Decision No. C03-1292

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01F-071G

HOME BUILDERS ASSOCIATION OF METROPOLITAN DENVER,

COMPLAINANT,

v.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

ORDER DENYING REHEARING, REARGUMENT, AND RECONSIDERATION; GRANTING CLARIFICATION; AND GRANTING WAIVER OF ADDITIONAL COPIES

Mailed Date: November 19, 2003
Adopted Date: November 12, 2003

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for Rehearing, Reargument, or Reconsideration (RRR) of Commission Decision No. C03-1093, filed on October 29, 2003 by Home Builders Association of Metropolitan Denver (HBA) and Public Service Company of Colorado (Public Service). We also consider a request for waiver of additional copies of affidavit and to allow for supplements to affidavit filed by HBA on November 7, 2003.

2. Public Service argues that we erred by finding that we have the authority to award reparations to HBA; that the filed rate doctrine does not bar reparations; that reparations are due without first providing Public Service an opportunity to test the accuracy and relevance of that evidence; that the rate order in Docket No. 96S-290G would have triggered the filing of new Construction Allowances (CAs); and that Public Service is not entitled to recover the amount of reparations awarded HBA in future electric service rates.

3. HBA seeks RRR urging the Commission to amend Order No. C03-1093 to require Public Service to pay reparations based on the test year actually used in Docket No. 96S-290G. HBA also seeks clarification that our order granting reparations to its members includes those members who received an incorrect CA related to small commercial and industrial gas extension customers, as well as residential extension customers.

4. Now, being duly advised in the matter, we deny Public Service's and HBA's applications for RRR consistent with the discussion below. We grant HBA's request for clarification that reparations shall be awarded to its members who received CAs for gas

extensions related to small commercial and industrial developments. We also grant HBA's motion for waiver of additional copies of affidavit exhibits. However, we deny HBA's motion to allow for supplements to the affidavit.

B. Threshold Legal Arguments

1. The Commission's Authority to Award Reparations in this Matter

5. Public Service argues that we erred in finding that this Commission has authority to award reparations to HBA. According to Public Service, our reading of §§ 40-6-119(1), 40-6-108(1)(d), and 40-3-102, C.R.S., to determine that HBA had standing to bring this matter, and that the Commission had jurisdiction to make an award of reparations was in error. Public Service urges that our finding was a "tortured and erroneous analysis that ignores the most basic rule of statutory construction."

6. The issue of whether HBA has standing to bring this action is separate from the issue of whether reparations is a remedy that can be awarded here, according to Public Service. Public Service again raises the argument that the language of § 40-6-119(1), C.R.S., limits our authority to award reparations "only to complainants that have been charged an excessive or discriminatory amount." Therefore, Public Service argues that although HBA may have standing to bring this action, we do not have authority to award reparations to its members affected by Public Service's failure to follow the explicit terms of its CA tariff. Public Service has raised this issue several times.

7. We are not any more persuaded by Public Service's arguments here than we were in its prior pleadings in this matter. We find the ALJ's holding that HBA not only had standing to bring this matter, but that this Commission had authority as well to grant reparations to HBA's

affected members, to be sound. Further, we do not find error in our interpretation of §§ 40-6-119(1), 40-6-108(1)(d), and 40-3-102, C.R.S. We determine that these three statutes, when read together, provide the necessary understanding of our authority here. We find support for our analysis in the courts as well.

8. The Colorado Supreme Court has been explicit that "in the absence of any clear intent to the contrary, statutes that are part of a single scheme or that deal with the same subject should be construed harmoniously to avoid absurdities." *See, People v. Luther*, 58 P.3d 1013, 1015 (Colo. 2002); *see also, Walgreen v. Charnes*, 819 P.2d 1039, 1043 (Colo. 1991) (recognizing that statutes "pertaining to the same subject matter are to be construed in *pari materia* to ascertain legislative intent and to avoid inconsistencies and absurdities.").

