(Decision No. R80-2380)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO ESTABLISH GAS AND ELECTRIC METER INSTALLATION CHARGES AND TO REVISE ITS RULES CONCERNING GAS METER LOCATIONS AND GAS METER AND SERVICE PIPE INSTALLATIONS.	APPLICATION NO. 32845
IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO REVISE THE EXTENSION POLICY INCLUDED IN ITS PUC NO. 5 - ELECTRIC TARIFF.	APPLICATION NO. 32602 RECOMMENDED DECISION OF EXAMINER LOYAL W. TRUMBULL DENYING APPLICATIONS

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DECEMBER 22, 1980
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Appearances: Kelly, Stansfield and O'Donnell, by James K. Tarpey, Esq., Denver, Colorado, for Public Service Company of Colorado;

Gorsuch, Kirgis, Campbell, Walker & Grover, by William H. McEwan, Esq., Denver, Colorado, for the City of Lakewood and the City of Arvada;

James M. Lyons, Esq., Denver, Colorado, for Home Builders Association of Metropolitan Denver;

Jeffrey G. Pearson, Esq., Denver, Colorado, for Colorado Office of Consumer Services;

D. Bruce Coles, Esq., Denver, Colorado, for Colorado Energy Advocacy Office;

Richard L. Fanyo, Esq., Denver, Colorado, for CF&I Steel Corporation;

Dudley P. Spiller, Jr., Assistant Attorney General, Denver, Colorado, for the Staff of the Commission.

PROCEDURE AND RECORD

On February 28, 1980, Public Service Company of Colorado (Applicant) filed the above-captioned application which was assigned Application No. 32602. Although the matter of notice was a substantial issue in this proceeding and will be the subject of specific findings

and conclusions, it will be noted at this point that due and proper notice of such application was issued by the Secretary of the Commission on March 5, 1980. As a result of such notice, requests for leave to intervene were filed by the following entities and disposed of as indicated:

Petitioner	Date Filed	Commission Action	Date	Dec. No.
City of Lakewood	4/2/80	Granted	4/8/80	C80-651
City of Arvada	4/4/80	Granted	4/15/80	C80-707
Home Builders Assn. of Metropolitan Denver (HBA)	3/17/80	Granted	4/15/80	C80-707
CF&I Steel Corporation (CF&I)	5/1/80	Granted	5/6/80	C80-886
Colorado Energy Advocacy Office	5/9/80	Granted	5/20/80	C80-982

On April 30, 1980, HBA filed a motion requesting that Application No. 32602 be consolidated with Case No. 5921, a complaint case which it had filed earlier against Applicant's rules, regulations and tariffs concerning construction advances and deposits and other related subjects, and also requested that these matters be heard by the Commission en banc. After responses and counter-motions by Applicant, the Commission issued Decision No. C80-1138 on June 10, 1980, granting the motion to consolidate Application No. 32602 and Case No. 5921 for hearing and denying the motion that the Commission hear the matters en banc.

On May 15, 1980, Public Service Company of Colorado (Applicant) filed the application which has been assigned Application No. 32845. Notice of such application was duly issued by the Executive Secretary of the Commission on May 23, 1980.

In response to a motion stated in the request of CF&I for leave to intervene in Case 5921, the Commission issued Decision No. C80-1406 on July 15, 1980, ordering that each intervenor in each matter was made an intervenor in the other if not already a party thereto.

On July 31, 1980, in response to a motion filed on behalf of Applicant, the undersigned Examiner issued an interim order consolidating Application No. 32845 with Application No. 32602 and Case No. 5921.

After numerous settings, continuances and interlocutory matters pertaining to discovery, the matters were finally called for hearing pursuant to due and proper notice on September 11, 1980, in the Commission Hearing Room, Fifth Floor, 1525 Sherman Street, Denver, Colorado. At such time, counsel for Complainant HBA moved for dismissal of Case No. 5921 without prejudice to later refiling, which motion was granted. Hearing was held as scheduled on the other two matters, with the hearing being completed on September 12, 1980. Testimony was heard from seven witnesses and a total of twenty-four exhibits were offered and admitted into evidence.

