or constitutional interpretation the decision given must usually stand.

#The case of City of St. George vs. Public Utilities Commission was cited and discussed in the briefs of the Utah Power & Light Company and the Utah State Public Utilities Commission as having conclusively settled the constitutional and statutory questions involved in the regulation of rates for a municipally owned utility by the Utah State Utilities Commission. The City of St. George had owned a municipal electric light plant and had sold it to A. L. Woodhouse, who in turn had sold it to the Dixie Power Company. In the contract of sale to A. L. Woodhouse, the City of St. George had provided that it should receive 15 K. W. H. of electrical energy for its street lighting system free of charge from A. L. Woodhouse and that the consumers of electrical current in St. George and its surrounding territory should receive service at a specified rate from the Plant as operated by the successor to the municipal ownership of it. The contract of sale was made in 1916 and was binding upon A. L. Woodhouse his heirs and assigns for twenty-five years. In the meantime, the Dixie Power Company operated the electric light plant. In 1921, the Utah State Public Utilities Commission set aside the contract made between the City of St. George and A. L. Woodhouse and allowed the Dixie Power Company to raise the rates for

See page 27 of "Application for Re-Hearing" by John F. MacLane and Geo. R. Corey, and page 2 of the Brief on Behalf of the Public Utilities Commission of the State of Utah by Harvey H. Cluff Attorney-general, and W. Halverson Farr, Deputy attorney-general, in the case of Logan City vs. Public Utilities Commission.

electrical current sold to the consumers of St. George and the surrounding territory and also to charge the City of St. George for the 15 K. W. H. of electricity which the City consumed for its street lighting. The case came before the Supreme Court in November 1923 and the decision rendered was written by Justice Frick. It was decided that the Supreme Court could not interfere in behalf of the City of St. George, because the Utah State Public Utilities Commission had approved a raise in the rates charged by the Dixie Power Company to the consumers of electrical current in St. George and its surrounding territory and had allowed the Power Company to charge for the 15 K. W. H. of electricity used by St. George for its street lighting, according to the powers delegated to the Utilities Commission by the Public Utilities Act. In giving this decision, Justice Frick said a number of other things applying to municipal lighting:

"It has been the declared policy of this state that the regulation of rates for public utilities services, " is a governmental function which cannot be surrendered or suspended by the City Council."

"Upon the other hand, the Legislature has always acted upon the theory that the police power inherent in the State has never been surrendered. That such is the case is clearly manifested in the Public Utilities Act itself and the subsequent amendment thereof as will hereinafter appear."

"Municipal corporations are included in the Public Utilities Act.-----The purpose of the Act was to require all those who are similarly situated to pay the same rate- - - -without favoritism."

See case of City of St. George vs. Public Utilities Commission 220 Pacific Reporter, page 720.

#Speaking of Sections 27 and 29 of Article VI of the State Constitution, Justice Frick further said:

"We can see nothing in either of these sections which prevents the state from enforcing its governmental functions to regulate rates for public utility service. It has so often been held that it would be useless to cite the numerous authorities that, unless the sovereign has in express terms or by unavoidable implication surrendered its governmental function to regulate rates for public utility service, such surrender will be held not to exist."

It is not surprising after all these remarks in the St. George case by Justice Frick that Attorney-General Harvey H. Cluff and Deputy Attorney-General W. Halverson Farr acting for the Utah State Public Utilities Commission should say on page two of their brief:

"It has never seemed to the writer that there ever could be any question as to the jurisdiction of the Commission over municipally owned light plants, and if ever such doubt existed certain it must be that the decisions emanating from this court, as well as the language of the act itself, have put the matter as we think, in repose."

It was the contention of Logan City, that all reasoning by Justice Frick in giving the decision on the St. George case was mere dictum, or superfluous judgment, on the question involved in that case. If the reasoning indulged in by Justice Frick was excessive and superfluous, then the question of the regulation of rates for a municipally owned electric light plant

#Section 29 of Article VI of the State Constitution:

"The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, or effects whether held in trust or otherwise, to levy taxes, to select a capital site, or to perform any municipal functions."

had not been decided upon by the Supreme Court before. If the St. George case is analyzed, it can be seen that the question involvedⁱⁿ that case did not apply to what jurisdiction the Utah State Public Utilities Commission had over municipally owned utilities. The question was whether or not the Utah State Public Utilities Commission could allow the Dixie Power Company to raise the rates for electrical current in St. George and charge for the electricity used by the City of St. George for its street lighting when a contract had been made whereby it was agreed that electrical current should be produced and served at specified rates to the City of St. George and its inhabitants. The City of St. George no longer owned or operated the electric light plant. In allowing the Dixie Power Company to raise the rates for electrical current in St. George, the Public Utilities Commission was regulating the rates of a privately owned company and not the rates of a municipal plant. When the Supreme Court decided that it could not interfere in the behalf of the City of St. George because the Utilities Commission had acted on the authority given to it by the Public Utilities Act, in allowing a private company to disregard a contract and raise its rates because the rates specified in the contract were unreasonable, that was all that was necessary and the rest of the decision applying to the regulation of municipally owned utilities can be regarded as dictum or superfluous. And being superfluous, it did not have a bearing on the decision of the Utah State Supreme Court in the case of Logan City vs. The Utah State Utilities Commission.

Section 4782 of the Compiled Laws of 1917 comprising part of the Public Utilities Act gives the following definitions:

1. The term "commission" when used in this title, means the public utilities commission of the State of Utah.
3. The term "corporation" when used in this title, includes a corporation, an association, a municipal corporation, and a joint stock company, having any powers or privileges not possessed by individuals or partnerships.
4. The term "municipal corporation" when used in this title shall include all cities, counties, or towns, or other governmental units created or organized under any general or special law of this state.
10. The term "electric plant" when used in this title, includes all real estate, fixtures, and personal property owned controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat or power, and all conduits, or other devices, materials apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat or power.
20. The term "electrical corporation" when used in this title, includes every corporation or person, their lessees, receiver, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any electric plant, or in anywise furnishing electric power for public use within this state, except where electricity is generated on or is distributed by the producer through property alone, solely for his own use or the use of his tenants and not for sale to others.
28. The term "public utility" when used in this title, includes every common carrier, gas corporation, automobile corporation, electric corporation, telegraph corporation, water corporation, heat corporation, and warehouseman, where the service is performed for or the commodity delivered to the public or any portion thereof.
The term "public or any portion thereof" as herein used means the public generally, or any limited portion of the public including a person, private corporation, municipality, or other political subdivision of the state, to which the service is performed or to which the commodity is delivered---

Sections 4783 and 4784 state that all charges made by any public utility must be reasonable and that every public utility must keep open to public inspection all schedules of rates, contracts, privileges, etc.

