

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION	)	
OF UNION RURAL ELECTRIC ASSOCI-	)	
ATION, INC., TO REOPEN THE PRO-	)	
CEEDINGS RESULTING IN DECISION	)	
NO. 63322 AND FOR AN ORDER	)	APPLICATION NO. 37131
MODIFYING THAT DECISION SO THAT	)	
UNION IS ISSUED A CERTIFICATE	)	COMMISSION DECISION
OF PUBLIC CONVENIENCE AND	)	
NECESSITY TO EXCLUSIVELY SERVE	)	
ALL CUSTOMERS WITHIN ITS EXCLU-	)	
SIVE TERRITORIES REGARDLESS OF	)	
ANNEXATION OF ANY PART OF THOSE	)	
TERRITORIES TO A MUNICIPALITY	)	
SERVED BY PUBLIC SERVICE COMPANY	)	
OF COLORADO UNDER A FRANCHISE.	)	

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August 19, 1987  
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STATEMENT

BY THE COMMISSION:

On July 8, 1987, the Commission entered Decision No. C87-950 which was a Commission initial order granting a joint motion for order amending prior Decision No. 63322 and dismissing Application No. 37131 with prejudice.

On July 28, 1987, Public Service Company of Colorado (Public Service) filed an application for rehearing, reargument, or reconsideration of Decision No. C87-950 and also filed a motion for a stay of that decision pending a decision upon its application for rehearing, reargument, or reconsideration. On August 5, 1987, by Commission Decision No. C87-1090, the Commission granted Public Service's motion for a stay of Decision No. C87-950 pending our determination of its application for rehearing, reargument, or reconsideration. By the same decision, the Commission authorized Union Rural Electric Association, Inc. (Union), at its option, to file a response to Public Service's application for rehearing, reargument, or reconsideration on or before August 11, 1987.

On August 12, 1987, Union filed a motion to accept its response to Public Service's application for rehearing, reargument or reconsideration which was also filed on August 12, 1987. Union stated that it did not receive the Commission's decision authorizing it to file

a response until August 11, 1987, which did not afford it sufficient time to file a response on the same day. We shall grant Union's motion to accept its response to Public Service's application for rehearing, reargument, or reconsideration.

Public Service basically contends that Commission Decision No. C87-950, which was issued prior to the submission of a draft order, goes far beyond what is necessary to resolve matters in this application; sets forth purported statements of fact which are not agreed to and which are unacceptable to Public Service if the matter is to be resolved in accordance with the joint motion of Public Service and Union; and sets forth unnecessary findings which may have ramifications beyond the instant proceeding. Public Service also states that the settlement process, which is in the public interest, will be seriously eroded if the Commission makes findings on hotly contested factual and other issues when such findings are not necessary to a determination that the settlement agreed upon by the parties is in the public interest.

Union, in its response, states that certain of the findings that are set forth in Decision No. C87-950 are factually correct and that it is hard for Union to foresee how Decision No. C87-950 would impact upon other issues that might arise between fixed utilities. Nevertheless, Union does state that it believes the language requested to be deleted is, in fact, accurate and appropriate as explanatory of the decision in this unique case but also acknowledges that the finding would still be adequate and effective if the language were deleted in accordance with Public Service's request.

It appears that Public Service has strong objections to certain findings in a decision which effects a settlement between it and Union. Union does not appear to object to the language, but acknowledges that the findings still would be adequate and effective if the language were deleted. Generally, we agree that if a settlement has been effected, it is not necessary for the Commission to set forth findings which have no effect upon the settlement itself. Accordingly, we shall grant Public Service's application for rehearing, reargument, or reconsideration in accordance with the order below.

THEREFORE THE COMMISSION ORDERS THAT:

1. Paragraphs 10, 11, and 23 under the section entitled Findings of Fact and Conclusions Thereon of Decision No. C87-950, dated July 8, 1987, are deleted. In lieu of those paragraphs, Paragraph 10 under the Findings of Fact and Conclusions of Decision No. C87-950 is revised to read as follows:

10. Union began this action to reopen the proceedings which resulted in Commission Decision No. 63322, requesting that Decision No. 63322 be modified or amended so that Union continues to be the sole electric supplier in its exclusively certificated areas (Areas A, B and C) regardless of annexation of any part of those areas to municipalities served by PSCo under franchise. In support thereof, Union has

argued that the modification is required because of the vastly different circumstances of today as compared to 1964; that the rapid urbanization of the Denver-Metropolitan area has resulted in expansive and far-reaching municipal annexations which could not have been foreseen by Union, PSCo or this Commission at the time of the 1964 Decision; and that such unstable and uncertain boundaries between utilities requiring Union to turn over its customers and exclusive service territories upon the whim of annexation of large portions of its service areas is contrary to public interest.

