

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
PLATTE RIVER POWER AUTHORITY, A NON-)
PROFIT COLORADO CORPORATION, 3030)
SOUTH COLLEGE AVENUE, FORT COLLINS,)
COLORADO, FOR AUTHORIZATION TO ASSIGN)
AND TRANSFER ITS ASSETS, INCLUDING)
EXISTING CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY, TO PLATTE)
RIVER POWER AUTHORITY, A SEPARATE)
GOVERNMENTAL ENTITY, 3030 SOUTH)
COLLEGE AVENUE, FORT COLLINS,)
COLORADO.)

APPLICATION NO. 28370

IN THE MATTER OF THE APPLICATION OF)
PLATTE RIVER POWER AUTHORITY, A)
SEPARATE GOVERNMENTAL ENTITY, 3030)
SOUTH COLLEGE AVENUE, FORT COLLINS,)
COLORADO, FOR AUTHORIZATION TO)
ACQUIRE THE ASSETS, INCLUDING)
EXISTING CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY, OF PLATTE)
RIVER POWER AUTHORITY, A NON-PROFIT)
COLORADO CORPORATION, 3030 SOUTH)
COLLEGE AVENUE, FORT COLLINS,)
COLORADO, AND TO ASSUME THE LIABILI-)
TIES OF SAID NON-PROFIT CORPORATION,)
OR IN THE ALTERNATIVE, FOR A DIS-)
CLAIMER OF COMMISSION JURISDICTION)
OVER RATES AND SECURITIES OF APPLI-)
CANT.)

APPLICATION NO. 28381

IN THE MATTER OF THE APPLICATION OF)
PLATTE RIVER POWER AUTHORITY, A)
SEPARATE GOVERNMENTAL ENTITY, 3030)
SOUTH COLLEGE AVENUE, FORT COLLINS,)
COLORADO, FOR AN ORDER AUTHORIZING)
IT TO ISSUE CERTAIN SECURITIES, TO)
WIT, REVENUE BONDS IN AN AMOUNT NOT)
TO EXCEED \$35,000,000 SECURED BY A)
PLEDGE OF NET REVENUES OF THE)
AUTHORITY, OR IN THE ALTERNATIVE,)
FOR A DISCLAIMER OF COMMISSION JURIS-)
DICTION OVER RATES AND SECURITIES)
OF THE APPLICANT.)

APPLICATION NO. 28385-Securities

ORDER OF THE COMMISSION UPON
RECONSIDERATION

August 5, 1975

Appearances: Raphael J. Moses, Esq., Boulder, Colorado,
A Edgar Benton, Esq., Denver, Colorado,
for Applicant;

James K. Tarpey, Esq., Denver, Colorado,
for the Commission.

STATEMENT

BY THE COMMISSION:

On May 30, 1975, the Platte River Power Authority, a non-profit Colorado corporation (hereinafter referred to as the "Non-Profit Corporation") filed with the Commission Application No. 28370 for an order authorizing the Non-Profit Corporation to assign and transfer its properties and assets to the Platte River Power Authority, a separate governmental entity and political subdivision of the State of Colorado (hereinafter referred to as the "Power Authority") upon the assumption by the Power Authority of all obligations and liabilities of the Non-Profit Corporation.

On May 30, 1975, the Non-Profit Corporation, acting on behalf of the Power Authority, filed with the Commission Application No. 28381 for an order authorizing the Power Authority to acquire the properties, assets, rights and privileges of the Non-Profit Corporation, whether real or personal, tangible or intangible, and to assume and guarantee all obligations and liabilities of the Non-Profit Corporation or in the alternative for this Commission to disclaim jurisdiction over rates or securities of the Power Authority.

On June 5, 1975, the Non-Profit Corporation, acting on behalf of the Power Authority, filed with the Commission Application No. 28385-Securities for an order authorizing the Power Authority to execute and deliver revenue bonds in an amount not to exceed \$35,000,000 together with a Resolution authorizing and providing for the issuance of Platte River Power Authority revenue bonds and securing their payment from revenues of the Power Authority, or, in the alternative, for this Commission to disclaim jurisdiction over rates or securities of the Power Authority.

On June 6, 1975, the Non-Profit Corporation filed with this Commission a motion to consolidate Applications No. 28370, No. 28381 and No. 28385-Securities for hearing, and to shorten the period for notice to customers to ten (10) days.