Section 4789 is: "The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, as defined in this title, and to supervise all of the business of every such public utility in this state and to do all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."

Section 4800 is: "The commission shall make and submit to the governor annual reports containing a full and complete account of the transaction of its office, together with such facts, suggestions, and recommendations as it may deem necessary, which report shall be published as the reports of departments of the state. The said report shall be made and submitted as soon after December 31 in each year as may be feasible in order to bring the report down to that date."

It would seem from the language of these sections of the Public Utilities Act that a municipality owning and operating its own utility is a "public utility" within the meaning of the Utilities Act. But the Supreme Court held that such reasoning could only be concluded by considering definitions and making deductions from them which would be inconsistent with section 29 of article VI of the State Constitution.

"And on familiar rules of construction if two meanings or constructions may fairly be given an act, one rendering it in harmony and the other in conflict with the Constitution, the former should be adopted."

* See page 976 of 271 Pacific Reporter.

The City Attorney of Logan City contended (on page 64 of his brief) that in addition to the statutory provisions (Sections 794, which shall be discussed later) the Order of the Utilities Commission dictating what rates Logan City should use for its Municipal Electric Light Plant violated the provision of section 29 of article 6 of the State Constitution.

The Attorney-general and the Deputy Attorney-General acting for the Public Utilities Commission said on page 6 of their brief, in regard to section 29 of article 6:

"Manifestly this section has no application here. By its very language it relates to improvements among property or effects owned or held by the municipality in its governmental or public capacity and not to property held by the city in its proprietary capacity or as a private corporation. Likewise the functions which the Legislature is prohibited from delegating to a special commission are municipal functions. But in the ownership and operation of a municipal plant the city is not performing municipal or governmental functions."

"While ownership and operation of a municipal plant may be one of the things a municipality can do, it does not necessarily follow that it is a municipal function because it does so. Nor is the commission a special commission within the terms of the constitutional provision above quoted."

Eight attorneys as amici curiae filed a brief in the support of a petition for a rehearing before the Supreme Court after the decision of the first trial in February 1928. Beginning on page one, part of the brief read as follows:

Amici Curiae is a group of attorneys heard only by the leave and for the assistance of the Court, and upon a case already before it. They have no control over the suit, and no right to institute any proceedings therein.

"The attorneys joining herein are counsel for various of the smaller electrical and gas utilities operating in the state and have no relation to or interest in the decision herein so far as it affects only the interests of the parties to the litigation. The decision heretofore handed down in this case, however, seems to establish certain constitutional principles which, if adhered to, will most vitally affect the interest of these smaller utilities represented by the counsel joining in this brief, and it is solely for the purpose of endeavoring to secure a modification of the court's views in reference to these constitutional principles that this brief is filed in support of the defendant Power Company's application for re-hearing.

"As we read the court's decision, it seems to hold- - - that the public Utilities Act of this state is repugnant to Section 29 of Article 6 of the state constitution in classifying as a "public utility" a municipal corporation owning and operating public utility plants whether constructed before or after the passage of the Public Utilities Act. We respectfully urge that the court has erred in so applying the constitutional prohibition contained in Section 29 of Article 6. Of course there can be no question but that the Legislature of the state through subsequent legislation can withdraw or modify requirements theretofore imposed by it upon the public utilities of the state; and, in such a situation, the only question is whether or not the Legislature has actually done so. It is a matter of very much wider import, however, to say that our constitution absolutely prevents the Legislature from exercising control over municipally owned public utilities in the manner set forth in our Public Utilities Act. - - -they are in no way repugnant and that the act must be considered in full force and effect according to its terms except to such as subsequent legislation has modified or repealed it.

"This section is one of the original sections adopted by the Constitutional Convention in 1895, and is evidently taken from similar provisions theretofore included in the constitutions of other states as we find substantially similar provisions in the constitutions of Pennsylvania (art. 9, Sec. 20), Wyoming (Art. 3, Sec. 37), California (Art. 11, Sec. 9), Colorado (Art. 5, Sec. 46), and South Dakota (Art. 3 Sec. 26). All of these, however were adopted prior to our Constitutional provision. - - - - - and it is very clear that none of them aimed at such an exercise of legislative power as that embodied in our Public Utilities Laws as all were adopted long prior to the era of statewide control of public utilities enforced through the Public Utilities Commissions and at a time when no thought whatever was being given to the problems that later arose with the great development in public utility services.

"The repugnancy between the Constitution and the statute can only be found by ignoring the historical setting and plain meaning of the constitutional provision and importing into it an intention to protect the municipalities of the state, at whatever cost to the general welfare of the people of the state at large, in what is denominated the right of local self-government, a right which the Constitution at no place indicates must include an unrestricted right to develop and handle at their own sweet will public utility plants for the service of their residents.

Justice Straup in the decision of the State Supreme Court said of the Utilities Act and its relation to Section 29 of Article 6 of the State Constitution:

"We think it clear that the undoubted purpose of the constitutional provision is to hold inviolate the right of local self-government of cities and towns with respect to municipal improvements, money, property, effects, and the levying of taxes, and the performance of municipal functions. Stress is laid on the words in the section of the Constitution, "special commission" that the power shall not be delegated to a special commission and that the Public Utilities Commission is a general and not a special commission, and hence whatever power may have been delegated to a general commission in such respect is not in violation of such constitutional provision. Such construction is too narrow and one which in effect impairs the very essence and purpose of it, deprives cities and towns of local self-government, and interferes with their power to levy taxes in the performance of their improvements, property and municipal functions."

"To say that the power of the commission, notwithstanding the Constitution, to supervise, regulate, and control the business and fix rates and charges of a municipally owned and operated plant is to disregard or not give effect to the Constitution, for a municipality is specifically and exclusively mentioned therein, and the Constitution in such particular expressly and exclusively adopted for the benefit and protection of only municipalities."

"If a municipally owned plant is included within the Utilities Act as a public utility, then by the provisions of the act, whenever ordered by the commission, a municipality before entering into a contract for construction work, or for ~~the~~ purchase, of any facilities, or with respect to other expenditures, is required to

submit its proposed contract, purchases, or expenditures in lieu thereof for all legitimate purposes and economical welfare of the utility, which as it seems to us, constitutes a direct supervision over and an interference with the municipal improvements and property and the performance of municipal functions and affairs forbidden by the Constitution."

