A Bridge Over Troubled Waters? The Power of a Bankruptcy Court to Set Public Utility Rates

Financial problems, past and present, of utilities like Tucson Electric, El Paso Electric and several rural electric cooperatives, should cause regulators to take into account the extraordinary powers of bankruptcy courts when they consider their ratemaking duties. The authority they save may be their own.

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Normally, a state public utility commission sets retail rates for electric utilities. In ratemaking determinations, each regulatory body is guided by a classic, regulatory principle: set just and reasonable rates at a level that will produce a fair return upon the fair value of utility property that has been dedicated to public service.[1]

Where the regulatory body fails to set "reasonable rates" — rates that produce a reasonable level of revenues to enable the utility to earn a fair rate of return, or where the inadequate level of rates results in insolvency, then a utility might have to file for bankruptcy. Needless to say, "the bankruptcy of a utility can be considered to be a regulatory failure."[2]

This article examines the turmoil which might arise if a bankruptcy court attempted to set rates for a debtor utility in the potentially long time prior to confirmation of a plan of reorganization.

There is little dispute over the role of the regulatory body either during the plan confirmation process[3] or postconfirmation. Pre-

confirmation, a bankruptcy court could defer to the regulatory body over final ratemaking decisions. Without approval from the regulatory body, I believe a bankruptcy court could set the rates preconfirmation, particularly where the utility faces severe cash flow problems and is in imminent danger of interrupting service.[4]

Having reviewed the cases decided under the U.S. Bankruptcy Code ("the Code"), most of the provisions of which became effective on October 1, 1979, I found none that addressed this precise issue: whether a bankruptcy court can grant preconfirmation rate relief to a debtor public utility.

This is not just an academic, conceptual concern. It should be of vital concern to many practitioners, both regulators and regulated. If regulatory failure occurs and a utility, as a consequence of inadequate rate relief, is forced to file for bankruptcy, utility regulators should realize that under the circumstances addressed here they might have to surrender their rate setting powers over the debtor utility preconfirmation to a bankruptcy court.

This may be of vital concern now to customers, creditors, and regulators of utilities such as Tucson Electric Power Company, El Paso Electric and several rural electric cooperatives which are or close to becoming involved in bankruptcy proceedings.

All parties recognize the increased costs and expenses — for attorneys, accountants, and other experts — associated with bankruptcy proceedings, as well as the uncertainty of their outcome.

I. Analysis: Bankruptcy Law and Ratemaking

Under the Supremacy Clause of the Constitution,[5] the Code controls in the event of conflict with state laws,[6] under which a state regulatory body operates,[7] or with federal laws, under which a federal regulatory body operates.[8] Jurisdiction[9] for a bankruptcy court to adjudicate the utility's request for preconfirmation rate relief exists under 28 U.S.C. §§157(a) and (b)(1)[10] and 1334(a) and (b).[11]

If regulatory failure occurs, regulators may have to surrender their rate setting powers over the debtor utility to a bankruptcy court.

The hallmarks of Chapter 11 are "the twin federal goals of rehabilitation and maximization of the estate for the benefit of creditors."[12] Congress' intent for Chapter 11 was "to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for the stockholders. . . . It is more economically efficient to reorganize than to liquidate, because it preserves jobs and assets."[13] Liquidation and the cessation of operations are the antithesis of Congress' intent to have successful reorganizations.

Only in Section 1129(a)(6) does the Code provide for the role of the regulatory body with jurisdiction over the utility. That regulatory body is to review and grant its approval as a condition precedent for any plan of reorganization which includes a change in rates.[14] There is no requirement in the Code to solicit regulatory body approval for a plan which proposed no rate change or a preconfirmation rate change. A long time could pass between the time the utility filed for Chapter 11 and when the plan was confirmed. Meanwhile, the utility would have to serve its customers. It could require additional capital to build facilities. Assuming the regulatory body failed to grant adequate rate relief pre-petition, it is unlikely that it would timely do so during bankruptcy.[15]