On June 17, 1975, the Power Authority was established and on June 18, 1975, filed its ratification, confirmation and approval of the applications theretofore filed on its behalf by the Non-Profit Corporation.

On June 17, 1975, the Commission issued Decision No. 86994, granting the motion to consolidate and extending the 30-day statutory requirement of Section 40-1-104(5), CRS 1973, for a period of 120 days as it related to Application No. 28385-Securities. The consolidated applications were then set for a hearing to be held on July 17, 1975, and due and proper notice thereof was given.

On June 19, 1975, the Power Authority filed a Motion to Reconsider Motion to Shorten Notice Period to Ten Days and on June 25, 1975, filed the affidavits of Albert J. Hamilton and Don R. Storeim in support of the motion to reconsider.

On July 1, 1975, the Commission issued Decision No. 87096 which amended Decision No. 86994, shortened the period of notice to eight days and set the consolidated applications for hearing to be held on July 10, 1975, at 10 a.m., at 500 Columbine Building, 1845 Sherman Street, Denver, Colorado. Due and proper notice thereof was given; and the matter was heard at said time and place by Examiner Robert E. Temmer to whom the matter had been duly assigned.

No protests were filed with regard to the applications, and no one appeared at the July 10, 1975 hearing in opposition to the granting of the applications.

At the July 10, 1975 hearing, Albert J. Hamilton, the General Manager of the Power Authority and of the Non-Profit Corporation, testified in support of the applications; and Applicants offered thirteen exhibits, all of which were admitted into evidence as Exhibits A through M, inclusive, as follows:

<u>Exhibit</u>	<u>Description</u>
A	House Bill No. 1666 as adopted by the 1975 General Assembly of Colorado and signed by Governor Lamm on May 20, 1975;
B	Organic Contract establishing Platte River Power Authority as a separate governmental entity;
C	July 25, 1973, \$4,000,000 Loan Agreement between the Non-Profit Corporation and the First National Bank in Fort Collins, Colorado;
D	Decision No. 85530, as modified by Decision No. 85562 of the Colorado Public Utilities Commission;
E	September 18, 1974, \$2,500,000 Loan Agreement between the Non-Profit Corporation and Morgan Guaranty Trust Company of New York;
F	May 2, 1975, \$5,000,000 Loan Agreement between the Non-Profit Corporation and Morgan Guaranty Trust Company of New York;
G	Projected Cash Flow - (6/27/75 to 9/29/75);
H	5/31/75 Financial Statements of the Non-Profit Corporation;
I	Affidavits of Publication of Notice - re Application No. 28381;
J	Proposed Master Bond Resolution of the Power Authority;
K	Proposed Supplemental Bond Resolution of the Power Authority;
L	Proposed Official Statement - re revenue bond financing;
M	Affidavits of Publication of Notice - re Application No. 28385-Securities.

During the hearing the Power Authority was requested to file as a late-filed exhibit a pro forma statement showing the effect on its capital structure of the proposed issuance of the securities in Application No. 28385-Securities. Said late-filed exhibit was duly received on July 14, 1975, and has been marked Exhibit "N", late filed.

On July 22, 1975, the Commission issued its Decision No. 87175 granting the three within applications. Said Decision contained therein the conclusion that the Commission had jurisdiction over the Power Authority.

On July 23, 1975, Applicant, Power Authority, filed a "Motion for Reconsideration, Rehearing, Reargument and Modification of Decision No. 87175". The portion of said Motion requesting reconsideration, rehearing and reargument with respect to Decision No. 87175 was granted by the Commission in its Decision No. 87249 dated July 29, 1975, and the within matters were set for rehearing and reargument on July 30, 1975.

On July 30, 1975, the Power Authority called as a witness Mr. Jerome S. Katzin, New York, New York, who is a special partner of Kuhn-Loeb & Company. At the July 30, 1975 hearing, Applicant's exhibit "O" which was a xerox copy of a letter from the Internal Revenue Service dated July 23, 1975, was admitted into evidence.

Reargument by counsel was also heard by the Commission at the July 30, 1975 hearing. At the conclusion of said hearing the Commission took the matter under advisement.

FINDINGS OF FACT

Based upon all the evidence of record herein, it is found as fact that:

1. The Non-Profit Corporation was organized under and by virtue of the laws of the State of Colorado by the following municipalities as their agency and instrumentality:

City of Fort Collins
City of Loveland
City of Longmont
Town of Estes Park.