The matter was taken under advisement upon conclusion of the hearing. Statements of position have been filed, as allowed upon conclusion of the hearing, and have been duly considered.

The record and exhibits of this proceeding are now submitted to the Commission together with this recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

The Examiner has found the following facts to exist, based upon all the evidence of record, and has arrived at the following conclusions based upon such facts:

1. On September 4, 1980, HBA filed a motion to dismiss Application No. 32602 on the grounds that Applicant had failed to comply with the requirements of Rule 18-A-1 and 18-A-5 of this Commission's Rules of Practice and Procedure.

One deficiency in notice alleged by HBA is that publication was made only in the Denver Post and Rocky Mountain News; HBA alleges that publication must comply with the requirements of 24-70-103(1), CRS 1973. However, Rule 18-A-5(b), which pertains to requests for authority to change rates on less than the normal thirty days notice, provides in pertinent part that:

> "b. The utility, contemporaneously with the filing of the application with the Commission, shall cause to be published in the legal notice section of a newspaper having general circulation in the service area affected by said application, notice in the following form:" (Emphasis added)

This rule is controlling as to the notice required by Applicant in this matter. "General circulation" raises a question of fact as to whether or not the newspaper in question is bought, sold, subscribed to, used in business and contains news and information pertaining to the subject area and not solely to the place of publication. HBA has not seen fit to put on evidence on such issues. HBA's second alleged grounds for dismissal is that notice of the proposed change in extension policy was not sent to ". . . each of the public utility's active consumers or users affected by the proposed changes. . ." as required by Rule 18-I-A-1 of the Commission's Rules of Practice and Procedure. However, such rule merely contemplates providing notice to consumers who will be affected in the rate, fare, toll, rental or charge for the utility service which they are then actively receiving from the utility, and for which they will receive bills. It does not contemplate notice to customers at sites of future service.

The notice given by Applicant of these applications is found to be in accordance with the pertinent law and the rules of this Commission, and the Examiner has thus concluded that HBA's motion to dismiss should be denied on all grounds.

2. Applicant Public Service Company is engaged in the generation, transmission, distribution and sale of electricity as a public utility within the State of Colorado. As of the end of 1978, Applicant had about 750,000 electric customers.

3. Briefly stated, the purpose of Application No. 32602 is to revise its present extension policy by:

a. Revising the free construction allowance that Applicant will spend for distribution facilities for a new customer from 5.5 times annual gross revenues downward to one times annual base rate revenues. The factor for street lighting for municipalities would be two times annual base rate revenues.

b. Requiring new customers to pay on a non-refundable basis the full cost of providing a service lateral for the customers exclusive use, the cost of which is presently included in computation of the "free construction allowance." Applicant's present average cost for a residential service lateral is $167.

By Application No. 32845, Applicant requests that it be allowed to further implement the policy of Application No. 32602 by substantially increasing its charges for installing gas and electric meters.

4. Applicant's extension policy, requires that total revenues be at least equal to 1½% per month or 18% per year of total extension cost, failing which a customer contribution would be required. Revenue of 18% per year is equivalent to a free construction allowance of 5.555 times annual revenues, which figure has been referred to as 5.5 throughout this proceeding. The present extension policy is subject, as Applicant's legal filed tariff, rule or regulation, to a rebuttable presumption of being just, reasonable and not unduly discriminatory. The rationale behind such 5.5X allowance is not known to be based upon any specific criteria of revenue to be derived from such investment. It is presumably a result primarily of two factors. First, the era was one of excess capacity. Secondly, the era was one of continuing competition for unserved areas between Applicant and rural electric cooperatives who had not yet been declared to be public utilities, and such extension policy was competitive with that of most REA's. Applicant has historically had, and presently has, a 1.5X free construction allowance for gas service customers, who must also bear the expense of running the gas line from the property line into the improvements.