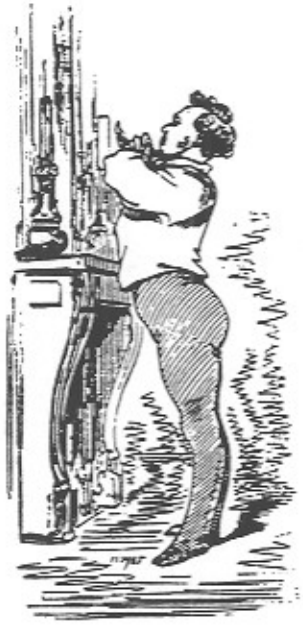
Section 362 (a) of Title 11[16] normally prevents the institution or continuation of any proceeding against a debtor, which was pending before or which could be filed after the utility filed for bankruptcy.[17] Section 362 would not apply to a rate case initiated by a debtor utility that was pending before the regulatory body. As for all other proceedings not initiated by the debtor utility, the automatic stay would be effective. Likewise, the exceptions to the automatic stay set forth in 11 U.S.C. §§362(b)(4)[18] and 362(b)(5)[19] are inapplicable to a

rate case, pending or proposed. These exceptions are for proceedings by governmental units to enforce their regulatory powers.[20] A rate case would be filed by the debtor utility.

The answer lies in 11 U.S.C. §§541(a)[21] and 105(a)[22] and by omission in the rest of the Code. Section 541(a) defines what constitutes property of the estate: an asset, wherever located or in whatever form. The definition is to be construed broadly.[23] A debtor utility's potential for increased rates and revenues, as set forth in a rate case filed with the regulatory body prior to bankruptcy, would be an interest in property, as defined in Section 541(a)(1). A debtor utility's potential for increased rates and revenues, as set forth in a rate case filed preconfirmation either with the regulatory body or a bankruptcy court, would be an interest in property, as defined in Section 541(a)(7). A bankruptcy court exercises jurisdiction over property of the estate.

Section 105(a) was designed to give a bankruptcy court broad powers to issue any order necessary to preserve assets of the estate or to take any action, where authorization to do so might not exist elsewhere in the Code — assuming that the evidence exists to grant by injunction the relief requested.[24] Section 105(a) would be specific, statutory authority for a bankruptcy court to grant preconfirmation rate relief. Section 105(a) resolves conflicts between Code statutes. Section 105(a) provides bankruptcy courts with powers otherwise unenumerated in the Code. To achieve a successful Chapter 11 reorganization, instead of having a liquidation and termination of service, a bankruptcy court could grant preconfirmation rate relief under Section 105(a).

Except for Section 1129(a)(6), the Code provides no reference to the role of a regulatory body when a non-railroad utility files for bankruptcy. If Congress had wanted a regulatory body to have to grant its approval for preconfirmation rate relief, presumably it could have so provided (as it did in Section 1129(a)(6) when rate relief is proposed in a plan). Silence in the Code as to the regulatory body's preconfirmation role suggests that Congress left that decision to a bankruptcy court.



Consequently, there is constitutional and statutory authority for a bankruptcy court to set the rates of a debtor public utility preconfirmation without interference from the utility's regulatory body.

II. Granting Preconfirmation Rate Relief

There is ample precedent from Code cases, state cases construing the impact of the Code, and pre-Code cases, which collectively stand for the proposition that a bankruptcy court could grant preconfirmation rate relief.

A. Code Cases

In *In re Public Service Co. of N.H.*,[25] the court issued a preliminary injunction under Section 105 to prevent a state utility commission from continuing with a rate decrease proceeding against the debtor utility, which was initiated by the state after the utility had filed for bankruptcy.

Under Section 105(a), the *Metro Transportation Co.* case[26] reversed the state regulatory body and ordered that a settlement agreement regarding the utility's self-insured status, which expressly included a provision for a rate increase, be implemented.

