Chapter 26: Public Utilities

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CHAPTER 26

Public Utilities

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A. COURT DECISIONS

§26.1. Telephone company: Directory advertising. The only public utilities case decided by the Supreme Judicial Court during the 1957 survey year was New England Telephone and Telegraph Co. v. National Merchandising Corp.\(^1\) New England sought to enjoin National from gratuitously distributing to telephone company subscribers telephone book covers on which were imprinted advertisements of local businesses which had paid National for the listing. The Court held in favor of National, finding that there was no substantial possibility of interference with telephone service, citing Hush-A-Phone Corp. v. United States.\(^2\) Furthermore, although technically title to the telephone books remains in the company, the customer has the right to use them as he sees fit provided the salvage value is not diminished. Accordingly, there could be no trespass to company property. In addition, the prohibition in the company's tariffs against the attachment of advertising devices to company property could not be construed as applicable to telephone directories without raising questions as to the validity of the tariff under applicable statutes\(^3\) and the Constitution.

The principal basis for the decision appears to be the Court's reluctance to extend the monopoly power of the telephone company\(^4\) to its non-regulated advertising business. In rejecting the claim that National is engaging in unfair competition, the Court concedes that the telephone company has a protected and necessary monopoly in furnishing telephone service and that it has a duty to provide telephone directories, but finds that the customer has the right to use accessories.

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The authors wish to acknowledge the assistance of Timothy J. Cronin, Jr., and Francis J. Pavetti, members of the Board of Student Editors, in the preparation of this chapter.

§26.1. 1335 Mass. 658, 141 N.E.2d 702 (1957). For further comment on this case, see §15.2 supra.
\(^2\) 2238 F.2d 266 (D.C. Cir. 1956).
\(^4\) G.L., c. 159, §§12(d), 14, 16, 18, 19; id., c. 166, §14.
when such use is privately beneficial without being publicly detrimental. In the absence of any substantial damage to the public interest, the distribution of such accessories is a proper field for advertising ingenuity. The contrary result reached in several other jurisdictions is rejected as resulting in an undue extension of a telephone company monopoly.

B. ADMINISTRATIVE DECISIONS

§26.2. Gas and water utilities: Rates. Of the three gas companies which came before the Department of Public Utilities on rate matters, two were among the group that does not have the benefit of a natural gas supply. Because of the high cost of its gas operations the Nantucket Gas and Electric Company is unable to charge a rate which is both compensatory and not so high as to be prohibitive. It manages to continue its gas business because its electric business provides it a reasonable margin of profit. The rates requested by the company and approved by the Department were designed to eliminate a deficit in gas operations and provide for a return of 3 percent on gas properties.

The Ware Gas Company received approval of an increase of its fuel adjustment factor upon proof that the prior factor was returning to the company only about one-tenth of increases in fuel costs.

Blackstone Gas Company, the smallest gas company in the Commonwealth, has operated during the past few years at a loss. A rate of return of 9 percent on net plant investment was allowed in recognition of the fact that, because of its losses, the capitalization of the company, including a substantial amount of debt, was in excess of the company’s net plant investment. After payment of interest charges, only a 3 percent return was available for the common stock.

In Re West Stockbridge Water Co., the department allowed a rate of return of 7.7 percent. Rates were approved for a period of one year only, to become permanent if during the year the company made certain capital expenditures found necessary to improve service, the effect of which would be to reduce the rate of return to 6 percent.

In Re C. and A. Construction, Inc., the company sought to increase water rates from $56 to $90 per annum. Part of the increase was apparently for the purpose of covering interest charges of 18 percent on outstanding loans. The Department found that the debt was not prudently incurred and approved a rate of $79 designed to provide...

See the cases cited in 335 Mass. 658, 672, 672n.1, 141 N.E.2d 702, 711, 711 n.7 (1957).

2 Re Ware Gas Co., D.P.U. 12065 (Apr. 1957).
5 D.P.U. 12105 (July, 1957).
duc a return of 6 percent. A comparable return of 6.28 percent was approved in *Re Milford Water Co.*

§26.3. *Electric utilities: Rates.* Under the Department's order relating to fuel clauses, electric companies are required from time to time to adjust the base price of fuel and the fuel adjustment factor to correspond to current fuel prices and operating efficiencies. These adjustments would result in loss of revenue if no corresponding changes were made in the base rates. Accordingly, the Department has permitted this revenue to be retained by incorporating it into the base rates. Since this rate change does not result in an increase in revenue for the company, the Department's investigations have been less extensive than in general rate cases and approval is granted if the current rate of return is not considered to be excessive and if the method of incorporating the revenue into the base rates is thought to be reasonable.

In the Plymouth and Cambridge Electric cases, the companies were permitted to apply their new fuel adjustment clauses to residential as well as industrial sales. This change was consistent with the current Department policy of eliminating the essentially unfair practice of requiring commercial and industrial customers to carry the whole burden of increased fuel prices.

The Department engaged in two general rate investigations. The Manchester case arose on complaint of more than twenty customers. The investigation was expanded to include complaints in connection with voltage variations, the disposition of which greatly influenced the Department's treatment of the rate question, since the company was required to correct these conditions at very substantial cost. The Manchester Company operates primarily with an underground system. Both investment and maintenance costs of these systems are high compared to overhead systems and these costs are reflected in comparatively high rates. The Department found that the company was nevertheless earning an excessive return of 6.83 percent and ordered a moderate reduction in rates by not permitting a complete “fold in” of fuel clause revenues in connection with the company's new fuel clause. The Department refused to order a greater reduction, however, because the trend of the rate of return has been downward as investment and other costs of doing business have risen in recent years. The Department felt that a further reduction in rates would jeopardize the company's ability to provide improved and expanded service.