It is a public utility as defined in Section 40-1-103, CRS 1973. It is engaged in the purchase of electric power and energy from the United States Bureau of Reclamation, and the transmission of that power and energy for sale at wholesale to the four Municipalities listed above (the "Municipalities").

2. The Non-Profit Corporation was created by the Municipalities as their agency and instrumentality, to construct, reconstruct, improve and rehabilitate, repair, operate, and maintain generating plants and transmission systems for the purpose of delivering electrical power and energy generated thereby to the Municipalities.

3. By Decision No. 85529, as modified by Decision No. 85562, this Commission granted the Non-Profit Corporation a certificate of public convenience and necessity to supply the wholesale power requirements of the Municipalities.

4. By Decision No. 85530, as modified by Decision No. 85562, this Commission authorized and approved the execution of the Loan Agreement dated July 25, 1973, between the Non-Profit Corporation and The First National Bank in Fort Collins, Colorado, and the issuance by the Non-Profit Corporation of its Promissory Note in the amount of \$4,000,000 pursuant to said Loan Agreement.

5. Decision No. 85531, as modified by Decision No. 85562, granted the Non-Profit Corporation a certificate of public convenience and necessity: (i) to construct a 230 Kv transmission line from Ault, Colorado,

to Longmont, Colorado, with interconnections to Fort Collins, Colorado, and Loveland, Colorado, and (ii) to acquire, operate, and maintain a double-circuit transmission line from Station 300 to Drake Road, Fort Collins, which serves as a part of such 230 Kv transmission line.

6. By Decision No. 85132 this Commission granted a certificate of public convenience and necessity for the Yampa Project which comprises the construction, operation and maintenance of an electric generating station to be located near Craig, Colorado, together with related transmission and transformation facilities and for the Non-Profit Corporation's participation in the Yampa Project.

7. Since August of 1973 the Non-Profit Corporation has supplied the electric power and energy required by the Municipalities by the purchase of that electric power and energy from the United States Bureau of Reclamation. Its transmission system is interconnected with the system of the United States Bureau of Reclamation. A portion of the power and energy utilized in Colorado by the Municipalities is generated outside of the State of Colorado, and thus must, of necessity, flow across the state line through the Bureau of Reclamation transmission system. The delivery points where the Non-Profit Corporation receives this power are all entirely within the State of Colorado. All of the customers of the Non-Profit Corporation and of the Power Authority, if these applications are approved, are and will be entirely within the State of Colorado.

8. In addition to the \$4,000,000 of interim financing authorized by Decision No. 85530, as modified by Decision No. 85562 of this Commission, the Non-Profit Corporation has borrowed additional money on an interim basis from Morgan Guaranty Trust Company of New York which additional borrowing has a maturity date of September 1, 1975, which is less than 12 months from the date of issuance.

9. On December 18, 1974, the Non-Profit Corporation filed with the Internal Revenue Service (the "Service") a request for a ruling that interest payable on bonds of the Non-Profit Corporation would, for federal income tax purposes, be excluded from the gross income of the recipient. The Non-Profit Corporation was subsequently advised by the Service that the Service is promulgating new regulations to apply to non-profit corporations incorporated as agencies and instrumentalities of municipalities and that the Service will be unable to rule on the request until the new regulations are in effect which is expected to be sometime in 1976.

10. Without a favorable ruling from the Service, the Non-Profit Corporation will be unable to issue the long-term indebtedness needed to repay present interim borrowings and to fund additional payments required for construction work in process, which work in process consists of the Yampa Project and related transmission systems, the 345 Kv transmission line from Hayden, Colorado, to Ault, Colorado, and the Ault, Colorado, to Longmont, Colorado 230 Kv transmission line; consequently, the Non-Profit Corporation would be unable to meet its financial obligations as they mature.

11. To enable cities and towns in Colorado which own and operate electric systems to overcome the financing problems faced by the Non-Profit Corporation, the 1975 Colorado General Assembly enacted House Bill No. 1666 (a copy of which was admitted as Exhibit A) which was signed by the Governor at 9:45 a.m. on May 20, 1975, and which became effective at that time.