In *In re JAL Gas Co.*,[27] the court enjoined the state regulatory body from a proceeding against the debtor utility requiring it to pay refunds to customers due to alleged "overcharges" made during the pre-petition period. *Erlin Manor*[28] reviewed a "negative equity" adjustment made against the debtor nursing home's rate application in a rate case pending before the state regulatory body. Finding that the rate adjustment would interfere with the purposes of a successful Chapter 11 rehabili-

tation, the court enjoined the state from making the negative rate adjustment.

B. State Rate Cases

In rate cases, state commissions have reviewed the dire consequences which could result from their failure to grant adequate rate relief to electric utilities, including the possibility that the utilities would be forced into bankruptcy. Citing the possibility of much higher rates as a result of the many additional costs which would be incurred in bankruptcy, the detrimental impact on local industry, the loss of jobs, the interruption of electric service, the rippling effect upon the cost of capital for other local utilities, and their possible loss of control over rate setting for the debtor utility, these commissions instead elected to grant rate relief.[29]

C. Pre-Code Cases

Pre-Code cases issued orders regarding the jurisdiction and power of federal courts to determine ratemaking or other matters that otherwise would have been decided by regulatory bodies.

The *Portland Electric* cases[30] enjoined temporarily a state utility commission from reducing rates pending the outcome of the rate case before the state commission. The rate case ultimately was settled by the parties, but the district court retained jurisdiction over the debtor utility throughout. *Denver v. Denver Tramway Co.*,[31] *Minneapolis v. Rand*,[32] and *O'Keefe v. New Orleans*,[33] all involved disputes over whether the federal courts had jurisdiction in cases pending before them to set rates for utilities; each concluded in the affirmative.

Crawford v. Duluth Street Rwy. Co.[34] permitted a utility to discontinue several unprofitable street car lines over the opposition of the local regulatory body where the alternative would have meant liquidation of the utility and total loss of utility services.

III. Bases for Denying Preconfirmation Rate Relief

Notwithstanding silence in the Code about the role of regulatory bodies in granting preconfirmation rate relief, a regulatory body, reluctant to relinquish control over rate setting to a bankruptcy court, could raise some arguments.

First, although Section 1129(a)(6) expressly is inapplicable, it might still be utilized, because it at least references an approval role for the regulatory body over a debtor utility needing rate relief.[35]

Second, the Johnson Act, 28 U.S.C. §1342, assuming none of its elements are shown to apply, serves as a barrier to a federal court granting rate relief.

Third, the Code requires a debtor utility to manage and operate the property of the estate according to all valid state laws, including those governing utilities.[36] Fourth, "[t]he Code

Regulators sometimes heed utility pleas for more revenues.

does not permit chapter 11 to be used as a device for circumventing the regulatory powers of any commission created under federal or state law which has jurisdiction over rates charged by the debtor."[37] Fifth, there are cases in which bankruptcy courts have deferred rate making concerns.

In *In re Auto-Train Co.*,[38] the court refused to allow a trustee to decrease rates of an interstate railroad without first obtaining approval from the ICC. But *Auto-Train* is distinguishable, in that it involved a railroad, which is treated differently under the Code. Also, its facts did not threaten extraordinary crisis or imminent threat of termination of all service.

In re Gulf Water Benefaction Co.[39] and *In re Cortaro Water Co.*[40] are pre-Code cases. In *Gulf Water*, the court felt that the debtor's attempt to seek relief in federal court, including a request for rate relief, was subterfuge. It refused to interfere with the state court's decisions about the debtor's rates.[41] In *Cortaro*, the trustee of a small utility requested a rate increase. The court refused and referred the trustee to the state commission. *Cortaro* is distinguishable for the same reasons as is Gulf Water.

Each of the arguments raised in this section can be readily addressed. First, Section 1129(a)(6) simply does not apply to preconfirmation. Second, the Johnson Act and Section 959(b) considerations would be satisfied by evidence of an extraordinary economic situation, which would be the basis of an injunction under Section 105(a). Without rate relief and the potential for increased revenues, the utility's estate would be in jeopardy. Service might be discontinued. Third, the warning from Collier is misplaced; Section 1129(a)(6) applies only to rate relief in a plan of reorganization. Fourth, the cases in this section are distinguishable from the situation of preconfirmation rate relief for a utility, which serves many customers, which is in imminent danger of discontinuing serving its customers, and where the economic consequences could be devastating to the geographic region and economy.

