

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO, 550 15TH STREET, DENVER,)
COLORADO, FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
FOR THE CONSTRUCTION, OPERATION)
AND MAINTENANCE OF A STEAM ELECTRIC)
GENERATING PLANT TO BE KNOWN AS)
THE PAWNEE STEAM ELECTRIC GENERATING)
STATION, NEAR BRUSH, COLORADO.)

APPLICATION NO. 28815

INTERIM DECISION
OF THE COMMISSION

April 30, 1976

- Appearances: Bryant O'Donnell, Esq.,
Donald D. Cawelti, Esq., and
James McCotter, Esq., Denver,
Colorado, and
Henry Anderson, Esq., Brush,
Colorado, for Public
Service Company of
Colorado, Applicant;
- John J. Conway, Esq., Denver,
Colorado, and
Raphael J. Moses, Esq., Boulder,
Colorado, for Tri-State
Generation and Transmission
Association, Inc., Intervenor;
- David L. Roberts, Esq., Fort Morgan,
Colorado, for Morgan County
Rural Electric Association,
Intervenor;
- Robert G. Shepherd, Jr., Esq.,
Denver, Colorado, for Information
Please, Inc., Intervenor;
- John Whittmyer, Esq., Boulder,
Colorado, for Platte River
Power Authority, Intervenor;
- Kenneth C. Scull, Esq., Brush,
Colorado, for the City of
Brush, Colorado, Intervenor;
- John E. Archibold, Esq., Denver,
Colorado, Assistant State
Solicitor General, and
Tucker K. Trautman, Esq., Denver,
Colorado, Assistant Attorney
General, for the Commission.

S T A T E M E N T

BY THE COMMISSION:

On December 1, 1975, Public Service Company of Colorado (Public Service), the Applicant herein, filed the herein application for a certificate of public convenience and necessity, for the construction, operation and maintenance of a steam electric generating station to be known as the "Pawnee Station" near Brush, Colorado, together with the associated transmission facilities.

After due and proper notice, dated February 10, 1976, the herein application was set for hearing before the Commission on March 3, 1976.

The following schedule sets forth names of all persons, corporations and/or associations that filed formal pleadings with the Commission seeking leave to intervene as a party; the dates of filing such pleadings; and the dates when the pleadings for leave to intervene were granted by the Commission:

<u>Name</u>	<u>Date Filed</u>	<u>Date Granted</u>
Information Please, Inc.	1/21/76	1/27/76
Platte River Power Authority	1/22/76	1/27/76
Tri-State Generation and Transmission Association, Inc.	1/22/76	1/27/76
City of Brush	1/22/76	1/27/76

By Commission Decision No. 88306, dated March 2, 1976, the motion filed on February 25, 1976, by Environmental Defense Fund, Inc., to submit an Amicus Curiae brief was granted and said brief has been considered by the Commission.

On February 13, 1976, Intervenor, Information Please, Inc., (Information Please) filed a "Motion to Compel Applicant to Answer Interrogatories and Request for Production of Documents by Monday, February 23, 1976," which motion was granted by Commission Decision No. 88233, dated February 17, 1976. On February 23, 1976, Public Service filed its responses to said interrogatories and production of documents with certain exceptions. On February 24, 1976, Information Please filed a "Motion to Vacate and Reset Present Hearing Date Scheduled for March 3, 1976." On February 26, 1976, Information Please filed concurrently a "Motion to Compel Applicant to Fully Answer Petitioner's First Set of Written Interrogatories and to Comply with Request for Production of Documents" and an "Addendum to Previously Filed Motion to Vacate Present Hearing Date Scheduled for March 3, 1976."

The hearing on this matter commenced on March 3, 1976, at the Commission's Hearing Room in Denver, Colorado. As a preliminary matter, Information Please's motion to vacate and reset the hearing date was resolved by the Commission's scheduling a further hearing date on March 31, 1976. Also, Information Please's motion to compel discovery was resolved by the parties with the exception of Public Service's refusal to produce various studies of alternative sites in Southeastern Colorado. The Commission denied Information Please's motion to compel discovery of those studies on grounds of relevancy.