#Justice Gideon said after hearing the case, that Section 29 of Article VI "did not grant to municipalities the power to exercise the right of local self-government, or to own and control property, or to own and operate a public utility for the benefits the inhabitants of such municipalities. These benefits the municipalities already enjoyed. On the contrary, the section is a limitation of the power of the Legislature to delegate to any body, save only the regularly elected officers of the municipalities, the right to supervise or interfere with the property of the municipalities, or to perform any municipal functions. The purpose of the constitutional provision quoted was to guarantee to the municipalities local self-government and to deny to the Legislature any power to delegate to any body other than the local government the right to supervision over or interference with the property of the various municipalities within the state."

However, the majority of the Court held, that from the very nature of their organization, municipalities owning and operating public utilities were in a different class from the private companies owning and operating public utilities. And being in a different class, the determination of rates should not be made on the same basis. That to deny to a municipality the right to operate its electric light plant with cheaper rates than the rates charged by a privately owned company was to deny to the municipality the use of whatever advantage or ability it had to produce electrical current at lower rates than those charged by a privately owned company. In fixing

See page 794 of 271 Pacific Reporter.

the rates for the Municipal Plant and the Utah Power & Light Company, the Public Utilities Commission undertook to put both companies on the same rates regarding the relationship between the two companies rather than the relationship of each company to the consumer and to the public welfare.

It seems clear from the quotation, that have been cited from the Briefs of the attorneys and the decision rendered by the Supreme Court, that there are two views held regarding the position of a municipality owning and operating a public utility. The first view is that a municipal corporation has two separate and distinct capacities; one political or municipal by which it exercises governmental functions; the other a private or proprietary function which it exercises when it owns and operates a municipal electric light plant it is then on the same basis as a private corporation owning and operating an electric light plant. If the first view is the logical view then the contention of the Utilities Commission and the Utah Power & Light Company, that Logan City by owning and operating a municipal electric light plant comes within the jurisdiction of the Public Utilities Commission because it is owning and operating a "public utility" within the definitions of the Public Utilities Act, is not an erroneous contention. But if the second view is the logical view and the one intended by the Legislature in providing the Constitution with Section 29 of

Article VI, the Supreme Court did not err in its decision, that the Order given by the Public Utilities Commission fixing the rates for the Municipal Plant of Logan City was in violation of Section 29, Article VI of the State Constitution. It is interesting to note that the Court was divided on the question of whether or not that section of the Constitution applied to property used by a municipality in producing a public utility or just to property used for governmental functions.

Justice Gideon, as has been shown, and Justice Cherry did not agree with majority opinion of the Court.

At the time of the passage of the Public Utilities Act in 1917, there was in force a statute (Chapter 3, title 16 Compiled Laws of Utah for 1917.) which among other things, authorized cities to control the finances and the property of municipal corporations. It authorized them to construct and maintain water works, gas works, electrical or other lighting works; to contract with and authorize any person, company or association to construct gas works, electrical or other lighting works in the city; to regulate the sale and the use of gas and electric or other lights and electric power charged therefor within the municipality; and to borrow money and issue bonds on the credit of the municipality for corporate purposes.

In 1921, three years after the Public Utilities Act was adopted, Section 794, Compiled Laws of Utah 1917 relating to bonding for water, light, or sewers was amended so as to read:

"The Board of Commissioners, City Council or board of trustees, as the case may be, shall provide by ordinance for the issuance and disposal of such bonds, provided that

no such bonds shall be sold for less than their face value. The Board of Commissioners, city council, or board of trustees as the case shall be, shall annually levy a sufficient tax to pay the interest on such indebtedness as it falls due and also to constitute a sinking fund for the payment of the principal thereof within the time for which such bonds are issued."

That section was again amended in 1925 (Chapter 63 Laws of Utah 1925.) and took effect March 13, 1925, seven years after the adoption of the Public Utilities Act. The section as in 1925 reads:

"794. Issue and disposal of bonds----charges--tax--time of bonds. The Board of trustees, as the case may be, shall provide by ordinance for the issuance and disposal of such bonds, provided that no such bonds shall be sold for less than their face value. The board of commissioners, city council, or board of trustees, as the case may be, shall annually levy a sufficient tax to pay the interest on such indebtedness as it falls due and also to constitute a sinking fund for the payment of the principal thereof within the time which such bonds are issued for the purpose of supplying any city or town with artificial light, water or other public utility, the rate or charges from the operation of the system or plant constructed from the proceeds of such bonds may be made sufficient to meet such payments, in addition to operating and maintenance expenses, and taxes shall be levied to meet any deficiencies. Water or sewer bonds may be issued for a term not exceeding forty years. All other bonds may be issued for a period not exceeding twenty years. Such bonds may be either serial or term bonds."

It was the contention of the City Attorney of Logan that this Section 794 as amended in 1925 definitely settled and provided home rule for municipalities in fixing rates on utilities, such as light and water.

The Court made the following statement in its decision after it had compared the Public Utilities Act with Section 794 as it is amended in Chapter 63, 1925 Utah Laws:

#"Looking alone to the definitions referred to in the Utilities Act, there is much force to the contention that municipalities owning and operating their own plant are included within the act. Still such a conclusion seems inconsistent with the subsequent acts of the Legislature (Chapter 63, Laws of Utah 1925) requiring the City Commission or the board of trustees of the city or town to levy a sufficient tax to pay interest on the bonds as it falls due, and also to provide a sinking fund for the payment of the principal of the bonds issued and sold to construct and operate a water-work system or electric light plant, etc."

#"When we look at Chapter 63, Laws of Utah 1925, an option or discretion is given the City Commission or board of trustees to pay the interest on and principal of the bonds either by taxation or from revenue derived from the operation of the plant as well as to meet all operating and maintenance expenses, and if there be any to meet the deficit by taxation. So, whether the interest on and principal of the bonds shall be raised and met by taxation, or from charges from operation of the plant, is a discretion given the city, and not the Utilities Commission. But here the Utilities Commission itself exercised the option, and determined that all of such payments, as well as operating and maintenance expenses must be met from charges of operation."

#"In fixing the rate for the city, the commission was just as much bound by such statutory provision as we are, and had no more license to disregard them than we have. What ever views may be entertained to the wisdom of municipalities owning and operating their own utility plants, or as to legislative enactments requiring interest and the principal of a bonded indebtedness created to establish and maintain the plant to be met by taxation, or partly by taxation and partly by charges from operation, or whether to permit a city in the operation of its plant to so meet such financial requirements is or is not unjust or unfair to a competitive and privately owned utility operating at the same plant, cannot justify a disregard of such statutory requirements."