12. To implement the provisions of Exhibit A, the Municipalities and the Non-Profit Corporation entered into an Organic Contract establishing Platte River Power Authority as a separate governmental entity (a copy of which was admitted as Exhibit B). Exhibit B became effective on June 16, 1975, subject only to Commission approval as to the obligation of the Non-Profit Corporation to assign, transfer and convey all of its properties, whether real or personal, tangible or intangible, to the Power Authority upon the assumption by the Power Authority of all obligations and liabilities of the Non-Profit Corporation.

13. The Power Authority will be able to issue, without a ruling by the Service, long-term indebtedness the interest on which, in the hands of the recipient, will be exempt from federal income tax; consequently, the Power Authority as the successor to the Non-Profit Corporation will not experience the same difficulty in meeting its financial obligations which has been experienced by the Non-Profit Corporation. The Power Authority is qualified to continue the operations of the Non-Profit Corporation; and, upon the completion of the transfer, the Power Authority will have the financial ability to continue the operations and will be in a better position to obtain financing.

14. The Power Authority is a separate governmental entity which is a political subdivision and a public corporation of the State of Colorado, separate from the Municipalities. It has the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

15. The Power Authority, as the successor of the Non-Profit Corporation, will be engaged in the supplying at wholesale of electric power and energy some of which will have been transmitted interstate. The delivery points where the Power Authority will receive its power will be the same as those of the Non-Profit Corporation, as set out in Finding of Fact No. 7, supra, and its customers will be the Municipalities, all of which are entirely within the State of Colorado. Three of the Municipalities provide electric service to consumers outside of their corporate boundaries.

16. The Power Authority proposes to issue construction bonds, Series 1975 A in an amount not to exceed \$35,000,000 and bearing an interest rate not to exceed 9 percent per annum. Redemption, sinking fund, and other relevant features of the proposed bond issue are set forth in the Master Resolution (a copy of which was admitted as Exhibit J), the Supplemental Resolution relating to Series A (a copy of which was admitted as Exhibit K), and the official statement (a copy of which was admitted as Exhibit L), which exhibits are considered to be in substantially final form. The terms and conditions of these Resolutions, official statement, and related financing documents are just and reasonable and in accordance with the public interest.

17. The Power Authority proposes that the revenue bonds will be payable from and secured by a pledge of net revenues received by the Power Authority from the sale of electric power and energy and from other sources incidental to the operation of the Power Authority's system.

18. The Power Authority proposes to use and needs the funds to be raised by the issuance of the above-described securities for the acquisition and construction of facilities and other properties, to reimburse general funds for monies expended on the acquisition and construction of facilities and other properties, to repay existing short-term and long-term indebtedness which matures on September 1, 1975,

and for other lawful purposes, all of which are not inconsistent with the public interest, including, without limitation, the financing of the following properties and facilities:

- (1) The 18 percent share of the acquisition and construction of Yampa Project generating facilities, equivalent to approximately 148 MW of the generating capacity from Craig Station and incidental transmission facilities;
- (2) The 28 percent share of the Hayden-Ault 345 Kv transmission line across the Continental Divide by means of Craig Station energy will be delivered to Ault, Colorado;
- (3) The 230 Kv local transmission lines from Ault to Fort Collins, and thence to Loveland and Longmont; and
- (4) The general plant, including offices, communications and other facilities. This entire group of electric utility facilities, collectively referred to as the 1975 Project, will be completed by 1979 with funds from the Power Authority's Series A Bonds and subsequent series of bonds and from retained earnings.

19. The financial position of the Power Authority will be significantly altered by the bonds it proposes to issue, but its financial position and ability to serve will not be impaired by this borrowing.

20. The Commission is fully advised in the premises, and due and proper notice of the applications here under consideration was given.

21. The present and future public convenience and necessity requires the granting of authority for the transfer of the assets of the Non-Profit Corporation to the Power Authority, including the certificates of public convenience and necessity held by the Non-Profit Corporation.

22. The granting of Application No. 28370 involved herein will be in the public interest.

DISCUSSION

No question has been raised as to the jurisdiction of this Commission over the Platte River Power Authority (a non-profit corporation) who is the Applicant in Application No. 28370 which seeks authorization to assign and transfer its assets, including existing certificates of public convenience and necessity to the Platte River Power Authority (a separate governmental entity). However, the jurisdictional issue which the Commission must decide is whether or not it has jurisdiction over the Platte Power Authority (a separate governmental entity) which is the successor in interest to the Platte River Power Authority (the non-profit corporation). Upon further reflection we now conclude that the Commission does not possess this jurisdiction.

