

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 02S-516W

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RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY  
CASCADE PUBLIC SERVICE COMPANY, WITH ADVICE LETTER NUMBER 34-WATER.

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**RULING ON EXCEPTIONS**

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Mailed Date: February 14, 2003  
Adopted Date: February 5, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. On January 16, 2003, Cascade Public Service Company (Cascade or Company) filed a Motion to Reschedule Rate Case Based on Commission Approval of Exceptions to Decision R03-0017. Because the motion requests a change to Recommended Decision No. R03-0017, the Commission will construe the motion as a filing of exceptions to the decision.<sup>1</sup> Within its exceptions, Cascade seeks to reopen and reset its rate case hearing, which was set for January 17, 2003. Cascade acknowledges in its exceptions that it did file a motion to withdraw its rate case filing, which the Administrative Law Judge (ALJ) granted in Recommended Decision No. R03-0017. In the motion to withdraw, Cascade stated that due to the estimated cost (\$4,000+) to retain legal counsel it, as a financially strapped utility, could not proceed with the case. In Cascade's opinion, the accountants could have worked out the details of the asked-for commodity increase and sufficient tap fee information had been submitted to allow the Commission to grant the increase in tap fees. Now being duly advised on this matter, the Commission will deny the request to reopen and reset Cascade's rate case.

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<sup>1</sup> Cascade's pleading was timely filed in accordance with § 40-6-114, C.R.S.

## II. DISCUSSION

2. On November 15, 2002, Cascade submitted a letter to the Director of the Commission requesting that it be allowed to represent itself at hearing without counsel. On November 22, 2002, the ALJ issued Recommended Decision No. R02-1328-I which directed Cascade to file either: (1) a pleading to comply with §131-127, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-21(b)(2) § 40-6-114, C.R.S.; or (2) a pleading which identifies counsel who will represent Cascade in this case. The ALJ set December 4, 2002 as the filing deadline. On December 10, 2002, the ALJ issued Recommended Decision No. R02-1382-I which denied the request to appear without counsel because Cascade had failed to provide the information required under §131-127, C.R.S., and 4 CCR 723-1-21(b)(2) § 40-6-114, C.R.S. The ALJ then provided Cascade another opportunity to retain counsel such that their counsel enter her/his appearance by December 13, 2002.

3. Review of the official file reveals that Cascade never filed any documentation for either self-representation or for hired-counsel representation. The Commission is sensitive to Cascade's financial condition, but no matter how deserving and cost-effective it might be not to hire counsel, the Commission cannot legally waive Colorado laws. The lack of counsel and the amount of time remaining in which to complete the case presents problems in granting Cascade's request to restart its rate case. If the rate case were to be restarted Cascade would have to: (1) either obtain outside counsel or file the necessary documentation for self-representation; (2) file written direct testimony and exhibits, in question and answer format; (3) answer any discovery or audit questions served on it by any intervener in the preparation of their answer testimony to Cascade's direct testimony; (4) file rebuttal testimony, again in question and answer format, for any issue or position which an intervener raised in their answer testimony; (5) defend

its case at hearing; (6) most likely file a post hearing Statement of Position; and (7) possibly file exceptions to the ALJ's decision.

4. Given Cascade's concerns, and ours, with incurring over \$4,000 in possible attorney fees and completing this case in the allowable timeframe, we believe a more prudent course of action would be for Cascade to consider some other options. First, the Commission has promulgated rules, which allow for a simplified regulatory treatment for small privately owned water utilities, *see* 4CCR 723-5-Part II. These rules can be found at our website at the following internet address: <http://www.dora.state.co.us/puc/rules/723-5.pdf>. Cascade should review these rules and determine whether any of the five possible regulatory options presented in these rules would meet its needs.

5. The second option, for Cascade would be to consider filing separate advice letters for each type of increase. Advice Letter No. 34 was a combined request to increase both the commodity charge and the tap fees. While it may be administratively efficient for Cascade to produce one advice letter, to the extent one aspect becomes contested, the whole advice letter has to be set for hearing and the Commission cannot legally approve the non-contested portion of the advice letter until the full legal process has occurred on the entire advice letter.

6. A final suggestion for Cascade to consider is contacting Commission Staff (Staff) before it officially files (and starts the regulatory time clock) any request to increase rates via an advice letter or an application for simplified regulatory treatment. To the extent an agreement can be reached between the Company and Staff prior to officially filing, the need to hire outside counsel could be greatly reduced. Ideally, future rate increases could be allowed to go into effect without a hearing, through operation of law, if Cascade and Staff are able to resolve their differences prior to the advice letter being filed.

**III. ORDER**

**A. The Commission Orders That:**

1. The Motion to Reschedule Rate Case Based on Commission Approval of Exceptions filed by Cascade Public Service Company is denied.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 5, 2003.**

(S E A L)



ATTEST: A TRUE COPY

*Bruce N. Smith*

**Bruce N. Smith**  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

**POLLY PAGE**

**JIM DYER**

Commissioners