It seems evident then, that the Supreme Court made its decision in accordance with statutory provisions, and that if the Utilities Commission had been given the jurisdiction to regulate the rates and the policies of a municipality owning

#See page 967 of 271 Pacific Reporter.

and operating a municipal light plant it would also have been given the jurisdiction to levy taxes or not to levy taxes for functions engaged in by the municipality. To give to the Public Utilities Commission the authority of levying taxes for a municipal plant would be in violation of Section 794 which states very clearly that taxation for municipal functions should be levied by the City Commission or the municipal board of trustees. Even if it can be admitted

that in the absence of constitutional or statutory prohibitions the legislature could exercise its police power, as was the contention of the Utilities Commission and the Utah Power & Light Company and regulate the rates for a municipally owned utility such exercise of the police power inherent in the state, would be repugnant to Section 794 as amended in the 1925 Utah Laws.

It was the contention of the Amici Curiae in their brief (on page 34) that the only prohibition made in Section 29, Article VI of the State Constitution regarding taxation was that the legislature should not delegate to any "special commission" the power to levy taxes, and further, that the legislature by the Public Utilities Act did not delegate the rate fixing power to the Public Utilities Commission, but that the legislature prescribed what the rates for public utilities should be and merely employed the Public Utilities Commission to find the facts and enforce the requirements of the Public Utilities Act as the utilities cases were brought before it. And being merely

an administrative agency acting for the legislature, the Public Utilities Commission is not a "special commission". Also, that the fixing of rates cannot under any circumstances be considered the levying of a tax since it lacks every characteristic of a tax because a tax is essentially a forced contribution levied upon the citizens generally and is imposed upon them by the taxing power of the state, while the fixing of rates is done for the purpose of regulation under the police power of the state and is enforced only against the company supplying the public utility because the consumers are free to buy the utility or not to buy it.

#The case of *Town Holyoke vs. Smith* (226 Reporter) and the case of *Public Utilities Commission vs. City of Helena* (159 Pacific Reporter) seem to be the only cases considered in states having constitutional provisions similar to Section 29, Article VI of the Utah Constitution and having Public Utilities Acts similar to the Public Utilities Act of Utah. The decision of these two cases are almost directly opposite to each other.

#The Montana Supreme Court sustained the constitutionality of the Montana Public Utilities Act in defining municipally owned utilities within the term "public utilities", while the Colorado Supreme Court held that the Public Utilities Act of the State of Colorado was unconstitutional when it was applied in fixing the rates for municipally owned utilities.

#Facts were taken from pages 6 and 21 of Brief of Amici Curiae in Support of Petition for Rehearing.

#The reasoning of the Montana case was used by Justice Friek in writing the decision of the St. George case. The Montana case held that a municipality owning and operating a public utility was just as much under the jurisdiction of the Utilities Act as a private corporation owning and operating a public utility because it was performing a proprietary function and that it was the duty of the police power of the state to regulate the rates of public utilities for the welfare of the public. And further, that the Public Utilities Commission was a general commission and not a "special commission" and so whatever power may have been delegated to the Commission was not in violation of any constitutional provision.

#The reasoning of the Colorado Supreme Court was used by the Utah Supreme Court in deciding the case under discussion. The Colorado case held that the prohibition in a State Constitution was not limited by the fact that the term "special commission" is used and if there is a reason to prohibit a special commission, a private corporation or association from exercising the powers, as named in a constitutional provision like Section 29, Article VI of the Utah Constitution, such prohibition extends to a general commission supervising or interfering with any municipal improvement, and the levying of taxes for such an improvement.

#The Supreme Court believed that the Colorado case was supported by better reasoning than the Montana case because

See page 972 of 271 Pacific Reporter.

considered the purpose of the constitution provision was to protect the right of local self-government of cities and towns with respect to municipal improvements, money, property, the levying of taxes and the performance of other municipal functions.

One of the reasons why the Supreme Court favored the viewpoint of the Colorado case was because of its argument regarding the position of the customers of a municipal plant as compared with the customers of a privately owned electric light plant. The customers of a municipally owned electric light plant do not require protection in matters covered by the Public Utilities Act because they themselves are the owners of the municipal plant and if they are maltreated by the officials they have elected and appointed to manage the plant, they can secure relief by electing other officials. The customers of a private company, unless they are stockholders, usually do not have a voice in regulating the rates and the policies of the private company and so they need the protection offered by the Public Utilities Commission in regulating the rates of privately owned utilities.

In conclusion, it can be said that the authority to fix the rates for public utilities owned and operated by a municipality does not belong to the Public Utilities Commission because municipally owned utilities are not "public utilities" within the meaning of the Public Utilities Act. Such authority was delegated to the City Commission or the Board of Trustees of the municipality owning and operating the public utility

by the Constitutional provision of Section 29, Article VI of the State Constitution and by the statutory provision of Section 794 as amended in 1925 Utah Laws. The St. George case was not applicable or a criterion by which to judge whether or not a municipally owned utility should come within the regulation of the Utilities Commission because the reasoning on this question in that case was superfluous and not on the issue before the Court at that time. The question of regulating the rates for a municipal electric light plant had not been definitely decided upon by the Utah State Supreme Court before the case Logan City vs. Utah State Public Utilities Commission was decided upon. The constitutional and statutory principles adhered to by the Court in its decision affect the policies and the regulation of all the municipally owned utilities operating within the State of Utah. The historical setting of the constitutional provision is interesting, but it is important because the welfare of the citizens of the municipalities are involved and not the welfare of the citizens of the State and as was said in the quotation from the brief of the Amici Curiae, Section 29, Article VI of the Constitution was taken from constitutional provisions in other states which were adopted prior to the state-wide control of public utilities by the organization of Public Utilities Commissions. To allow the Public Utilities Commission the right to regulate the rates for municipally owned utilities would in effect also allow it to make assessments and collect taxes for the maintenance and operation of such municipally owned

utilities. To allow the Utilities Commission to regulate taxation for municipal enterprises would be violating the right of local self-government given to the municipal governments by the State Legislature. There are two existing viewpoints of the municipal ownership and operation of public utilities; one, that a municipally owned utility is a "public utility" within the meaning of the Public Utilities Act; and the other, that a municipally owned utility is a municipal improvement for which taxes can be levied and is not a "public utility" within the meaning of the Public Utilities Act. Two other states have constitutional provisions like Section 29, Article VI of the Utah Constitution and Public Utilities Acts similar to the Utah Public Utilities Act and the interpretation which they put on their constitutional and statutory provisions regarding municipally owned utilities are entirely conflicting. The constitutional section 29 of Article VI applies to the Public Utilities Commission whether it is a special commission operating as an administrative agent for the State Legislature or a general commission given administrative jurisdiction of its own.