At the March 3, 1976, hearing, Public Service presented the direct testimony of Richard F. Walker, Vice President of Engineering and Planning in the Electric Department, who testified concerning the design and siting factors of the project, and James N. Bumpus, Manager of Financial Services and Treasurer, who testified concerning the financing of the project. Public Service witnesses sponsored Exhibits 1 through 16, all of which were admitted into evidence and identified as follows:

<u>Exhibit No.</u>	<u>Description</u>
1	Map of Public Service Company of Colorado Interconnected Electric System, as of December 31, 1975
2	Map of Pawnee Site Area
3	Project Schedule
4	Map of Public Service Company of Colorado Interconnected Electric System, as of December 31, 1975 - With Pawnee Transmission System
5	Public Service Company of Colorado - Increase in P.S.Co. Residential Customers and Increase in Colorado Population Age 25 and Above - 1970-1980
6	Public Service Company of Colorado - Average Number of Residential Customers (And Percent Increase from Previous Year) - 1970-1980; Annual KWH Usage Per Average Residential Customer (And Percent Increase from Previous Year) - 1970-1980; and Residential KWH Sales (And Percent Increase from Previous Year) - 1970-1980
7	Public Service Company of Colorado - Commercial and Industrial Sales and Total Colorado Employment - 1970-1980
8	Public Service Company of Colorado - Kilowatt Hour Sales to Street Lighting, Public Authority and Resale Customers (And Percent Increase from Previous Year) - 1970-1980
9	Public Service Company of Colorado - Total Kilowatt Hour Sales (And Percent Increase from Previous Year) - 1970-1980
10	Public Service Company of Colorado - Maximum Net Firm Demand, Total Net Energy for Load & Loss (And Percent Load Factor) - 1970-1980

<u>Exhibit No.</u>	<u>Description</u>
11	Public Service Company of Colorado - Net Effective Capability and Maximum Net Firm Demand with Reserve Requirement - 1975-1980
12	Two Page Diagrams of Pawnee Plant Features
13	Pawnee Unit 1 Cost Estimate and Estimated Cost of Systems and Equipment for Environmental Protection
14	Estimated Sources of Funds Needed to Finance The Pawnee Steam Generating Station
15	Public Service Company of Colorado - Capital Structure at December 31, 1975
16	Public Service Company of Colorado - Balance Sheet - December 31, 1975; Statement of Income Twelve Months Ended December 31, 1975; and Statement of Retained Earnings Twelve Months Ended December 31, 1975

The following additional exhibit was admitted:

17	Letter, dated March 30, 1976, addressed to the Public Utilities Commission from the Board of County Commissioners, Morgan County, signed by Don Queen, Chairman
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Cross-examination of Public Service's witnesses commenced on March 31, 1976, and concluded on that day. Also, testimony was presented by Information Please witness, Bernard Jones, concerning the potential impact of construction of the Pawnee Plant on the Brush community. And, finally, the Mayor of the City of Brush testified generally concerning the community's concern that Public Service work with the Brush city officials to minimize any adverse impact that the project might cause.

At the conclusion of the receipt of testimony at said hearing, legal documents were presented by certain parties concerning the meaning of the second sentence of 40-5-103(1), CRS 1973. The Commission, additionally has considered written arguments set forth, respectively, in a letter dated March 12, 1976, from Assistant Attorney General Tucker K. Trautman to counsel for Public Service and a responding letter thereto, dated March 19, 1976, from Bryant O'Donnell, one of counsel for Public Service.

At the conclusion of the hearing, the Commission took the instant matter under advisement.