Article XXV of the Colorado Constitution states:

"ARTICLE XXV

Public Utilities

In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities." (emphasis added)

Inasmuch as the Power Authority is wholly owned by the four municipalities listed in Finding of Fact No. 1, it would appear that the jurisdiction of this Commission over the municipally owned utility is specifically excluded by the last clause of Article XXV of our State Constitution. Such a conclusion, however, although quick, easy, and facially correct, would not necessarily be the proper legal conclusion to the jurisdictional question. This is because our Supreme Court has properly recognized an implied but necessary exception to what appears to be the broad exclusion of Commission jurisdiction over municipal utilities or municipally-owned utilities.

Approximately 50 years ago in the case of City of Lamar vs. Town of Wiley, 80 Colo. 18, 248 P. 1009 (1926) our Supreme Court held that the Public Utilities Commission had jurisdiction to fix the rates for electric utility service supplied by the City of Lamar to the Town of Wiley. The Court said:

"...We, therefore, hold that where a municipality, as owner of a public utility, furnishes the commodity in question to its own citizens and inhabitants, consumers within the municipal limits, the city itself, through its proper officers, possesses the sole power to fix rates. When a municipality, whether in its operation of its own public utility it acts in its municipal or governmental, or in its proprietary, or quasi public, capacity, or partly in one and partly in the other, and as such furnishes public service to its own citizens and in connection therewith supplies its products to consumers outside of its own territorial boundaries, the function it thereby performs, whatever its nature may be, in supplying outside consumers with a public utility, is and should be attended with the same conditions and be subject to the same control and supervision that apply to a private public utility owner who furnishes like service..."

Id. at 23

The rationale of the Court's Decision was that consumers who reside outside the City of Lamar had no voice in selecting those who fix rates for public service. Two years earlier, in 1924, the rationale and justification for municipal regulation of municipally-owned utilities operating wholly within the municipality was enunciated in the Town of Holyoke vs. Smith, 75 Colo. 286, 226 P. 158 (1924) in which the Court said:

"On principle it would seem entirely unnecessary to give a commission authority to regulate the rates of a municipally owned utility. The only parties to be affected by the rates are the municipality and its citizens, and, since the municipal government is chosen by the people, they need no protection by an outside body. If the rates for electric light or power are not satisfactory to a majority of the citizens, they can easily effect a change, either at a regular election, or by the exercise of the right of recall."

See also the case of Public Utilities Commission vs. the City of Loveland, 87 Colo. 556, 289 P. 1090 (1930) wherein our Supreme Court said that a city had no superior right as to territory outside of its municipal boundaries over the rights of any other public utility, private corporation or otherwise, authorized to furnish service. Thus, it is clear that the law in Colorado until the adoption of Article XXV in 1954 by the electorate, was that a municipal utility operating beyond its territorial boundaries had no right superior to any other public utility and that once it acted (in whatever capacity) to serve or supply consumers outside of its territorial boundaries, it is subject to the jurisdiction and regulation of this Commission.

In the case of City and County of Denver vs. Public Utilities Commission, Colo. ____, 507 P.2d 871 (1973), our Supreme Court held that the law as set forth in Lamar vs. Wiley, supra, was the law in this state at the time Article XXV was adopted and that nothing in the language of the amendment suggests that it was designed or intended to modify that law. In that case the Supreme Court specifically held that if the City of Denver determined to operate its mass transit system outside of the territorial boundaries of Denver, it is subject to the jurisdiction of this Commission. Insofar as the four municipalities furnishing electrical service at retail to consumers beyond their municipal boundaries, such sales are subject to the jurisdiction of this Commission.

In the strict and traditional sense, the Power Authority is not a municipality inasmuch as it is not an entity instituted by the inhabitants of a city or town for the purposes of local government within a specified geographical area. However, in recent years the term "municipal" has been used in a broader sense to include every corporation formed for governmental purposes so as to embrace counties, towns, school districts, and other governmental divisions of the state. See Gaud vs. Walker, 214 S.C. 451, 53 SE 2d 316, and Tovey vs. City of Charleston, 117 SE 2d 872 (1961). There is no uniformity in court decisions with respect to whether or not various types of special purpose districts or entities are considered municipal corporations, though the weight of authority appears to be on the side of the proposition that such districts created where authorized by state legislators are considered municipal corporations or, at least, quasi-municipal corporations.*

* Footnote appended to end of decision.