9. The legislature is presumed to intend that the various parts of a comprehensive scheme are consistent with and apply to each other, without having to incorporate each by express reference in the other statutory provisions. *See generally*, 2b Norman J. Singer, Sutherland Statutory Construction, § 51.02, at 188 (6th ed. 2000) ("Provisions in one act which are omitted in another on the same subject matter will be applied when the purposes of the two acts are consistent."). In *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50 (Colo. 2003), the court found that the primary responsibility in a statutory analysis that involves a number of interrelated statutory sections, is to strive to give consistent, harmonious, and sensible effect to the statutory scheme as a whole. *Citing Martin v. People*, 27 P.3d 846, 851 (Colo. 2001); *see also* B*ynum v. Kautzky*, 784 P.2d 735, 738 (Colo. 1989) ("If possible, we must try to reconcile statues governing the same subject"). The court also determined that "[I]f a statute potentially conflicts with another statute, a court must attempt to harmonize them to effectuate their purposes." *People v.*

Hamilton, 876 P.2d 1236, 1240 (Colo. 1994). "When construing two statutes respecting the same or similar subject matter, full effect must be given to both legislative provisions." *People v. Hamilton*, 666 P.2d 152, 155 (Colo. 1983) (citing *Buck v. Dist Ct.*, 199 Colo. 344, 608 P.2d 350 (1980)).

10. As such, to accept Public Service's strained arguments regarding statutory interpretation would have the absurd result of allowing an association to bring an action on behalf of its representative members, while not allowing reparations should they be found appropriate. We find our statutory interpretation to be sound and therefore decline to accept Public Service's reasoning.

11. Public Service asserts that our associational standing analysis is irrelevant and incorrect. It argues that since standing addresses the right of an entity to bring a cause of action, not to obtain a particular remedy our analysis is irrelevant. Public Service further argues that our analysis of standing is incorrect because the U.S. Supreme Court has set out three prongs to determine associational standing. Public Service asserts we intentionally failed to address the third prong of the *Hunt* test.[1] Public Service maintains that the Supreme Court did in fact find the third prong of the *Hunt* test was a judicially established prudential limitation on associational standing, as opposed to a limitation mandated by the U.S. Constitution.

[1] In *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed. 2d 383, (1977), the Court laid out a three-prong test to determine standing by a representative association. According to *Hunt*, an organization generally has standing to bring a claim on behalf of its members where: (1) its members would otherwise have standing to sue in their own right; (2) the interest the organization seeks to protect is germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

12. Regarding Public Service's claim that we intentionally ignored the third prong of the *Hunt* test we again review the Supreme Court's analysis. In *United Food and Commercial Workers Union Local 751, v. Brown Shoe Company*, 571 U.S. 544, 116 S.Ct. 1529, 134 L.3d 2d 758 (1996), the Court comprehensively addressed the issue of associational standing. According to the Court, "once an association has satisfied *Hunt's* first and second prongs assuring adversarial vigor in pursuing a claim for which member Article III standing exists, it is difficult to see a constitutional necessity for anything more." *Id* at 571 U.S. 556, 116 S.Ct. 1536 (citation omitted). The Court went on to find that although *Hunt's* third prong may rest on less than constitutional necessity, it is not robbed of its value. The Court found the value of the third prong to be as a guard against "the hazard of litigating a case to the damages stage only to find the plaintiff lacking detailed records or the evidence necessary to show harm with sufficient specificity." *Id*. The Court further held that the third prong may "hedge against any risk that the damages recovered by the association will fail to find their way into the pockets of the members on whose behalf injury is claimed." *Id*. The Court concluded that the doctrine of representational standing, of which associational standing is only one aspect,

> rests on the premise that in certain circumstances, particular relationships (recognized either by common law tradition or by statute) are sufficient to rebut the background presumption (in the statutory context, about Congress' intent) that litigants may not assert the rights of absent third parties. Hence the third prong of the associational standing test is best seen as focusing on these matters of administrative convenience and efficiency, not on elements of a case or controversy within the meaning of the Constitution.
>
> *Id* at 517 U.S 557, 116 S.Ct. 1536. (footnotes and citations omitted)

Based on the findings of the Court, we can ascertain nothing in Public Service's arguments to convince us our analysis on the associational standing issue was in error.