§26.3. 1 D.P.U. 7357 (Mar. 1946).


3 See note 2 supra.

than one track is involved, the Department has ordered the installation of automatic gates as well as flashing lights, but where the crossing consists of a single track the Department, except in unusual circumstances, does not consider automatic gates necessary.²

The safety case of most interest dealt with approval by the department of the petition of the Boston and Albany Railroad for installation of centralized traffic control between Boston and Rensselaer, New York.³ This system provides automatic signaling in both directions on each track with signals controlled by a single employee from a centrally located instrument panel. The system is so constructed that the operator cannot give inconsistent directions to trains moving in opposite directions. The installation of the system permits a reduction in the number of tracks necessary for operation, thus permitting saving of maintenance costs, and at the same time affords a higher degree of safety.

In Re New York, New Haven and Hartford R. R.,⁴ the Department reconsidered an earlier decision ⁵ and suspended operation of its order requiring the railroad to install automatic gates after finding that the town authorities failed to take any of the steps recommended in the prior decision for reducing hazards. The installation would be wasted if not accompanied by action of the town to improve visibility at the crossing.

§26.7. Gas, electric and water utilities: Securities. The Department continued to experience a heavy volume of petitions for approval of new security issues as the high level of investment and the consequent need for new capital continued.¹

In the Cape & Vineyard case,² the Department granted an exemption from the requirement that bonds be sold under competitive bidding,³ finding that, because of the small size of the issue and the scarcity of available funds on the bond market at the time, the negotiated sale at what was found to be a reasonable rate of interest was in the public interest.

The merger of several electric companies was approved by the Department upon its finding that the new company would provide a more economic vehicle for future financing and permit a reduction in costs by means of the integration of accounting, engineering and operating activities.⁴

²Re Board of Selectmen of the Town of Needham, D.P.U. 12087 (July, 1957).

²D.P.U. 11914 (May, 1957).
³G.L., c. 164, §15.
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C. Rules and Regulations

§26.8. Commercial motor vehicles. Certificates of regular route common carriers customarily designate the cities and towns through which a carrier may operate. Some certificated carriers have not been able to make use of new highways which pass through some but not all of the cities and towns included in the carrier’s certificate. By two regulations promulgated during the survey year, carriers were given authority to use such new highways as afford a direct route between points which the carrier is authorized to serve, so long as the carrier does not serve cities and towns along the new highway which are not included in its certificate.1

The Department refused to promulgate a rule requiring all common carriers by motor vehicle to file annual financial returns on the ground that the number of carriers involved in rate complaints was not sufficient to justify the imposition of this burden on all carriers.2

§26.9. Gas and electric companies. In Re Berkshire Gas Co.1 the Department promulgated, as an amendment to the Uniform System of Accounts, a method of accounting for accelerated depreciation and amortization under §§167 and 168, Internal Revenue Code of 1954. Companies electing methods permitted by those sections will debit a subaccount entitled “Provision for Deferred Federal Income Taxes” and credit a “Reserve for Deferred Federal Income Taxes” with the amount by which the taxes are reduced by virtue of the use of these methods. In later years, federal income taxes, assuming no change in the corporate tax rate, will be increased under these methods and the amount of the increase will be credited to the former account and debited to the latter.

§26.10. Railroads. Under D.P.U. 7378 railroads were required to employ a train crew of a conductor and two brakemen for yard switching movements. In order to conform the rule to designations common to all railroads, a new rule was promulgated requiring a crew consisting of “a conductor or yard foreman, and two brakemen or yard helpers.”1 The Brotherhood of Railroad Trainmen contended that the amendment indirectly sanctioned a practice made unlawful by G.L., c. 160, §180, which provides that no person shall be employed as a conductor unless he has been employed as a brakeman for two years. It was argued that some yard foremen did not have this experience and were permitted to act as conductors under the Department’s rule. The Department disposed of this argument by ruling that the statute was an unconstitutional limitation on the rights of employees, following Smith v. Texas.2


D. Legislation

§26.11. Railroads. Under the provisions of Acts of 1957, c. 159, railroads are now required to obtain approval of the Department before either discontinuing the operation of a passenger train or cutting out more than 10 percent of its station stops, if the train has been operated for twelve consecutive months. Previously the railroads were authorized to discontinue trains subject to the Department's power to restore the service if the resulting service was found to be inadequate. The new requirement avoids public inconvenience of temporary loss of service when it is found that the discontinuance is not warranted. The Department must act within sixty days of its hearings on the matter.

Acts of 1957, c. 159 relieves railroads of the duties of care imposed by G.L., c. 160, §§120-125, with respect to drawbridges which have not been opened for five years.

Acts of 1957, c. 450 authorizes the Metropolitan Transit Authority to construct an addition to its Boylston Street subway by the purchase of the Newton Highlands Branch of the Boston and Albany Railroad. The commencement of construction was conditioned upon a prior approval by the Department of Public Utilities of plans indicating that the project could be completed at a cost not exceeding $9,200,000.

§26.12. Water companies. Acts of 1957, c. 220 gives water companies the right to shut off the supply of a customer for non-payment of the charges therefor. The statute conforms generally to the comparable sections relating to gas and electric companies.1

§26.13. Telephone company. Upon the filing of increased rates by the New England Telephone and Telegraph Company, the General Court by Acts of 1957, c. 266, directed the Department to make an investigation and report of the company's rate structure. Following its practice in preceding rate investigations of this company, the General Court made a special appropriation to cover the costs of the investigation.

§26.12. 1 G.L., c. 164, §§124, 124A.