In Colorado, it would appear that both elements of the State Constitution and the case law ascribe the broader meaning to the phrase "municipal corporation". For example, Sec. 4 of Article X of the State Constitution provides that, "the property, real and personal, of the state, counties, cities, and other municipal corporations and public libraries, shall be exempt from taxation." Similarly, Sec. 7 of Article X states, "The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but, may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation." Such phraseology implies the phrase municipal corporation is not exclusively confined to cities and towns.

In the case of People vs. Earl 42 Colo. 238, 257 (1908) the Supreme Court states:

"Municipal corporations are bodies corporate and politic, consisting of the inhabitants of a city, town or district created by law, partly as the agent of the state to assist in the civil government of the state, but chiefly to administer the local affairs of the city, town or district which is incorporated; they are creatures of statute, endowed with such powers, duties, rights and privileges as are conferred upon them by statute, and none other, except such powers as arise by necessary or reasonable implication, to enable them to execute their functions; the legislature, in the absence of limiting constitutional provisions, has plenary power to adopt, for their government, such measures as shall, in its judgment, best accomplish the purpose for which they are created, including the creation and manner of filling municipal offices, either by election or appointment." (emphasis added)

The People vs. Earl language quoted above was reiterated in the case of Milheim vs. Moffat Tunnel Improvement District 72 Colo. 269, 277 (1922). It is interesting to note that one of the objections raised against the Moffat Tunnel Improvement District was the argument that corporate authorities of such municipalities to whom the right to tax is given are only such as are elected by the people or chosen with their consent. The Supreme Court pointed out that Section 12 of Article XIV specifically provides that the General Assembly shall provide for the election or appointment of municipal officers.

The governing body of the Power Authority is a Board of Directors in which all legislative power of the Power Authority is vested. The number of directors is four; with the governing body of each municipality appointing one member to the Board of Directors. The fact that the Power Authority's governing body is appointed, rather than elected, does not remove the Power Authority from the classification of being a municipal entity.

In the case of People vs. Letford 102 Colo. 285, 299 (dealing with a water conservancy district) it was stated:

"The relator has not cited any constitutional provision which he contends is expressly violated by the creation of this district for public purposes in the form of a quasi-municipal corporation, and we are satisfied that none exists. The general rule is stated in vol. 1, McQuillin on Municipal Corporations (2d ed.), page 387, section 134, as follows: 'In the absence of constitutional limitations the state legislature may create any kind of a corporation to aid in the administration of public affairs and endow such corporation and its officers with such powers and functions as it may deem necessary'."

In the case of City of Aurora vs. Aurora Sanitation District, 112 Colo. 406 (1944) the City of Aurora brought an action to have the operation of a sanitation district enjoined and its existence nullified. In fact, the Aurora Sanitation District's boundaries were located entirely within the boundaries of the City of Aurora. The Supreme Court said that this fact was immaterial and that the territorial limits of overlapping public corporations is immaterial if such entities have separate and distinct governmental purposes. In the Aurora case, the Supreme Court cited the case of Perkins vs. Board of Commissioners of Cook County 271 Illinois 449, 111 NE 580 wherein it was decided that for the more efficient administration of public affairs the legislature might provide for the organization of a municipal corporation (a forest preservation district) embracing territories situated wholly within, or partly within and partly without, the boundaries of another municipal corporation. 112 Colo. 415.

The Power Authority, which was created by organic contract as a separate governmental entity, is by virtue of Section 29-1-203.1(4) a political subdivision and a public corporation of the State of Colorado. Among its powers, specifically authorized by the General Assembly in House Bill No. 1666, and reiterated in its organic contract, are to incur debts, liabilities or obligations and to borrow money and, from time to time, to make, accept, endorse, execute, issue and deliver bonds, debentures, promissory notes, bills of exchange and other obligations of the Authority for monies borrowed or in payment for property acquired or for any of the other purposes of the Authority, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other collateral instrument, or by other lien upon, assignment of, or agreement in regard to, all or any part of the properties, rights, assets, contracts, easements, revenues and privileges of the Authority wherever situated. In addition, the Power Authority is empowered to fix, maintain and revise fees, rates and charges for functions, services or facilities provided by the Power Authority.