DISCUSSION

Within recent years there has been a great deal of controversy with respect to the siting and construction of electric generating power plants. Today the public interest dictates consideration not only of the need for electricity to meet growth and demand at reasonable utility rates, but also the need to recognize pollution of the environment in meeting those demands for energy. Rising demand for energy has necessitated additions to plant capacity; construction expenses for new plant have increased because of inflation and the higher cost of capital. Inflation and rising costs of capital, as well as continued growth in demand for energy, results in increased construction costs. In addition, it should be noted that in recent years an increasing proportion of the cost of power plants has become attributable to pollution control facilities which are required to meet pollution standards. All of these costs, of course, ultimately must be reflected in utility rates. The Commission's historic and continuing responsibility is to ensure that the public's need for energy is met at the lowest possible cost commensurate with adequate service.

With regard to the responsibilities of this Commission pertaining to the instant application, it is necessary first of all to refer to 40-4-102(1), CRS 1973, which provides in relevant part:

"Whenever the commission, after a hearing upon its own motion or upon complaint, finds the additions, extensions, repairs, or improvements to or change in the existing plant, equipment, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made or that a new structure should be erected to promote the security or convenience of its employees or the public or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure be erected in the manner and within the time specified in such order. If the commission orders the erection of a new structure, the selection of the site of such structure shall be subject to the approval of the commission."

Thus it can be seen that the foregoing statutory criteria are directed principally to the security (that is safety) and convenience of both the employees of the utility involved, and the public, and in the securing of adequate service or facilities. It is also clear from the foregoing cited statute that the power and authority of the Commission is not limited merely to a determination of whether a new plant should be built but also includes approval of the site of the facility. The two considerations are, of course, intertwined, and in the past the Commission traditionally has considered the following factors: (1) The present and projected growth of demand for utility services and the adequacy of system capacity to meet that demand; (2) the proximity to load centers; (3) the fuel sources proposed to be utilized; (4) availability of those fuel sources and water supplies; (5) safety; (6) interconnection with other utility systems; (7) lack of duplication with other utility facilities; and, (8) private property boundaries.

See Commission Decision No. 71104, April 2, 1968 (Fort St. Vrain); Commission Decision No. 76419, December 9, 1970 (Comanche); Commission Decision No. 77415, April 21, 1971 (Henderson Project); Commission Decision No. 81536, October 16, 1972 (Hayden); Commission Decision No. 85132, June 5, 1974 (Craig). These listed factors collectively can be described as "traditional utility factors".

As hereinafter discussed, and, as set forth in our Findings of Fact and Conclusions of Law, it is clear that the traditional utility factors dictate the construction by Public Service of a 500 megawatt plant to meet its 1979 projected system maximum net firm demand. The need for additional capacity is clearly based on projected growth in demand as well as the efficiency with which the utility's present capacity is utilized or the so-called system load factor (average kwh demand divided by maximum system demand). Public Service can influence these factors in numerous ways. The Commission plans to embark on generic hearings concerning the electric rate structure of Public Service which could have a marked effect upon these factors. However, any final approval of construction of a power plant will be conditioned on the utility taking all economically feasible steps to retard system growth and improve the system load factor. In this regard, while Public Service's growth projections are conservative and its load factor is favorable, it should institute information programs for its customers — both residential and nonresidential — on energy conservation and load management. Public Service should study the feasibility of load control and more efficient use of waste heat from power plants. While we recognize that Public Service has made strides in these areas, we want to underscore the importance we place on the continuation and acceleration of these efforts. We plan to monitor the Public Service progress at every available opportunity.