13. We find Public Service's argument that the associational standing issue is irrelevant without merit as well. Our (and the Administrative Law Judge's (ALJ)) analysis of this issue was addressed because of Public Service's arguments that HBA lacked standing to seek reparations under § 40-6-119(1), C.R.S. Public Service dedicates its entire exceptions to the ALJ's Recommended Decision (Decision No. R03-0519) to this sole issue of standing. To now argue that our analysis in Decision No. C03-1093 is irrelevant is disingenuous at best.

2. Filed Rate Doctrine

14. Public Service argues that we erred in finding that the filed rate doctrine does not bar reparations to HBA. Public Service maintains that because its CA tariff allows that no review of the CA may occur if Public Service shows, through a waiver request, that there has been no change in circumstances since the current CA was approved, it is well possible that the Commission could find that no change is necessary or appropriate to the current CA. Therefore, we could not conclude that Public Service violated its tariff when it was only a possibility that it would have had to update the CA. Public Service also intimates that because under § 40-3-111, C.R.S., we have the authority to investigate the ongoing validity of a previously approved rate, the onus was on the Commission, rather than Public Service to ensure it was following the provisions of its tariffs.

15. Public Service also determines that our rules do not permit us to override the statutory requirement that a rate remain in effect until changed by a valid order. Public Service cites § 40-6-112(2)(a), C.R.S., that rates found by the Commission after hearing to be just and reasonable "shall go into effect and be the established rates subject to the power of the commission, after a hearing on its own motion or upon complaint, as provided in this article, to

alter or modify the same." Public Service reasons that we can therefore only modify the existing CA by a new rate it proposes or if the existing rate no longer reflects the cost of service rendered. Further, any rate change we order could only have prospective effect. Additionally, Public Service points out that we are without jurisdiction to require the waiver/informational update procedures specified in its CA tariff. Public Service asserts that it could have refused to incorporate those provisions, leaving us with no remedy other than a review proceeding pursuant to § 40-3-111, C.R.S.

16. Public Service takes issue with our analysis regarding the availability of the filed rate doctrine and the rule against retroactive ratemaking here. Public Service finds our analysis a "blurred view of the distinction between [the Commission's] authority to entertain challenges to filed rates with [our] lack of authority to change a filed rate retroactively through the imposition of reparations.

17. We find these arguments unavailing as well. It is not necessary for us to go through our rather extensive analysis of the filed rate doctrine and the rule against retroactive ratemaking again here. Nothing Public Service presents dissuades us from finding that those two doctrines cannot be used by Public Service to duck its responsibilities for violating the explicit language of its CA tariff. It does not matter that the tariff language gave Public Service the option to revise the CA on an annual basis or seek a waiver from that calculation, what is relevant is that Public Service failed to do either since 1995. As such, this Commission was without the necessary information to determine whether in fact we would have granted a waiver to Public Service or required Public Service to recalculate its CA based on relevant changes, such as the "1997 rate case" in Docket No. 96S-290G. Nor are we persuaded by Public Service's

argument that this Commission should have been aware of its tariff violations as they occurred, thereby freeing Public Service of responsibility in this matter. Rather, we find that argument nothing more than a red herring to detract from the real issue - that Public Service violated the express terms of its CA tariff since 1995.

18. To the extent it is necessary to clarify our analysis regarding the filed rate doctrine and the rule against retroactive ratemaking, we will provide a brief analysis. The filed rate doctrine has its genesis in *Keogh v. Chicago & Northwestern Railway*, 260 U.S. 156, 43 S.Ct. 47, 67 L.Ed. 183 (1922), where the Supreme Court first held that once a carrier's rate had been submitted to and approved by the responsible regulatory agency (there the Interstate Commerce Commission (ICC)), a private shipper could not successfully recover antitrust damages on a claim that the rate was the product of an antitrust violation. The Court reasoned that the ICC's approval had, in effect, established the lawfulness of the shipper's rates. *Id*. at 260 U.S. 162-63, 43 S.Ct. at 49.