It should be noted that Section 29-1-203.1(4) provides that the separate governmental entity (i.e. the Power Authority) has the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate, and is a political subdivision of the state. In the broad sense of the term, it seems clear that the Power Authority is a municipal corporation, thus entitled to the municipal exemption set forth in Article XXV. Quoting Justice Holmes in the case of Towne vs. Eisner 245, 418 38 S.C. 158, 159, 62 L Ed. 372, "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content, according to the circumstances and times in which it is used." See also the case of City of Olivette vs. Graeler 338 SW 2d. 827, 835 wherein it was said, "Many public agencies, rendering services of a municipal nature for which a corporate form of organization is provided by law, may properly be included in the category of 'municipal corporations' in the broader sense."

A significant case is that of People vs. Chicago Transit Authority 64 NE 2d. 4, which was decided on November 21, 1945. The Illinois Supreme Court stated that chief among the questions presented was whether or not the Transit Authority Act, passed by the Illinois Legislature, created a municipal corporation. Among the reasons advanced that the Chicago Transit Authority (which embraced not only the City of Chicago but 85 cities and villages other than Chicago in Cook County) was not a municipal corporation, was that (1) it had no municipal powers; (2) did not govern, (3) exercised no political rights; (4) had no taxing powers, and (5) had no police powers. Section 3 of the Transit Authority Act provided that the Chicago Transit Authority is a political subdivision and body politic and municipal corporation. The Supreme Court of Illinois stated that the Chicago Transit Authority was created for a public municipal purpose, that operation of an adequate, modern transportation system is well calculated to obtain objects of state police power, that is, the promotion of public comfort, health, safety and general welfare, and that the state could create a public municipal corporation to furnish such adequate transportation. 64 NE 2d. 9.

It should be noted that Section 10.3 of Chapter 111 and 2/3rds of the Public Utilities Law of Illinois provides that the Illinois Commerce Commission has power over public utilities "except, however, such public utilities as are or may hereafter be owned by any political subdivision or municipal corporation of this state or owned by such political subdivision or municipal corporation and operated by any of its lessees or operating agents." The case of Fallon vs. the Illinois Commerce Commission specifically held that the Illinois Commerce Commission had no jurisdiction over the Chicago Transit Authority as a municipal corporation, 84 NE 2d. 641, 643 (1949). Furthermore, the court held that "...after acquisition of the Chicago Rapid Transit Company (a private corporation) by the Chicago Transit Authority, the Commerce Commission lost jurisdiction over the property of the Chicago Rapid Transit Authority, after the Transit Authority purchased the property, to enforce any of the orders it previously had jurisdiction to enter."

In conclusion, it is clear to us that the legislative intent in enacting House Bill No. 1666 was to provide a vehicle whereby municipalities could band together to effect the development, production, and transmission of electric energy for the benefit, in whole or in part, of the inhabitants of the contracting municipalities. The broad range of powers given by the General Assembly to such an entity, including the contracting of debt and the fixing of its own fees, rates and charges, among others, evidences, in our opinion, the intent of the General Assembly that such an entity be free of the jurisdiction of this Commission with respect to its securities — at the very least. Such a conclusion is hardly novel in that other legislatively created entities which perform utility functions, such as water districts and the Regional Transportation District, are not under the jurisdiction of this Commission.

The applications before the Commission, at this time, do not involve rates. Thus, it is not necessary for us to determine now whether the Power Authority's wholesale sales to the said municipalities for resale outside the corporate limits of the municipalities are subject to our jurisdiction, and we reserve our ruling thereon when that issue comes before us.

CONCLUSIONS ON FINDINGS OF FACT

1. This Commission has jurisdiction over Application No. 28370, it being the application of Platte River Power Authority (a non-profit Colorado corporation) for authorization to assign and transfer its assets, including existing certificates of public convenience and necessity, to Platte River Power Authority (a separate governmental entity) which application should be granted.

2. This Commission has no jurisdiction with respect to Application No. 28381 and Application No. 28385—Securities because of the fact that Platte River Power Authority (a separate governmental entity) is a municipally-owned utility, and a political subdivision and a public corporation of the state which has the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic. Consequently, it is exempt from the jurisdiction of this Commission by virtue of Article XXV of the Constitution of Colorado.

An appropriate Order will be entered.