With respect to the siting of the plant, environmental factors such as the effects of the construction of the proposed Pawnee Plant on the quality of the air and water, as well as the land in the area, must be considered with respect to the public convenience and necessity. The environmental factors must be weighed in the balance along with the traditional utility-related factors. Although we are mindful of our responsibility to consider all relevant factors, including environmental factors, in passing upon the public convenience and necessity of the proposed plant, we recognize that there are other governmental agencies at the local, state and federal levels, that are also empowered to evaluate particular environmental factors relating to the construction and operation of power plants. For example, Public Service must apply for and obtain a rezoning of the plant site and a building permit from local authorities in Morgan County before it can commence construction of its proposed plant. Additionally, Public Service must obtain a permit prior to construction from the Air Pollution Control Commission which is part of the Colorado Department of Health. Furthermore, in the event the final design of the proposed plant envisions the discharge of pollutants into state waters, Public Service must comply with the water quality laws of the state and obtain a discharge permit before it begins operation of the plant.

While recognizing our own particular responsibility to consider the public interest in all of its aspects, the appropriate and efficient procedure to accomplish this does not require at this time duplicate hearings before this Commission and the above referenced governmental agencies with respect to environmental factors. These other governmental agencies, with their particular expertise, will be giving full consideration and study to the plant's impact upon the environment. The Commission, of course, will be fully cognizant of the course of proceedings before these agencies.

The Public Utilities Law, 40-5-103(1), CRS 1973, recognizes the foregoing procedure and provides:

"Before any certificate may issue under sections 40-5-101 to 40-5-104, a certified copy of its articles of incorporation or charter, if the applicant is a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise, permit, ordinance, vote, or other authority of the proper county, city and county, municipal or other public authority. The commission has power to issue said certificate after hearing, to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated facility, line, plant, or system or extension thereof or for the partial exercise of the rights granted by such certificate such terms and conditions as in the judgment the public convenience and necessity may require." (Emphasis added)

The second sentence of the above-cited statutory subsection clearly mandates that the utility shall present such evidence as this Commission requires to show that it has received the required consents, permits, etc., from all local or other public authorities which are necessary prior to the construction of the proposed facility. When Public Service files with this Commission evidence that it has received the required permits and consents, we will be assisted in making our ultimate determination as to whether or not the proposed plant, at the proposed site, will be in the public interest from the standpoint of environmental and land use factors.

Accordingly, we shall require, in the order hereinafter to follow, that Public Service file evidence of all consents, permits, or other authorities, which are issued by local or other public authorities and which are required before construction of the proposed power plant may begin. The consents and permits which we have in mind include, but are not necessarily limited to, the following:

- (1) Rezoning authority from Morgan County Commissioners;
- (2) Building permits from applicable authorities;
- (3) Air pollution permit from the Air Pollution Control Commission or Division of the Colorado Department of Health; and
- (4) If applicable, a discharge permit from the Water Quality Control Division of the Colorado Department of Health.*

* We recognize that Public Service may not need to obtain a discharge permit if its final plant design does not envision the discharge of pollutants into state waters. Further, we recognize that the discharge permit, if required at all, is not a prerequisite to the start of construction. However, if Public Service has not obtained a permit, for whatever reason, by the time the other relevant permits have been secured, it shall instead submit evidence to this Commission of its proposed compliance with applicable water quality laws.

We also shall hereinafter order that Public Service give notice to all the parties to this proceeding of the fact that it has filed evidence of the foregoing described consents and permits from local and other public authorities. Within twenty days after the filing by Public Service of the above required evidence, any party, if it so desires, may file comments or objections with respect thereto or make appropriate motions which the Commission promptly will consider. Depending upon what further proceedings may be required, if any, the Commission will issue its final order with respect to Public Service's application for a certificate of public convenience and necessity for the Pawnee Plant.

From the point of view of the utility-related factors, the construction of a power plant by Public Service with the capacity described in its application is in the public interest. The Commission recognizes that the selection of a plant site rests with the management of the utility involved, subject to approval of the Commission. In other words, our review is to see whether or not there has been an abuse of management's discretion in this regard. Our Findings of Fact will set forth the evidentiary bases upon which we conclude that the utility-related factors clearly show that the construction of a power plant is in the public interest. We will defer final determination of the within application pending the filing of the required evidence as described herein.