5. Inasmuch as most "extension policies" have been in place for years and decades, and most often come before this Commission when a complaint is lodged by a customer of a rural electric association, it is worthwhile to examine the purpose of an extension policy. It is generally recognized that a public utility must extend service at its own expense or investment in order to fulfill a reasonable request for service by a person otherwise entitled to demand service from the utility. The duty to provide service has been well described in 64 Am. Jur. 2d §44 at page 582:

> "In regard to the reasonableness of the cost which an extension will entail, it is not necessary that a particular extension of service shall be immediately profitable, or that there shall be no improfitable extensions, the criterion being generally whether the proposed extension will place an unreasonable burden upon the utility as a whole, or upon its existing customers . . .
>
> But while the utility cannot fix the limits of the proposed extension at territory which will yield an <u>immediate profit</u>, and, on the other hand cannot be required to make unreasonable extensions, there is a point midway between these extremes at which the utility may require of the proposed consumer assitance in the necessary outlay in furnishing the service."

Applicant's extension policy represents an effort, pursuant to Rule 31 of this Commission's Rules Regulating the Service of Electric Utilities to codify or define a reasonable request for service at Applicant's expense. To further belabor the point, such a policy is to define the maximum amount that a public utility will invest in additional facilities

in order to provide service before it will require any additional expense to be borne by the customer; the problem is to determine the amount that can reasonably be invested in such service without unduly burdening the company and its ratepayers.

6. The dollar amount of distribution costs not covered by contributions (i.e., those that did not exceed the 5.5 times earnings free construction allowance) have increased from $22.7 million in 1975 to $48.7 million in 1979. As of June 30, 1980, Applicant had unrefunded construction deposits and advances in the amount of $11.8 million on its books for plant not installed as of that date.

In 1979, Applicant connected electric service to 27,780 new meters or customers at new hours. The total number of new customers forecasted by Applicant for 1980 is 19,000, most of the decline being due to high mortgage interest rates during the year. Applicant does not expect the 1979 level to be reached again until 1984.

Applicant's expenditures for underground distribution systems for 1980 and 1981 will total about $50 million. The present 5.5X free construction allowance would result in customer contributions of only about $2.4 million during that two-year period. The specific benefit to Applicant of the proposed change in free construction allowance is that it would reduce by $7 to $9 million per year the amount that it has to raise by stock or debt issuance in order to finance such plant. Based upon an average of 20,000 new residential units per year, Applicant's cash flow in terms of earnings would be increased by a gross amount of $3,340,000. However, due to contributions in aid of construction currently being required by IRS to be included in operating revenues for income tax purposes, the net cash flow increase would be only about $1,670,000. Over the next five years, Applicant will have to provide new distribution plant which will cost between $100 and $200 million.

7. As nearly as can be derived from the record in this proceeding, based upon Applicant's 1978 cost of service study, the average imbedded investment in net distribution plant for existing residential customers is $233, inclusive of service lateral but exclusive of transmission and distribution substations. The average annual revenue per general residential customer in 1978 was $224.

At the present time, the average residential customer generates annual base rate revenues of $374, but the average distribution investment for that customer has risen to $704, including service lateral. Although new customers have historically been subsidized by older customers due to inflation in costs of service, Applicant contends that such costs of service are increasing so rapidly in comparison to past costs and present revenues that the rules of the game must be changed by trying to limit the distribution investment per new customer to a level approximating the average imbedded investment in distribution facilities per existing customer.