2. Paragraph 11 under the Findings of Fact and Conclusions of Decision No. C87-950 is revised to read as follows:

11. On February 2, 1987, Hearings Examiner Robert E. Temmer issued Recommended Decision No. R87-149 (R87-149) finding that paragraphs 5 and 6 of Article 1 contained in the agreement of April 20, 1964, between Public Service and Union should be eliminated so that the service area of Union would remain fixed instead of being subject to change. It was also found in R87-149 that the annexation provision in the April 20, 1964, agreement acts contrary to the doctrine of regulated monopoly and creates unnecessary duplication to the detriment of the public interest. Accordingly, R87-149 recommended that Decision No. 63322 issued on July 20, 1964, in Application No. 20427 and Application No. 20428 be amended to disapprove paragraphs 5 and 6 of Article 1 of the agreement of April 20, 1964.

3. Paragraph 14 of the Findings of Fact and Conclusions of Decision No. C87-950 is renumbered as Paragraph 13 and is modified to read as follows:

13. The joint motion requests that the Commission amend Decision No. 63322 by deleting Paragraphs 5 and 6 of Article 1 of the April 20, 1964 agreement, and upon entry of this order, that this proceeding (Application No. 37131) be terminated. The Commission finds that the relief requested in the joint motion will resolve the territorial conflict between Union and Public Service appropriately. The joint motion is consistent with the public interest and public convenience and necessity require that it be approved and that Decision No. 63322 should be modified accordingly.

4. Paragraph 14 in the Findings of Fact and Conclusions of Decision No. C87-950 is revised to read as follows:

14. Deletion of the annexation paragraphs is in the public interest because it resolves differences between the utilities by agreement rather than by expensive and time-consuming litigation, with all its attendant uncertainties, and because it provides for firm territorial boundaries for the exclusive service areas of both Union and Public Service, thereby addressing duplication, intermingling, and potential confusion in the minds of the consuming public, as well as efficient public utility service or, alternatively, it sets forth a mechanism for the sale of Union's assets to Public Service. Public convenience and necessity require that the annexation paragraphs be deleted from the approved agreement of the parties.

5. Except as modified by this Decision and Order, Decision No. C87-950, dated July 8, 1987, shall remain as set forth in that Decision.

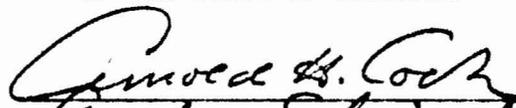
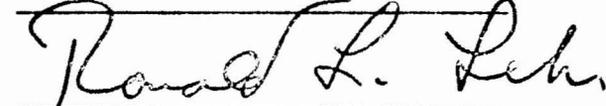
6. The "Motion For Extension of Time Within Which to File a Response" filed by Union Rural Electric Association, Inc., on August 12, 1987, and directed to the application for rehearing, reargument, or reconsideration filed by Public Service Company of Colorado on July 28, 1987, is granted.

7. The 20-day time period provided 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.

This Decision and order shall be effective 30 days from this date.

DONE IN OPEN MEETING the 19th day of August 1987.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

  
  
  
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION )  
OF UNION RURAL ELECTRIC )  
ASSOCIATION, INC., TO REOPEN THE )  
PROCEEDINGS RESULTING IN DECISION )  
NO.63322 AND FOR AN ORDER MODIFYING )  
THAT DECISION SO THAT UNION IS )  
ISSUED A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO )  
EXCLUSIVELY SERVE ALL CUSTOMERS )  
WITHIN ITS EXCLUSIVE TERRITORIES )  
REGARDLESS OF ANNEXATION OF ANY )  
PART OF THOSE TERRITORIES TO A )  
MUNICIPALITY SERVED BY PUBLIC )  
SERVICE COMPANY OF COLORADO UNDER )  
A FRANCHISE. )

APPLICATION NO. 37131

ERRATA NOTICE

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September 18, 1987  
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Decision No. C87-1159  
(Issued August 19, 1987)

1. Change the introductory words in Ordering Paragraph 1 of Decision No. C87-1159 from: "Paragraphs 10, 11, and 23. . . ." to read: Paragraphs 10, 11, and 12. . . ."

2. Add the following sentence to the beginning of Ordering Paragraph 3 of Decision No. C87-1159: "Paragraph 13 of the Findings of Fact and Conclusions of Decision No. C87-950 is renumbered as Paragraph 12."

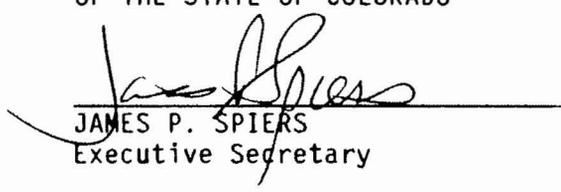
3. Strike the first two lines in Ordering Paragraph 4 of Decision No. C87-1159 and substitute the following: "A new Paragraph 14 in the Findings of Fact and Conclusions of Decision No. C87-950 is added as follows:"

4. Strike Ordering Paragraph 5 of Decision No. C87-1159 and replace with:

5. Except as modified by this Decision and Order, Decision No. C87-950 dated July 8, 1987, and

Decision No. C87-1035 dated July 24, 1987, shall remain as set forth in those Decisions.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

  
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JAMES P. SPIERS  
Executive Secretary

Dated at Denver, Colorado this 18th  
day of September 1987.

MRH:nrg:1524G