FINDINGS OF FACT

Based upon all the evidence of record, the Commission finds as follows:

1. Public Service is a corporation duly organized and existing under and by virtue of the laws of the State of Colorado. A certified copy of Public Service's Restated Articles of Incorporation has heretofore been filed with this Commission. It is a public utility subject to the jurisdiction and regulation of this Commission, and is engaged principally in the generation, purchase, transmission, distribution and sale of electricity and in the purchase, distribution, and sale of natural gas.

2. Public Service proposes to construct, operate and maintain a new electric generating station and associated transmission facilities to be located in the vicinity of Brush, Morgan County, Colorado, as depicted on Exhibit 2. The Pawnee Station will be a coal-fired steam electric generating station having a capacity to generate 500 megawatts. In light of Public Service's present mix of base load and peaking generating units, the relative economy realized in building a large plant and the projected required system capacity needed in 1979, the construction of a 500 megawatt unit is reasonable. Public Service proposes to begin construction in 1976 and complete construction in 1979.

3. In connection with the construction of the Pawnee Station, Public Service proposes to construct two parallel 230 kv transmission lines running from the Pawnee Station to the Denver Metropolitan area as depicted on Exhibit 4. In addition, an existing 230 kv transmission line running from the Fort Lupton area east to the Beaver Creek area, in the vicinity of Brush, will be divided and the two lines extended into the Pawnee Station. Thus, upon completion, there will be, in effect, four 230 kv transmission lines originating at the Pawnee Station: One running to the Beaver Creek area, one running back to the Fort Lupton area, and the two new lines running to the Denver Metropolitan area. These lines will interconnect with the existing Public Service transmission system in Colorado and will not result in a duplication of facilities of other utilities.

4. The Pawnee Station is located in the certificated area of Morgan County Rural Electric Association; however, Public Service will not serve any customers in that area as a result of the construction or operation of the plant.

5. The Pawnee Station will be fired by coal, which will be supplied by Amax Coal Company from its Bellaire mine, near Gillette, Wyoming. The coal will be delivered to the site by so-called unit trains running between the mine and the power plant. In light of the shortage of natural gas, the expense and unpredictable availability of fuel oil, the relatively undeveloped technology of geothermal and solar power, the lack of further hydro resources in Colorado, and the expense of building nuclear plants, the use of coal, which is relatively abundant and comparatively inexpensive, is a reasonable choice of fuel to generate electricity at the Pawnee Station.

6. Public Service plans to supply water to the Pawnee Station from water rights in the South Platte River basin that the Company has acquired in the past and from the proposed Wildcat Reservoir located in Morgan County, which the Company plans to construct and operate in conjunction with the Riverside Irrigation District.

7. Public Service plans to construct facilities to store excess coal and water so that the Pawnee Station can remain in operation despite temporary interruptions in delivery.

8. Public Service estimates that the Pawnee Station will cost approximately \$230,335,000 to construct, \$42,122,000 of which is attributable to systems and equipment for environmental protection. In addition to the estimated station cost, the associated transmission lines and right-of-ways will cost approximately \$45,000,000. The Company proposes to finance the construction of the Pawnee Station from the following sources: (1) internal funds including, but not limited to, charges for depreciation of existing plant and equipment and retained earnings - 50%; (2) sale of the Company's first mortgage bonds - 25%; (3) sale of the Company's cumulative preferred stock - 7%; and, (4) sale of the Company's common stock - 18%.