8. The results of the proposed changes to a subdivider, based on 1979 costs, would be basically as follows for the average subdivision. The service lateral for each house would cost $167 and be paid for by the subdivider. The balance of the extension cost and the completion of the free construction allowance and customer contribution proceeds as follows:

Primary facilities	$ 68
Feeders and secondary distribution	$331
Transformers	$138
Total distribution cost not including service lateral	$537
One year's revenues at average of $31.17 per month	374
Customer contribution	$163

Under the present extension policy, disregarding the difference between total revenues, and base rate revenues, there would have been a potential free construction allowance of about $2,057. The $330 that the subdivider will have to pay for the service lateral and customer contribution will be passed on to the first purchaser in the purchase price of the dwelling.

9. Applicant relies almost entirely on Exhibit 1 to support the change from a 5.5X to a 1X free construction allowance. Exhibit A, consisting of two pages, states as follows:

PAGE 1

Total base rate revenue for distribution customers (primary and secondary)			$412,796,000
Net plant for primary and secondary distribution service laterals and meters			$352,387,000
Embedded fixed charge rate			(1) X 25.57%
Revenue required to support existing distribution facilities			$ 90,105,000
New plant supportable at		$90,105,000 / (2) 30.95%	$291,131,000
New money costs Extension ratio times	$291,131,000 / $412,796,000 =		0.71

(1) Details of embedded plant costs on page 2.
(2) Detals of new plant costs on page 2.

PAGE 2

Component	Embedded Plant Cost	New Plant Cost
Depreciation	4.11%	3.30%
Property Tax	1.71	1.71
Property Insurance	.15	.15
Bond Interest	3.47	7.54
Preferred Dividend	1.08	1.39
Common Earnings	5.36	5.36
Income Taxes	4.60	6.41
Operating and Maintenance	5.09	5.09
TOTAL	25.57%	30.95%

Much of the hearing was spend in attempting to determine what the formula stated on page 1 does or does not tend to prove. Assuming the accuracy of the alleged "Imbedded Plant Cost" and "New Plant Cost," the Examiner finds that Exhibit A, through the fourth step, tends to prove only the following, all other factors remaining equal:

a. At the end of calendar year 1978, Applicant could cover the fixed charges associated with its $352,387,000 investment in existing net plant for distribution service, laterals and meters at a cost of $90,105,000.

b. Now, if Applicant was going to build and install the amount of such additional distribution plant, the fixed costs of which would be $90,105,000, it could only erect or install $291,131,000 worth of distribution plant instead of the $352,387,000 which can be supported due to lower historical imbedded costs.

The "extension ratio" shown in step five is merely a fraction which results from dividing the alleged "new plant supportable at new money costs" by "total base rate revenues for distribution customers (primary and secondary)."

In arriving at its "New Plant Cost" on Page 2 of Exhibit 1, Applicant used in determining the Income Tax component on the basis of effective tax rate for imbedded plant cost and statutory tax rate for new plant cost. The effective tax rate should have been used for both, reducing New Plant Cost to 29.14%, which would result in new plant of $309,385,720 being supportable at the new money costs and would indicate an extension ratio of .75X according to Applicant's formula. The difference is de minimis.

10. Inasmuch as the changes sought by these applications are actually intended to remedy what Applicant's officers perceive to be a cash flow problem, regardless of all the verbiage about promoting equity between customers, it is interesting to note the position that Applicant takes with regard to the role that its current filed rates play in the situation. Applicant does not take the position that its current rates are inadequate, apparently because this could be construed as a collateral attack on the rates which resulted from its last general rate case, I&S No. 1330, which resulted in Decision No. C80-130, issued January 22, 1980. Also, Applicant is currently in the midst of another general rate case in I&S Docket No. 142.5. To the contrary, Applicant's officers accept the revenue levels resulting from I&S 1330 as actually dictating the necessity of the proposed changes. The evidence adduced upon behalf of COCS demonstrates that Applicant's net working capital has declined from the $65 million level in December of 1975 to a negative $56 million in November of 1979, and that its current ratio has declined from 1.58 to .825 over the same period of time.