O R D E R

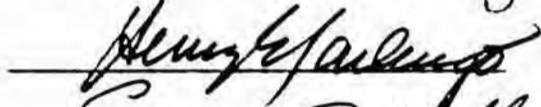
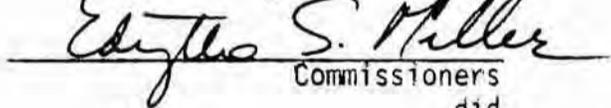
THE COMMISSION ORDERS THAT:

1. Application No. 28370 be, and the same hereby is, granted.
2. The Platte River Power Authority, a non-profit corporation, 3030 South College Avenue, Fort Collins, Colorado, be, and hereby is, authorized to sell and transfer all of its assets and obligations associated therewith used in connection with the rendering of electric service, including the sale and transfer of the existing certificates of public convenience and necessity used in connection therewith, and all rights owned thereunder, to the Platte River Power Authority, a separate governmental entity, 3030 South College Avenue, Fort Collins, Colorado, and said transfer hereby is authorized and approved.
3. Application No. 28381 and Application No. 28385-Securities, be, and the same hereby are, dismissed for lack of jurisdiction.
4. The authority herein granted shall be exercised from and after the date of this Order.
5. Decision No. 87175, dated July 22, 1975, be, and the same hereby is, rescinded.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 5th day of August, 1975.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO




Commissioners
did

* Footnote to page 11.

Cases holding that special purpose districts are municipal corporations or quasi-municipal corporations: Houch vs. East Chester Public Utility District 104 F.S. 588; Louisville and Jefferson County Airboard vs. American Airlines 165 F.S. 777; Siler vs. Industrial Accident Commission 309 P.2d 910; Barley vs. Evansville-Vandenburg Airport Authority District 166 NE 2d 520; Ward vs. Controller of Commonwealth 186 NE 2d 461 (Metro Transit Authority); City of Olivette vs. Graeler 338 SW 2d 827; Page vs. Metropolitan Sewer District 377 SW 2d 348; Housing Authority of City of Wilmington vs. Johnson 134 SE 2d 121.

Cases holding that special purpose districts are municipal corporations or quasi-municipal corporations - cont'd: Tovey vs. City of Charleston 117 SE 2d 872; Schlarb vs. Northern Suburban Sanitation District 352 P.2d 647; People ex rel. Coutrakon vs. Lohr 138 NE 2d 471 (Metropolitan Fair and Exposition Authority in Cook County is a "species of a municipal corporation"); People vs. Public Building Commission of Chicago 142 NE 2d 67; Finance Commission of City of Boston vs. McGrath 180 NE 2d 808; Broadway National Bank of Bayonne vs. Parking Authority of City of Bayonne 191 A 2d. 169 (parking authority is an instrumentality of a municipality, although it is a separate and independent entity); Court of Seattle vs. International Longshoreman's and Warehouseman's Union 324 P 2d 1099; Howes vs. Lockheed Aircraft Corporation 162 SE 2d 896 (Cobb County - Marietta Water Authority); Chanslor - Western Oil and Development Company vs. Metropolitan Sanitation District of Greater Chicago 266 NE 2d. 405; Brown Briar Enterprises, Inc., vs. City and County of Denver 493 P.2d 352; Cuyahoga Metropolitan Housing Authority vs. City of Cleveland 342 FS 250; People vs. Chicago Transit Authority 64 NE 2d 4; Burns vs. District Court of 18th Judicial District 144 Colo. 259 356 P.2d 245 (recreation district is a de facto municipal corporation);

Cases holding special purpose districts are not municipal corporations; Schumacher and Forelle Incorporated vs. Johnson 261 NYS 2d 262 (State Dormitory Authority); Wilmington Housing Authority vs. Williamson 228 A 2d 782; In re Oahe Conservancy Sub-District 185 NW 2d 682 (Conservancy District is not a true municipal corporation, but is vested with some of the powers and attributes of a municipal corporation and hence may be called "quasi-municipal"); Evans vs. Metropolitan Utility District of Omaha 188 NW 2d 851 (Metropolitan Utilities District is a public, rather than municipal, corporation, performing proprietary functions; the dissenting opinion stated that the Metropolitan Utilities District is a municipal corporation in the broad sense of the term); Housing Authority of City of Woonsocket vs. Fetzik 289 A 2d 658; People ex rel. Cheyenne Soil District vs. Parker 118 Colo. 13, 192 P.2d 417 (soil district not a municipality for purposes of Article V, Section 1, of the Colorado Constitution relating to initiative and referenda).