WATER LITIGATION

The Logan City Electric Light Plant is operated by pressure pipes which lead from its reservoir to its generating wheels. A governor automatically controls the amount of water which passes over the generating wheels, in direct proportion to the current demanded of the Plant. The current demand on the Plant naturally varies more or less during every hour of the day and is particularly high in the evening when all the lights are being used by the consumers. At such a time, the Plant draws on its storage water in the City's reservoir. During the early morning hours, when the current demand on the Plant is low, a smaller amount of water is used and the reservoir is refilled. The Plant not only uses the regular stream of water in the Logan River, but also draws on its storage water in the reservoir, when the current demand on the Plant is high. Such use of its governor and the storage and subsequent use of the water in the River constantly fluctuates the water in an uneven stream and it is held to be a great detriment to the generating plant belonging to the Utah Power & Light Company, which is situated about three miles further down the River.

Before the summer of 1922, the Logan Hyde Park & Smithfield Canal Company took its water from the River below the

intake of the Utah Power & Light Company's flume and had its headgate in the flume of this Company's intake. The headgate was submerged in the bottom of the flume, so that the water was spilled under pressure in a constant stream back into the River and ran down the river bed for a distance of about eighty rods and then went into the intake belonging to the Canal Company. In 1922-23, the Utah Power & Light Company rebuilt its flume leading from its intake to its generating plant, doing away with the sub-merged headgate and causing the canal to take its water over the spillway of the Utah Power & Light Company's dam.

The generating plant of Logan City was shut down, during the irrigation season of 1923, for reconstruction. It was not noticed until the season of 1924, that the absence of the Canal Company's sub-merged headgate brought the river water to the Power Company's flume in the same uneven stream as existed when it left the City's generating plant. Not only did this change cause a fluctuation of the water for the Power Company's generating plant, but also in the irrigation streams furnished by the river. The Logan, Hyde Park & Smithfield Canal Company and other irrigation companies, situated lower down on the River, demanded that Logan City should cease fluctuating the water. These farmers claimed that the unsteady stream was due to the enlargement Logan City had made on its Plant and reservoir. This was obviously not the case, since Logan City had used its

governor before it reconstructed its Plant and had sent water back into the River at an irregular flow. The removal of the submerged headgated by the Power Company in its flume was the real reason for the fluctuation of the irrigation stream. At the time this demand was made upon Logan City, the Mayor and the City Commission were rather friendly with the Power Company and so it was agreed that Logan City's generating plant should connect up with the generating plant of the Utah Power & Light Company and take its governor off the generating wheels during the summer irrigation season. Under this arrangement, the generating plant of the Municipal Plant generated a large volume of current and the excess current went into the Power Company's system. The City did not concede that it was at fault in fluctuating the irrigation stream, but adopted this method during 1924 and 1925 in order to avoid trouble with the irrigators.

In June 1926, the same irrigators and other water users came to Mayor Lundstrom and made a like request, that the City should connect its generating plant up with the Power Company's generating plant and take off its governor from the generating wheels so as to give the canals an even stream of water. The City did this, but on the 25th day of June 1926, the Utah Power & Light Company ordered the City to disconnect its wires, stating that it did not care to receive any current from Logan City. It seemed to the City Officials that the purpose of this order was to compel the City to restore its governor ~~and its~~ generating plant and so fluctuate the river stream, by which the Power

Company hoped that the irrigators and the farmers would file suit against Logan City, which was done. In this suit, the Power Company was joined as a party defendant, and the District Court held that Logan City was bound by the default decree entered February 21st, 1922, and was prevented from setting up any of its power rights upon Logan River and was enjoined from fluctuating the water in the River.

It is interesting to note, that in the suit which resulted in the decree of February 21, 1922, all interested parties were asked to present their claims on the water rights of Logan River so that all titles could be quieted on such waters, and that Logan City did not enter a claim and so was left out in the decree. It seems possible that such an important user of the water of Logan River as Logan City is for its generating plant, must have received notice of such court proceedings. Somewhere in the 1922 administration blame could be obviously placed for its neglect to file in Court the City's right to the water of Logan River. At this same suit, the Utah Power & Light Company made no reference whatsoever to the Municipal Electric Light Plant on Logan River or that Logan City operated its Plant with a governor fluctuating the stream and interfering with the rights of the Utah Power & Light Company.

At the Supreme Court litigation on June 4, 1928, the main subject of controversy was the superiority or priority of rights to the use of the water of the River as between the opposing side

each of whom asserted rights paramount to the other. However, the judgment of the District Court given at the 1926 litigation was upheld by the Supreme Court holding that all matters were judicially settled by the decree of 1922.

Regardless of this decree in favor of the Utah Power & Light Company, the City continued to fluctuate the water and declared that it had always operated its Plant with the use of a governor on its generating wheels and that it was the only way in which its Plant could be operated. During December 1928, the fluctuation became serious in the viewpoint of the Utah Power & Light Company because the River was then filled with broken ice and snowy slush which clogged its machines when it came into them in uneven proportions. About January 1st, 1929, the officials of the Utah Power & Light Company threatened Logan City and its officials with contempt of court proceedings if the City continued to operate its Plant in such a manner as to fluctuate the water of Logan River. Regardless of this threat, the Mayor and the City Officials refused to consider the wishes of the Power Company or obey the jurisdictions of the Courts.

An order signed by Judge M. E. Harris was filed in the District Court citing Mayor A. G. Lundstrom and other City Officials into the Court on January 11, 1929, to show cause why they should not be punished for contempt of court in disobeying and refusing to comply with the judgment and decree of

the Court rendered on the 18th day of December 1926. The Order was issued upon the affidavits of George R. Corey, Wilford W. Smart and George D. Clyde, which alleged that the water of the River was being fluctuated by the generating plant of Logan City.