11. The present construction allowance is sufficiently generous that virtually all of Applicant's distribution system, and its distribution rate base, have been developed as a result of construction allowance. Very little of Applicant's distribution plant is attributable to contributions by customers whose free construction allowance exceeded 5.5 times revenues. Although Applicant's present 5.5X free construction allowance has been described by Applicant's officers as "overly generous," it must be realized that such a policy is the norm rather than an exception in this state. For example, Union Rural Electric Association has a 5X allowance, and the City of Colorado Springs Utilities Division requires that revenues for each of the five years following completion of the extension be at least 18% of the total cost of such extension. There is no evidence tending to demonstrate the number of customers who do in fact require distribution investment at the upper limits of the present extension policy. In fact, even at present costs, the evidence shows that the average customer requires distribution investment, including service lateral, of $704. Inasmuch as such average customer generates base rate revenues of $374, it appears that the average new customer presently requires an extension ratio or free construction allowance of only 1.9X; this factor would obviously be lower if computed on gross revenues. On closer examination, it becomes increasingly apparent that Applicant is not saying that 5.5X is too high. It is saying that 1.9X is too high given the present earnings picture in their judgment, and

they would therefore now like to abdicate their responsibility to invest in distribution plant and let the new customer undertake that role.

12. The granting of the reduced free construction allowance would result in undue subsidization of old customers by new rather than preventing undue subsidization of the new by the old, which is supposed to be the rationale of this application. The problem is that a new customer would pay the entire nonrefundable cost of his service lateral and the distribution cost in excess of 1X base rate revenues. This done, he would start paying rates for service which would include a component for a return on rate base attributable to distribution investment and service laterals which had been provided by Applicant up to an amount equal to 5.5 times gross revenues.

13. Granting Application No. 32602 would not serve the purpose sought to be accomplished and would cause a current increase in income taxes and a later failure to have recovered depreciation charges associated with distribution investment. The reason for this is that the customer contributions received for the service lateral and the distribution plant in excess of the 1X free construction allowance would constitute taxable income; inasmuch as the plant to which it is attributable must be capitalized, there would be no offsetting expense. Inasmuch as such contributed plant cannot be included in rate base, it is also not subject to depreciation, which will result in a shortfall in capital for eventual replacement of such facilities, which would presumably be sought to be remedied by Applicant by inclusion in a request for increased rates. Applicant realizes this problem and has considered a possible solution of doubling the charge for a service lateral to $334.

14. The general policy of this Commission with regard to extension of service is incorporated in Rule 31 of this Commission's Rules Regulating The Service of Electric Utilities. (See Case No. 5320, Decision No. 68572, effective January 1, 1967.) It is specifically found that investment in new distribution facilities to the maximum extent of a 5.5X free construction allowance, under present and foreseeable conditions, does not constitute "unwarranted or uneconomical investments" within the contemplation of subsection 1(d) of said Rule 31.

15. The proposed reduction of the free construction allowance is entirely out of step with traditional rate making, which has always been done on an average basis rather than by attempting to differentiate between members of a customer class. Typically, once customer classes have been established on similarities of service and elasticities of demand, all the members of that class are going to pay the same rate regardless of whether they are one mile or ten miles from the end of a transmission line, and this does not constitute an undue burden upon the nearer customers.

16. There are no extraordinary facts or circumstances concerning Applicant's financial situation or the environment in which Applicant readies service which would recommend a 1X free construction allowance.

17. Applicant's present extension policies and meter charges have not been shown to be unjust, unreasonable or unduly discriminatory. The proposed revisions are unjust, unreasonable, and would result in undue discrimination against new customers.

18. It is the ultimate conclusion of the Examiner that both Application No. 32602 and No. 32845 should be denied.

19. Pursuant to 40-6-109, CRS 1973, the Examiner recommends that the following order be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Application Nos. 32602 and 32845 are hereby denied.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

3. As provided by 40-6-109, CRS 1973, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of 40-6-114, CRS 1973.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Loyal W. Turnbull
Examiner

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