

(Decision No. C88-413)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE REMAND OF)	
HOME BUILDERS ASSOCIATION OF)	APPLICATION NO. 32602-Reopened
METROPOLITAN DENVER V. PUBLIC)	
UTILITIES COMMISSION OF THE STATE)	COMMISSION DECISION AND ORDER
OF COLORADO AND PUBLIC SERVICE)	GRANTING MOTION PURSUANT
COMPANY OF COLORADO: CIVIL ACTION)	§ 40-6-116(5), C.R.S.
NO. 82 CV 1747, DIVISION 9, DENVER,)	
DISTRICT COURT, CITY AND COUNTY)	
OF DENVER, DENVER, COLORADO.)	

April 6, 1988

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On March 14, 1988, Public Service Company of Colorado (Public Service), filed a "Motion Pursuant to C.R.S., § 40-6-116(5)," requesting the Commission to enter an order directing Public Service to give notice by publication regarding the amounts not claimed by the persons entitled to them in accordance with the provisions of § 40-6-116(5), C.R.S. In its motion, Public Service stated that it filed, also on March 14, 1988, its fourth and final progress report number 4 indicating that \$521,778.05, has not been claimed by the persons entitled to refunds as a result of the remand order of the Denver District Court in Civil Action No. 82 CV 1747, Division 9. Section 40-6-116(5), C.R.S., provides that:

. . . the Commission shall cause notice to such persons to be given by publication once a week for two successive weeks in the newspaper of general circulation printed and published in the city and county of Denver and in such other newspapers as may be designated by the commission, said notice to state the names of persons entitled to such moneys and the amounts due each person. All moneys not claimed within ninety days after publication of such notice shall be paid by the public utility, under the direction of the commission, into the state treasury and credited to the general fund.

Public Service proposes to publish notice in the Denver Post and the Rocky Mountain News, and then wait the 90 days from the date of the second publication for claims to be made. Within 20 days after the expiration of the 90-day period, Public Service shall advise the Commission of the amount still unclaimed and then will request the Commission to enter an order directing Public Service to pay the unclaimed amount into the state treasury to be credited to the general fund.

No response was made by any of the parties in Application No. 32602-Reopened to Public Service's motion. The Commission would note, however, that on January 9, 1987, the City and Lakewood, and the City of Arvada (Cities) filed comments on the proposed refund plan of Public Service. In those comments the Cities state that § 40-8-101, C.R.S., et. seq., must be applied as the appropriate escheat statute in dealing with unclaimed refunds. Section 40-8-101, C.R.S., provides that unclaimed refunds shall be turned over to municipalities. It was further contended by the Cities that § 40-8-101, C.R.S., which was enacted in 1947, is irreconcilable with § 40-6-116(5), C.R.S., which was enacted in 1913, and that, accordingly § 40-8-101, C.R.S., having been enacted later in time, is controlling.

On February 3, 1987, the Commission entered Decision No. C87-166, which contains the statement that the issue of which escheat statute, namely § 40-6-116(5), C.R.S., or § 40-8-101, C.R.S., applies has been determined by Judge Martin in his remand order and that any changes in that order must be sought from the Denver District Court.

In as much as Public Service's motion did not elicit a response and appears, at this time, to be uncontested, the Commission will grant that motion subject to the usual provisions of § 40-6-114, C.R.S., pertaining to reconsideration.

THEREFORE THE COMMISSION ORDERS THAT:

1. The "Motion Pursuant to C.R.S., § 40-6-116(5)", filed by Public Service Company of Colorado on March 14, 1988, is granted.
2. Public Service Company of Colorado shall give notice regarding unclaimed refund amounts pursuant to the remand of Home Builders Association of Metropolitan Denver v. Public Utilities Commission of the State of Colorado and Public Service Company of Colorado in Civil Action No. 82 CV 1747, Division 9, Denver District Court, City and County of Denver, in accordance with § 40-6-116(5), C.R.S., by publication in the Denver Post and the Rocky Mountain News.
3. The 20-day time period provided for by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration begins on the first day after the mailing or serving of this Decision and Order.

4. This Decision is effective 30 days from this date.

DONE IN OPEN MEETING the 6th day of April 1988.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Arnold H. Cook

Arvid Schmidt

Ronald L. Lehr

Commissioners

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