IV. Conclusion

Bankruptcy courts should not be seen as an easy means to obtaining rate relief which reluctant regulatory bodies are unwilling to authorize.

At the same time, if regulatory failure does occur and a utility has to file for Chapter 11, then rate relief may be obtained from a bankruptcy court preconfirmation. This is especially true if the utility can present evidence necessary to obtain a Section 105(a) in-

Utilities cast aside by their regulators may see bankruptcy as a sweeter alternative.

junction: that (1) timely rate relief from the regulatory body is unavailable and probably would be a futile gesture, if applied for; (2) service is in imminent threat of disruption; (3) without utility service, the local economy and geographic region would be endangered dramatically, jobs would be lost, and creditors would suffer.

To date, at least four state utility commissions — Indiana, Kansas, New Hampshire, and Michigan — have recognized that a bankruptcy court could set rates preconfirmation for a debtor utility and have factored this into their rate setting determinations, as noted at Section II, above.

Whether a bankruptcy court ever adopts the views presented here, only time will tell. But the wait may be short indeed if the Tucson Electric or El Paso situations degrade seriously enough to occasion a Chapter 11 proceeding. ■

Footnotes:

1. Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989); Hope Natural Gas Co. v. FPC, 320 U.S. 591 (1944); Bluefield Water Works v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679 (1923).

2. A. KAUFMAN AND D. DULCHINOS, UTILITY BANKRUPTCY, v. and 5 (Cong. Res. Serv., Library of Congress, 1984); *accord* In re Public Service Co. of New Hampshire, 108 B.R. 854, 890 (Bankr. D. N.H. 1989).

3. To confirm a plan, 11 U.S.C. §1129(a)(6) requires:

> [a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

It is assumed that the plan would provide for the same regulatory supervision postconfirmation as preconfirmation, and that the plan would contain a change in rates. Thus, Section 1129(a)(6) would require regulatory approval for the plan. After plan confirmation and the utility emerged from bankruptcy, it is assumed that the regulatory body would resume control and jurisdiction over the utility.

4. If a state-regulated utility cannot obtain adequate rate relief from its state regulatory body, it may be able to do so before a federal district court when it can avoid the application of

28 U.S.C. § 1342 ("the Johnson Act"), which reads:

> The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:
>
> (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,
>
> (2) The order does not interfere with interstate commerce; and,
>
> (3) The order has been made after reasonable notice and hearing; and,
>
> (4) A plain, speedy and efficient remedy may be had in the courts of such State.

Under the Johnson Act, a state regulatory body has to demonstrate that each of four elements is present to prevent the federal court from setting the rates of the utility. It is assumed that the debtor utility would prevail in such a dispute. For example, it is assumed that prior to bankruptcy, the utility had exhausted all state court remedies for obtaining adequate rate relief from its state regulatory body and appellate courts, and therefore, there could be no compliance with Section 1342(4): "a plain, speedy and efficient remedy may be had in the courts of such State."

5. U.S. Const, art. VI, cl. 2.

6. Perez v. Campbell, 402 U.S. 637 (1971); Rhodes v. Stewart, 705 F.2d 159, 163 (6th Cir. 1983); cert den. 464 U.S. 983 (1983); In re Madeline Marie Nursing Homes, 694 F.2d 433, 436-37 (6th Cir. 1982).

7. Where the elements for injunctive relief existed, bankruptcy courts have enjoined state regulatory bodies. In re Erlin Manor Nursing Home, Inc., 86 B.R. 307 (D. Mass. 1985), *aff'g*. 36 B.R. 672 (Bankr. D. Mass. 1984) (Rate Setting Comm'n); In re Wilner Wood Products Co., 119 B.R. 345 (Bankr. D. Me. 1990) (Dep't of Envtl. Protection); In re Pub. Serv. Co. of N.H., 98 B.R. 120 (Bankr. D. N.H. 1989) (State and Pub. Util. Comm'n); In re Metro Transp. Co., 64 B.R. 968 (Bankr. E.D. Pa. 1986) (Pub. Util. Comm'n).