9. Public Service estimated the growth in demand on its system by 1980. In making its estimates, Public Service has not included projections for any new large industrial customers or a substantial increase in the number of all-electric residences. In all cases, the projections are about 50% lower than its historical trend. Public Service has estimated that: (1) total kilowatt-hour sales system load will grow from 11,010 megawatt hours in 1975 to 15,140 megawatt hours in 1980 or an average compound annual growth rate of 6.6%; (2) total net energy for load and loss (energy necessary to supply load and system losses) will grow from 11,867 megawatt hours in 1975 to 16,351 megawatt hours in 1980 for an average compound annual growth rate of 6.6%; and (3) maximum firm demand (energy necessary to meet system peak load with losses) will grow from 2,054 megawatts in 1975 to 2,752 megawatts in 1980 for an average compound growth rate of 6.0%. Public Service has calculated its required installed reserve margin, to provide extra capacity for normal maintenance as well as unexpected failures of forced outages of its generation and transmission facilities, based on the loss of its largest unit plus 5% of the maximum load. Since Public Service must be prepared to serve its maximum or peak load even with unexpected plant failures and normal maintenance and because of uncertainty involved in purchasing power elsewhere during peak periods, such reserves are necessary and Public Service's method of calculation is reasonable. It should be noted in this regard that Public Service's Comanche I Unit (350 megawatts and its largest plant capacity in 1975) was out-of-service for about six weeks due to a transformer failure in February 1975, which fortunately was during an off-peak period. By 1979, Public Service's projected required capacity, maximum net firm demand plus reserve requirement will be 3,244 megawatts during the summer of 1979. With the Pawnee Station, Public Service will have a net effective capability at the time of system peak to meet that demand of 3,250 megawatts. Without the addition of the Pawnee Station, Public Service would only have a net effective capability of 2,750 megawatts with which to meet the projected maximum net firm demand of 2,613 megawatts in 1979, leaving an inadequate reserve margin to cover normal maintenance and unexpected plant failure conditions. By 1980, that capability would fall short of even meeting the projected maximum firm demand of 2,752 megawatts.

CONCLUSIONS ON FINDINGS OF FACT

From the standpoint of utility-related factors as set forth in our Discussion and Findings of Fact, the present and future public convenience and necessity requires and will require the construction, operation and maintenance by Public Service Company of an additional plant of 500 megawatt capacity in order for it to meet its projected system maximum net firm demand and also provide an adequate margin of reserve.

O R D E R

THE COMMISSION ORDERS THAT:

1. Public Service Company of Colorado shall file with the Commission evidence of all consents, permits or other authorities from local, state or federal authorities which are required before construction of its proposed power plant ("Pawnee Station") may begin, including but not limited to evidence of the following:

- a. Rezoning authority from Morgan County Commissioners;
- b. Building permits from applicable authorities;
- c. Air pollution permit from the Air Pollution Control Commission or Division of the Colorado Department of Health;
- d. If applicable, a discharge permit from the Water Quality Control Division of the Colorado Department of Health, or compliance with pertinent water quality laws.

2. Simultaneously with the filing of said evidence, Public Service Company of Colorado shall file an affidavit with the Commission that the evidence as set forth in paragraph 1 of this Order, comprises all consents, permits or other authorities required by any local, state or federal authority to begin construction of the Pawnee Station and shall serve copies of said affidavit and said evidence upon all parties to this proceeding.

3. Within twenty (20) days of the filing of the affidavit and evidence, and service thereof -- required by paragraphs 1 and 2 of this Order -- any party may, if it so desires, file with the Commission comments or objections with respect to the evidence filed by Public Service Company of Colorado or make appropriate motions with respect thereto.

4. This decision is interim in nature.

5. Any motions presently pending and not disposed of otherwise, be, and hereby are, denied.

6. The Commission shall retain jurisdiction of this proceeding to the end that it may take such further order or orders in the premises as to it may seem proper or desirable.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 30th day of April, 1976.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

EDWIN R. LUNDBORG

EDYTHE S. MILLER

Commissioners

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COMMISSIONER HENRY E. ZARLENGO
CONCURRING IN PART AND DISSENTING
IN PART.

CONCURRENCE AND DISSENT OF COMMISSIONER ZARLENGO:

I concur that there will be a need for the additional electric energy to be supplied by the proposed plant. The evidence in the record could be more complete but, nevertheless, is sufficient to support a finding that there is such need. The record discloses no serious challenge to such finding.