Judge Oscar W. McConkie of the Third Judicial District Court was Judge at the trial because M. C. Harris had disqualified himself to act in this case. The City Attorney first put forth an objection to the allegation made upon the City Officials and asked that the Court should dismiss the proceedings because the previous court decisions did not enjoin Logan City from fluctuating the river water for power purposes. He contended that the Utah Power & Light Company had not been injured by the City in the operation of the Municipal Plant with the use of its governor on its generating wheels. He stated that the Power Company had ordered the City's employed engineer off its flume when an attempt had been made to make measurements pertinent to the case. He observed that the Utah Power & Light Company would not have been injured in the slightest degree if it had put flash boards upon its dam at the intake of its flume and thus maintained a reservoir in its forebay which would have given an even stream in its flume, because Logan City did not consume or destroy any of the water of the River. He further asserted that Utah Power & Light Company had gained a technical advantage by means of the decree of 1922

and had arbitrarily done away with its reservoir and had refused to operate a headgate in its flume and had thus allowed the water to come in gushes into its flume and had permitted part of it to spill over, so as to make a showing in Court at contempt of court proceedings against Logan City and its officials. He said that the only purpose the Utah Power & Light Company had in bringing forth the lawsuit was to destroy Logan City's Electric Light Plant, since its predecessors, the Hercules Power Company and the Telluride Power Company had always used flashboards on the dam at its generating plant and so had the Utah Power & Light Company for a number of years. He contended that the Court did not have jurisdiction over the proceedings because the remittitur, or the court decree, had not come down from the Supreme Court since its decree was issued in June 1928, and had not been filed with the Clerk of the District Court until after the papers had been served on the City Officials by Sheriff Shaw for contempt of court.

The Utah Power & Light Company opposed the dismissal of the contempt of court proceedings against the City Officials by a lengthy discussion showing how the Company was injured by the generating plant of the City, which caused the river stream to be irregular. Attorney A. E. Bowen attempted to show that Logan City had had its day in Court by citing its failure to take part in the District Court trial to quiet

Attorneys Storry, Corey and Bowen acted for Utah Power & Light Company.

water claims on the Logan River in 1922. He urged that there came a time when litigation should cease and that that time was when the Supreme Court had given its decision, that the Power Company's rights to Logan River were superior to those of Logan City, in June 1922. The Power Company, further asked that a commissioner should be appointed by the Court, at the expense of Logan City, to take charge of and manage the gates and valves in the operation of the hydro-electric plant belonging to the City, so that the decree of the Court could be enforced and obeyed by the City Officials.

The officials of the Utah Power & Light Company and of Logan City discussed the matter among themselves after the Court had adjourned. An informal gentlemen's agreement was reached between the parties by which it was agreed that Logan City, during the low water season, should operate its Diesel Engine in the evenings so as to take off the larger part of its peak load. The City also agreed to make an effort not to fluctuate the water in its reservoir more than two tenths of a foot. Upon this understanding, the City was allowed the right to continue to operate its Plant with a governor on the generating wheels as it had always done and the Power Company voluntarily dismissed the contempt of court proceedings which it had instituted against the City Officials.

It is obvious in this chapter of water litigation during the competitive relationship between the Utah Power & Light Company and the Logan City Electric Light Plant that the City

lost its priority reservoir and storage rights which were granted to it by the Department of Interior in 1903, and was mutually agreed upon by the Logan Power Company, a predecessor of the present Power Company, by the Court decrees of 1922 and 1926. The decree of 1922 was the result of a failure to meet a legal requirement by the City. It does not seem necessary that in the court proceedings of 1922, that the Utah Power & Light Company should have brought forth the fact that Logan City was entitled to water rights to Logan River for its generating plant and it proved an advantage to it not to have mentioned the fact that Logan City fluctuated the water of Logan River, as that would have brought forth the question of Logan City's title to the water of the river. The charge made by the City, that the Power Company removed the submerged head-gate in its flume in order to bring the City into the Courts as a defendant for fluctuating the water of Logan River, was not answered by the Power Company. It seems feasible that there is some truth in this charge. The Utah Power & Light Company did not deny that the use of flashboards upon the forebay of its generating plant would have regulated the river stream for its Plant. Judge McConkie would have dismissed the contempt of court proceedings against the City Officials had not the gentlemen's agreement between the opposing companies been arranged, because the Order from the Supreme Court was not filed with the Clerk of the District Court before the proceedings were instituted against the City. The Utah Power

A Light Company still have a superior power right to the water of Logan River over the storage and power rights of Logan City for its Municipal Plant, because of the litigation in 1922 and 1926 resulting in court decrees to that effect. It seems to the writer that this is a regrettable situation since Logan City acquired their reservoir and power rights from private milling concerns, who had been given power rights on the River long before any privately owned electric light plant was constructed and operated by the predecessors of the Utah Power & Light Company.

The engineering facts of this chapter were obtained from a report made to the Federal Trade Commission by the City Attorney in February 1929. The writer attended the litigation for contempt of court when the Logan City Officials were charged with contempt of court, on January 11, 1929.

SOCIOLOGICAL EFFECT

A discussion of the municipal lighting in Logan City would not be complete without briefly saying something about the sociological effect of the past rate rivalry and litigation between the Logan City Electric Light Plant and the Utah Power & Light Company. The case of Logan City vs. the Utah Power & Light Company was more than business competition with a great deal of public controversy attached to it. It was conflict and being conflict made it more interesting from a sociological standpoint. Competition becomes conflict when it becomes conscious and when the competitors identify one another as rivals or as enemies. Conflict demands a personal stand on matters and a statement of the individual's attitude and opinion. It is probable that the consumers of electrical energy took an interest in the litigation carried on in the Supreme Court and at the contempt of court proceedings against the Logan City Officials because it was consciously and personally carried on between a municipality operating an electric light plant and a privately company owning and operating an electric light plant. The municipal corporation and the private corporation attacked each other as enemies and the outcome of the conflict affected the rates of electrical current in Logan. The consumers of electrical energy divided themselves into two groups, one group supported the cause of the Power Company and the other group supported the cause of the Municipal Plant. Every consumer of electrical energy must have been faced with the question of rates and of the

place of the Municipal Plant and of the private corporation in the community. It seems that the citizens and the taxpayers of Logan must have taken an inventory of their citizenship and of their business affiliations and then decided to which electric light plant their patronage should go. The situation of making a decision and then upholding and supporting that decision brought out a sense of team work and meant different social relationships than would have existed under normal conditions without a conflict between the Municipal Plant and the Utah Power & Light Company. Every day, the business men in Logan are competing with each other for patronage in their particular kind of business. Under ordinary conditions, such competition does not produce the interest or the action produced by the conflict between the two power companies because it is not as personal or as purposeful as this conflict was.