8. Where the elements for injunctive relief existed, bankruptcy courts have enjoined federal regulatory bodies. NLRB v. Superior Forwarding, Inc., 762 F.2d 695 (8th Cir. 1985) (NLRB); In re ML Barge Pool VII Partners Series A, 98 B.R. 957 (E.D. Mo. 1989) (Dep't of Transp. Maritime Admin.); In re Richmond Paramedical Serv., Inc., 94 B.R. 881 (Bankr. E.D. Va. 1988) (Dept. of Health & Human Serv.); In re Hunt, 93 B.R. 484 (Bankr. N.D. Tex. 1988) (Commodity Futures Trading Comm'n); In re Apex Oil Co., 91 B.R. 860 (Bankr. E.D. Mo. 1988) (DOE).

9. Besides the Johnson Act, there could be additional, abstention arguments raised against the bankruptcy court's exercising its jurisdiction to grant preconfirmation rate relief. Under classic abstention doctrine, a

federal court may abstain and defer to state courts or administrative proceedings to resolve disputes involving only state law issues.

It also is assumed that these other abstention arguments would be unsuccessful. For example, one key element in decisions by federal courts to abstain is the availability of timely resolution of the dispute in the state forum. Borintex Mfg. Co. v. Banco Gubernamental de Fomento para Puerto Rico, 102 B.R. 8 (D. P.R. 1989); In re Commercial Oil Serv., Inc., 88 B.R. 126 (N.D. Ohio 1987), aff'g. 58 B.R. 311 (Bankr. N.D. Ohio 1986). It is assumed that the debtor utility was unsuccessful in obtaining adequate relief from the state before bankruptcy.

Another key element is that the dispute involves only state law issues. In a preconfirmation rate relief request, the debtor utility would argue that much more is involved than the state procedures for rate increases — e.g., payment of creditors' claims, and the balancing of all economic interests at stake in a successful reorganization (e.g., ratepayers, creditors, stockholders, bondholders, and regulators), which is something that only the bankruptcy court, and not the regulatory body, could handle. In re Pub. Serv. Co. of N.H., 108 B.R. 854, 890-91 (Bankr. D. N.H. 1989).

10. 28 U.S.C. §§157(a) and (b)(1) provide:

> (a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
>
> (b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

11. 28 U.S.C. §§1334(a) and (b) read:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

12. In re Stable Mews Assoc., Inc., 41 B.R. 594, 597 (Bankr. S.D. N.Y. 1984).

13. H.R. Rep. No. 95-595, 95th Cong., 2d Sess. 220, reprinted in 1978 U.S. Code Cong. and Ad. News 5963, 6179 ("House Report").

14. S. Rep. No. 95-989, 95th Cong. 2d Sess. 126, reprinted in 1978 U.S. Code Cong. and Ad. News 5787, 5912 ("Senate Report"); House Report, at 6368.

15. Failure by the regulatory body and the bankruptcy court to set an adequate level of rate relief would leave the utility only one final option — close its doors and liquidate. Then the "lights would go out." Without utility service, customers would confront a dire emergency. Who would order a police or military organization, such as the National Guard, to operate the utility, and who, ultimately, would pay the costs? Before things would reach that drastic stage, an extraordinary situation would exist, and the bankruptcy judge should intervene to order adequate rate relief.

16. 11 U.S.C. §362(a) states:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 302, 302, or 303 of this title ... operates as a stay, applicable to all entities, of —
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor against property of the estate, of a judgment obtained, before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor... .

17. The scope of Section 362 is very broad. Senate Report, *supra* note 14 at 5836. Section 362(a) is designed to give the debtor "a breathing spell and time to work constructively with its creditors." House Report, *supra* note 13, at 6135. "The primary purpose of Section 362 is to prevent the piecemeal liquidation of a debtor company by the piranha-like attacks of creditors." In re Kish, 41 B.R. 620, 624 (Bankr. E.D. Mich. 1984). Section 362(a)(1) only prevents actions brought against a debtor, not those brought by the debtor. In re Wengert Transp., Inc., 59 B.R. 226 (Bankr. N.D. Iowa 1986).