The granting of the certificate of public convenience and necessity under the circumstances, and as granted, is premature and contrary to the law. The law provides:

"(2) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall in all respects be adequate, efficient, just and reasonable." Section 40-3-101(2), CRS 1973.

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the . . . practices, equipment, facilities, or service of any public utility, or the methods of manufacture . . . employed by it, are . . . unsafe, improper, inadequate or insufficient, the commission shall determine the . . . reasonable, safe, proper, adequate . . . or methods to be observed, furnished, constructed, enforced, or employed and shall fix the same by its order, . . ." Section 40-4-101. (Emphasis supplied.)

"The commission shall have power, after hearing had on its own motion or upon complaint, to make general or special orders . . . to require each public utility to maintain and operate its . . . plant, system, equipment . . . in such manner as to promote and safeguard the health and safety of . . . the public, and to require the performance of any other act which the health or safety of . . . the public may demand." Section 40-4-106.

The law also provides that the power and authority is vested in the Public Utilities Commission, and it is made its duty to generally supervise and regulate every public utility in Colorado and to do all things in addition thereto which are necessary and convenient in the exercise of such power. (Section 40-3-102)

Under the Constitution all power to regulate the facilities and service of every public utility is vested in the Public Utilities Commission until such time as the General Assembly may otherwise designate. The General Assembly has not otherwise designated. (Article XXV)

The Commission, thus, clearly has been vested with all necessary power, and is charged with the duty, to consider, make determinations, and enter orders specifically concerning the construction and operation of electric generating plants by public utilities and the impact thereof on the health and safety of the public. If it appears other governmental agencies may have been given overlapping power and duties in whole, or in part, or power and duties inconsistent with those of the Public Utilities Commission, unless it is clear that the Public Utilities Commission has been divested of such power and relieved of such duties, which is not the case here, the Commission cannot legally refrain from the exercise and performance thereof. It must be borne in mind that the Commission's powers and duties concerning the impact of operations of public utilities on the health and safety of the public granted by the Colorado Constitution and the statutes have not been expressly revoked, and are specific and not abrogated by implication by any general powers which may be conferred to others.

The Public Utilities Law, 40-5-103(1), CRS 1973, does provide that an applicant shall file with the Commission evidence that it has received "the required consent, franchise, permit, . . . or other authority" from other governmental agencies. This additional responsibility imposed by law upon the applicant does not, of course, revoke the Commission's own duty to hear and make findings of its own.

The Majority states:

"When Public Service files with this Commission evidence that it has received the required permits and consents, we will be assisted in making our ultimate determination as to whether or not the proposed plant, at our proposed site, will be in the public interest from the standpoint of environmental and land use factors."* (Emphasis supplied.)

Is the Commission after receiving this "assistance" to hold a hearing of its own? or will it accept the findings and conclusions of some other governmental agency without it itself holding a hearing and making its own findings of fact and conclusions?

It also states:

"Within twenty days after the filing by Public Service of the above required evidence (evidence of the required consents and permits from other public authorities), any party . . . may file comments and objections with respect thereto . . . Depending upon what further proceedings may be required, if any, the Commission will issue its final order. . ."** (Emphasis supplied.)

The filing of the "required evidence" that the Applicant has received such authorities is not the equivalent of a "finding on evidence after hearing required to be made by the Commission itself"; nor, is the right given to a party to "file comments or objections with respect thereto" an adequate substitute for the Commission's own action.