It seems a sociological rule, that the greater the amount of consumption of electrical current in the industries and homes of Logan, the higher will be the standards of living of the consumers. It has been shown that in Logan a greater amount of electric energy was consumed by the patrons of the Municipal Plant on the 5¢ meter rates than on the 10¢ meter rates. When the flat rates with continuous burning were used as charges for electrical energy in Logan, many people used illumination and electrical energy in Logan, for their work and comfort which they cannot afford at the meter rate charges. There are families in Logan since measured electricity

#See page 52 of this thesis.

has become enforced, that can only afford to burn one 40 watt lamp in their kitchen, while at the flat rates they burned two or more lights (at least an additional one in the living room). Their standard of living has been lowered and the home life under the kitchen lamp is not quite as elevating as it was before. Most people can afford the use of necessary light and power for respectable standards of living at a reasonable consumption of electrical current on reasonable rates. It seems that the patrons of the Municipal Plant can afford to consume more electrical current than the patrons of the Utah Power & Light Company, because the rates of the Municipal Plant are lower than those of the Power Company. No doubt, consumers of electrical current would have had to materially reduce their amount of illumination and power usage if the high 10¢ meter rates had been allowed to stay in force.

The enforcement of those high ten cent rates on the meter basis would have made a difference in the industrial and home life of the Logan people. Mayor Lundstrom wrote the following plea in "The Logan Journal" of March 3, 1928, right after the Order of the State Utilities Commission had come into operation.

"This more than ever evident in the electric light problem since the metered system was put into effect, I am confronted with it every day in some form or other, and especially since meter rates at a minimum of \$1.00 per month and the ten cent per K. W. H.

"I have a number of calls from aged and poor people who have been using but one or two lights, requesting that their service be disconnected, as they could not pay the required minimum of \$1.00 per month. Others cannot afford 10¢ per K. W. H."

See page 52 of this thesis.

It can be said that the Logan City Officials have been instrumental in raising the amount of consumption of electrical current and the standards of living of the patrons of the Municipal Plant.

It should be remembered that the relationship and the situation which developed between the Utah Power & Light Company and Logan City was more than ordinary business competition, it was a conflict with a crisis. This conflict caused unusual excitement among the people of Logan and caused them to form personal opinions on questions that would not have been presented to them if Logan City and the Power Company had not applied for hearings before the Public Utilities Commission and the State Supreme Court.

CONCLUSIONS

Logan City has attained considerable success in the ownership and in the operation of its Municipal Electric Light Plant regardless of the competition and the litigation it has had with the Utah Power & Light Company.

To have privately owned electric light plants if regulated by some governmental unit for the benefit of the consumers of electrical current would be satisfactory and it would not be necessary for municipalities to enter the field of business by owning and operating electric light plants in competition with private corporations. It seems good reasoning to say that the large private corporations owning and operating electric light plants which are state wide, even nation wide and interconnected so that a large amount of electricity can be generated by them for a large number of consumers can serve their customers at lower rates than small municipal plants owned and operated by the patronage and the taxation of a handful of citizens and consumers of electrical current within a municipality. We are living in an age when big business with its wide-spread and its chain-like organizations is replacing the small enterprises owned by individuals or smaller corporations because of its ability to produce and sell at cheaper prices. Large power com-

panies are organizations of smaller units and have become so interconnected that five companies, together with their immediate sphere of influence, control 46.9 per cent of the nation's output as it was in 1925; that the next eight in size control another 22.6 per cent; the following seven, another 13.6 per cent. These power companies due to their extensive and interstate position attain monopoly privileges. There is usually no competition to keep their rates down. To take the place of competition with other companies they are regulated by state public utilities commissions. One of the purposes of regulation is to protect the public from monopoly prices. The growth of the power industry beyond municipal limits and then beyond state limits have made municipal control and state control inadequate. If state regulation were possible, it has no certainty by which to protect the public, because it is merely a series of estimates on the fiscal conditions of the power companies checked only by the few men comprising a utilities commission. And when a utilities commission accepts the rates adopted by a power company without investigation as to their justification as far as the consumers are concerned, a municipally owned plant not under state regulation is justified in competing with a privately

#Figures taken from "Power Control" by Rauschenbush & Laidler on page 68.

owned plant for the benefit of the consumers of electrical current in the municipality where the privately owned company has entered. Public ownership is obviously preferable to regulation as it was exercised in the case of Logan City vs. the Utah Power & Light Company when it came before the State Public Utilities Commission. It was obvious in that case as has been shown in this thesis that the Commission favored and promoted the welfare of the Utah Power & Light Company. This seems especially clear when in August 1927, the Utah Power & Light Company claimed before the Commission that it could not serve electrical current to the consumers in Logan at lower rates than its 10¢ meter rates and then in December 1928 it voluntarily asked to drop its rates in the entire state to 8¢ meter rates.

Municipal ownership of electric light plants is not favored by some people because it interferes with private enterprises operating in the same field. Section 794 as amended in the 1925 Utah Laws makes it mandatory whether or not a municipality pays the bonds issued for the construction of a municipal plant by taxation or from operating revenue and so it is possible for it to operate on low rates that do not supply enough revenue to pay off its bonded indebtedness. Those who oppose municipal ownership of electrical current plants, also, contend

that if a municipality enters the field of business by owning and operating an electric light plant, it should be placed upon the same basis as a private business, that is, it should allow for the amount of taxation a municipal plant would be charged if it were a privately owned business in the item of its operating costs, it should pay the interest and the principal of its bonded indebtedness entirely from revenue collected from operating incomes and some think that it should also collect enough revenue to put into a depreciation fund by which to build a new electric light plant. People who oppose municipal ownership feel that it would only be fair and undiscriminating to put a municipal plant on the same basis as a private corporation since the private corporation is at a disadvantage when competing with a municipal corporation who can make tax assessments for its municipal if it so desires. They argue that while owning and operating an electric light plant may be one of the things a municipality can do, it should be considered a proprietary function and not a governmental function when it engages in the business of producing electrical current to its citizens.

Careful auditing of municipal and private company accounts would doubtless show that almost none of them are exempt from the general principle that a large scale installment has a smaller investment cost and a higher

efficiency than a small installment. Using this argument the Utah Power & Light Company should be able to serve the people of Logan with cheaper electrical current than the Municipal Plant can serve them. It is the belief of the writer that municipal electric light plants in general are necessary for the welfare and the benefit of the public, since state regulation of privately owned electric light plants is insufficient. State regulation is insufficient because the private companies are inter-state enterprises and many of the public utilities commissions seem to be friends of the private companies. Regulation by the national government has not been tried.