18. 11 U.S.C. §362(b)(4) provides:

> (b) The filing of a petition under section 301, 302, or 303 of this title ... does not operate as a stay —
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> (4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

19. 11 U.S.C. §362(b)(5) reads:

> (b) The filing of a petition under section 301, 302, or 303 of this title ... does not operate as a stay —
>
> (5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; ...

20. Senate Report, at 5838; House Report, at 6135; 2 Collier on Bankruptcy ¶362.05[4] (15th ed. 1991).

21. 11 U.S.C. §541(a) states in pertinent part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is composed of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case ... .
>
> (6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
>
> (7) Any interest in property that the estate acquires after the commencement of the case.

22. 11 U.S.C. §105(a) reads:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

23. Senate Report, at 5868; In re G & L Packing Co., Inc., 41 B.R. 903, 916 (N.D. N.Y. 1984).

24. Senate Report, at 5815, 5837 (§105(a) authorizes a bankruptcy court to stay an action of a state court and to issue any order necessary to carry out the Code); House Report, at 6135-6136, and 6298-6297 (Section 105(a) empowers the bankruptcy court with ample additional powers to prevent harm to the estate from actions or inactions); 2 Collier on Bankruptcy 105.01 and 105.02 (15th ed. 1991); In re Penn Terra, Ltd., 733 F.2d 267, 273 (3rd Cir. 1984); In re First Fed. Co., 42 B.R. 682, 685 (W.D. Va. 1984).

25. 98 B.R. 120 (Bankr. D. N.H. 1989).

26. 64 B.R. 968.

27. 44 B.R. 91 (Bankr. D.N.M. 1984).

28. 36 B.R. 672, *aff'd* 86 B.R. 307.

29. In re Public Service Co. of Indiana, 72 PUR 4th 660, 679 (Ind. Pub. Serv. Comm'n 1986) (where there is a threat of imminent disruption of electricity, because the state commission "would not act in time to provide income from rates that would avoid such disruption, ... [then Section 105(a)] provides the bankruptcy court broad enough ... power to avoid such a catastrophe."); In re Wolf Creek Nuclear Generating Facility, 70 PUR 4th 475, 564-65 (Kans. Co. Comm'n 1985); In re Pub. Serv. Co. of N.H., 66 PUR 4th 349, 429 (N.H. Pub. Util. Comm'n 1985) ("the bankruptcy court could assert exclusive jurisdiction to establish interim electric rates if there was an immediate need for cash to preserve the prospects of a successful reorganization."); In re Consumers Power Co., 66 PUR 4th 1, 20 (Mich. Pub. Serv. Comm'n 1985).

30. In re Portland Elec. Power Co., 97 F.Supp. 857 (D. Oreg. 1951); In re Portland Elec. Power Co., 97 F.Supp. 877 (D. Oreg. 1943).

31. 23 F.2d 287 (8th Cir. 1927), cert. den. 278 U.S. 616 (1928).

32. 285 Fed. 818 (8th Cir. 1923).

33. 273 Fed. 560 (E.D. La. 1921), aff'd 280 Fed. 92 (5th Cir. 1922).

34. 60 F.2d 212 (7th Cir. 1932).

35. *See* note 3, *supra*.

36. 28 U.S.C. §959(b) states:

> (b) ... a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

37. 5 Collier on Bankruptcy ¶1129.02[6], at 1129-35 (15th ed. 1991).

38. 6 B.R. 510 (Bankr. D. D.C. 1980).

39. 674 F.2d 462 (5th Cir. 1982).

40. 3 F.Supp. 257 (D. Ariz. 1933).

41. *Gulf Water* is distinguishable because it was decided under the Bankruptcy Act, before bankruptcy courts were granted their omnibus powers in Section 105(a). Its holding was expressly limited to the complicated factual background. No evidence of detrimental economic consequences was presented.