The Majority itself recognizes this responsibility stating:

"Although we are mindful of our responsibility to consider all relevant factors, including environmental factors, . . . we recognize that there are other governmental

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agencies at the local, state and federal levels, that are also empowered to evaluate particular environmental factors relating to the construction and operation of power plants."*

and

"While recognizing our own particular responsibility to consider the public interest in all of its aspects, the appropriate and efficient procedure to accomplish this does not require at this time duplicate hearings before this Commission and the above referenced governmental agencies with respect to environmental factors. These other governmental agencies, with their particular expertise, will be giving full consideration and study to the plant's impact upon the environment. The Commission, of course, will be fully cognizant of the course of proceedings before these agencies."*

Again, this is no legal substitute for performance of its duty by the Commission itself. That there may be ". . . duplicate hearings before this Commission and the above referenced governmental agencies with respect to environmental factors", or that duplicating hearings may be avoided by accepting the findings and conclusions of some other legal body, cannot excuse the Commission from the performance of a specific duty. The fault, if it be a fault, lies with the Legislature.

It will not suffice for the Commission to take the position and assume that some other agency can, and will, substitute for it in discharging its duties. It cannot abdicate; it cannot "pass the buck".

The Commission is fully aware that a coal-fueled electric generating facility which will use an estimated 2 million tons of coal annually (Transcript page 59) at the location proposed may have so severe a detrimental impact upon the health and safety of the public as to be intolerable unless proper safeguards are maintained. The evidence in the record bearing upon these issues is wholly insufficient, and inadequate, and the Commission cannot make a reasonable determination and enter proper orders.

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Under the circumstances the Commission must, to discharge its duty under the law, reopen the case for further hearing to elicit evidence to determine what safeguards may be necessary in operating the proposed plant to protect the health and safety of the public and to avoid what may be intolerable pollution and contamination of air, land and water and to avoid unreasonable danger to crops, vegetation and wildlife. The dangers alluded to may not be fully measurable, or the necessary safeguards be definitely determined; however, the Commission after further hearing could require some method found to be reasonable for monitoring and periodically reporting to the Commission on an ongoing basis the safety of the plant's operation. An effort to prevent danger is more in the public interest than is a later effort to remedy.

Any necessary delay will be far offset by the benefit to be derived by the public and even by the Company.

The Applicant has elected to construct this plant at the proposed site. There is no clear preponderance of the evidence that under economic conditions presently prevailing it is the best site from the point of view of efficient operation. Authority to construct this generating plant at the proposed site should be ordered subject to the condition that the Commission will, if there has been under present conditions any abuse of managerial discretion, in the future when rates or valuations are at issue disallow proportions of investment and/or operating expenses which are due to the fact that the plant is located at the proposed site, if the allowance of such portions of investment and/or operating expenses would disadvantageously affect the ratepayer. As the decision to construct such plant at the proposed site is a decision being made by management of the Applicant and is not presently supported by clear and substantial economic advantages any risks should be borne by the Applicant if such decision of management should in the future prove to be an abuse of discretion adversely affecting the customers.

The thrust of this dissent is that it is the unavoidable duty of the Commission to hold its own hearings and make its own findings of fact and conclusions on the issues referred to; that it must reopen the case to hold a hearing to do so; that it cannot accept the findings and conclusions of others as a substitute for its own; and, that such hearing should be held at the most opportune time for all concerned, including the Commission.

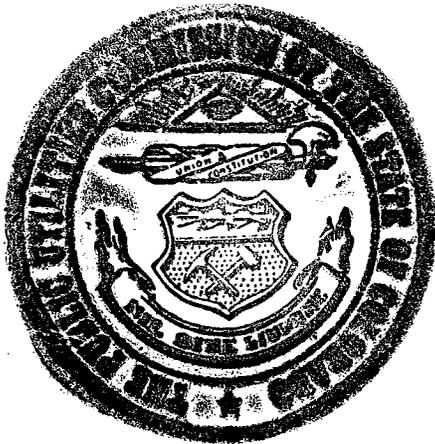
(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

HENRY E. ZARLENGO

Commissioner

hbp



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Harry A. Galligan, Jr." The signature is written in dark ink and is somewhat stylized.

Harry A. Galligan, Jr.,
Executive Secretary