Municipally owned electric light plants are a benefit to the consumers of electrical current in that they give service at cost, they compete with privately owned companies, who are so wide-spread and influential that they gain monopoly privileges and take advantage of them in operating their business for gain and profit, and in this competition are means of regulating the charges to be made for electrical current when other regulation seems inefficient.

The Utah State Supreme Court found that it was bound by the statutes (Section 794 as amended in 1925 Utah Laws, and Section 29, Article VI of the State Constitution) in making its decision that a municipally owned utility is not a "public utility" within the meaning of the Public Utilities Act and so is not within the jurisdiction

of the Public Utilities Commission. The Legislature in making the statutes and the Court in interpreting them have made it possible for municipal lighting in Utah to function according to the policies and rates fixed for it by the City Commission of the municipality where it is operated. It seems to the writer that in doing this the Legislature and the Court have strengthened the administrative and legislative powers of the municipalities in Utah. It seems a logical thing to do, since it would be rather absurd to allow a municipality the right to issue bonds for the construction of a municipal electric light plant and to assess taxes for the payment of such bonds and then allow the State Utilities Commission to say what rates should be charged by such a municipal plant. Rate regulation for a municipal plant by a state utilities commission would be interfering with the taxing power of municipalities and with their local self-government. It would nullify the statutes.

To vest the regulation of municipally owned utilities with the municipalities themselves seems an advantage since they will not be required to operate on the same rates or with the same policies as privately owned utilities. Such an advantage will promote the welfare of municipal electric light plants in Utah and will aid them in serving the people with reasonable rates which is hardly to be expected from privately owned utilities as they are regulated at the present time.

It is the opinion of the writer that taxation for the purpose of paying the indebtedness of a municipal light plant is justifiable in that a municipal plant belongs to all the citizens and taxpayers and was built upon the authority of majority vote which regulates all governmental enterprises and so should be paid for by all the citizens whether they are patrons of the municipal plant or of a privately owned company. Further, that the municipal plant is a means of regulating the rates charged by producers of electrical current because their development and operation in competition with private companies can be expected to have the effect of cleaning house among the financiers who have been making and are trying to make a very good thing out of high rates because governmental regulation is ineffective.

In the writer's opinion, the question of whether or not a municipal electric light plant is justifiable is involved in the relationship existing between a municipal plant and a private one when they are in a state of competition with each other. Such relationship is not comparable to the competition between private concerns or the competition between two privately owned electric light plants. Competition between private companies is wasteful and detrimental to the consumers of electrical current because it means that they must pay rates high enough to support two companies with their administrative organizations when in producing

a utility like electricity, one administrative organization and one generating plant can supply the demand for current. Competition between two companies usually terminates in the unification of both companies into one, or the bankruptcy of both companies, or in the exclusion of one company by the other from the field it has entered. Such competition ends in a monopoly position of the surviving company. If a municipal plant is placed upon the same competitive basis as a private plant with which it is competing, its success and existence is questionable. It has already been said that a private business can produce electricity at lower rates than a municipal plant because it is usually interstate and more wide-spread. For this reason, the municipally owned utility must have some advantages in competing with other commercial plants or otherwise they and their purpose must pass out of the picture of producing electrical current. If a municipal plant is put on an equal standing with a private company generating electricity and under the jurisdiction of the Public Utilities Commission, having policies like it did in the competitive situation between Logan City and the Utah Power & Light Company, there is no advantage in maintaining a municipal plant for the consumers since such a condition would involve the same wasteful competition which exists between two competing plants privately owned. The consumers of electrical current would be divided as customers between the two plants and the rates would be

higher because of the existence of two companies. It would be a loss to the taxpayers of the municipality since they would have to pay just as high rates for current from their own plant as from the other plant and would eventually have to give up the operation of their plant after the investment they had made in its construction, because of the competition with the private company who has the advantage of being a member of big business and can produce cheaper rates. This is especially true, if the rates are high and based upon the profit-making business system of a private business which gains monopoly privileges. Such would have been the case if the 10¢ meter rates had remained effective on the Municipal Plant in Logan. There was no objection to have had the Utah Power & Light Company operate at the 5¢ meter rates and be on an equal standing with the Municipal Plant at such rates because the Municipal Plant could not be outdone and put at a disadvantage in the competitive relationship since the 5¢ meter rates were low rates based on actual cost of production. As long as the customers of the Municipal Plant are receiving current at low rates based on cost of operation and the amount needed for interest and principal of the bonded indebtedness of the plant, they will be satisfied and loyally support it. It may be added that part of the taxpayers who have had to pay taxes for the construction of the plant will patronize it even though a deficit occurs in its ability to pay its maintenance and also its indebtedness so that further taxation

for such demands upon it must be made, since taxation is justifiable for a municipal plant so that all the taxpayers may help to pay its bonded indebtedness whether they are its customers or customers of another plant.

As soon as the as a municipal plant goes upon high rate schedules, high enough to produce revenue above operating and construction costs and in competition with a private plant, the patrons of the municipal plant will cease to support it because it no longer serves the purpose for which they constructed it, and as has been shown under such conditions a municipal plant is just as detrimental if not more so, because of the investment the taxpayers have made, as another private company would be in competing with the Utah Power & Light Company in Logan.

It seems necessary that a municipality owning and operating an electric light plant should be placed in a different position from a private company generating and selling electrical current and should be allowed the advantage of issuing bonds for the construction of an electric light plant and decide on the rates to be charged for its service and on whether or not the bonded indebtedness should be paid from operating revenues or from taxation. If it is not allowed these advantages, the private companies will ultimately replace all municipally owned institutions and gain monopoly privileges. If the Municipal Plant in Logan cannot and should not be allowed to operate on a comparatively

low rates, its continued existence is not justified, since it was constructed to meet the monopoly prices of the privately owned company in 1904 . Therefore the justification of the Legislature and the State Supreme Court of Utah to strengthen the position of the Municipal Electric Light Plant of Logan and of municipal electric light plants in general and making it possible for municipalities to issue bonds and asses taxes for the construction of a municipal electric light plant and then determine the rates for such a plant lies in the question of whether or not a municipal plant should be constructed or operated in the first place.

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The committee in charge of the writing of this thesis recognized that the subject treated is more or less of a controversial nature and that a preponderating part of the material used has been on one side of the case.

The committee, however, took the stand that the writer of this thesis has done sufficient work (both in amount and from the point of view of scholarship) with the material available to her, to warrant the acceptance by it of this thesis and it is convinced that the writer, also, is well aware of the incompleteness of the treatment of the subject to the limitations noted.