19. The Court reaffirmed the *Keogh* holding in later cases applying the filed rate doctrine to rates filed with the Federal Power Commission (FPC) and its successor, Federal Energy Regulatory Commission. *See generally, Square D. Co. v. Niagra Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 106 S.Ct. 1922, 90 L.Ed.2d 413 (1986) (antitrust damage claim barred rates filed with ICC); *Arkansas Louisiana Electric Co. v. Hall*, 453 U.S. 571, 101 S.Ct. 2925, 69 L.Ed.2d 856 (1981) (breach of contract damage claim barred rates filed with FPC); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, 95 L.Ed. 912 (1951) (fraud damage claim barred rates files with the FPC).

20. In decisions subsequent to *Keogh* and its progeny, however, the Court has emphasized the limited scope of the filed rate doctrine to preclude damage claims only where there are validly filed rates. For example, in *Carnation Co. v. Pacific Westbound Conference*, 383 U.S. 213, 216, 86 S.Ct. 781, 783, 15 L.Ed.2d 709 (1966), the Court found that a carrier's implementation of rate-making agreements which were not approved by the Federal Maritime Commission was therefore subject to the antitrust laws. The Court discussed the *Carnation* case further in *Square D* , *supra* and noted: "The specific *Keogh* holding … was not even implicated in *Carnation* …, because the ratemaking agreements challenged in that case had not been approved by, or filed with the [Federal Maritime Commission]." *Square D*, 476 U.S. at 422 n. 29, 106 S.Ct. at 1930 n. 29. In a later decision, the Court held that a carrier could not rely on the filed rate doctrine when, having filed a tariff lacking an essential element, "in effect it had no rates on file …" *Security Services v. K Mart Corp.*, 511 U.S. 431, 114 S.Ct. 1702, 1708, 128 L.Ed.2d 433 (1994).

21. To find that we do not have the power to order reparations because Public Service failed to follow the plain language of its CA tariff would be inconsistent with our regulatory role and statutory duties. Such a finding would deprive this Commission of much of its power to protect customers from unfair rates. It is our legislative and constitutional charge to set rates which protect both: (1) the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity; and (2) the right of consumers to pay a rate which accurately reflects the cost of service rendered. *Public Service Co. v. Public Util. Comm'n*, 644 P.2d 933 (Colo. 1982). The judgment or discretion on the part of the Commission in determining what is a fair, just, and reasonable rate must be based upon

evidentiary facts, calculations, known factors, relationship between known factors, and adjustments which may affect the relationship between known factors. *Mountain States Tel. & Tel. Co. v. Public Util. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973). In the area of utility regulation, the Commission has broadly based authority to do whatever it deems necessary or convenient to accomplish the legislative functions delegated to it. *City of Montrose v. Public Util. Comm'n*, 629 P.2d 619 (Colo. 1981).

22. Based upon the findings of the U.S. Supreme Court and our own supreme court regarding this matter, we find that if a utility misleads us or fails to follow the explicit standards of its own tariff, the rule against retroactive ratemaking and the filed rate doctrine are not available as a defense to an order of reparations. These two doctrines were not intended to permit a utility to subvert the integrity of our ratemaking authority or even the utility's own tariff. To give credence to Public Service's reasoning would surely undercut this Commission's authority and allow a utility to charge any sort of rate despite the requirements of its own tariff, and refund nothing if caught. No incentive would exist for a utility to comply with its own tariff.

C. Public Service's Request for Further Hearings

23. Public Service argues that our decision to use the 1997 rate case, filed under Docket No. 96S-290G, (97 rate case) as the basis for a determination that reparations are warranted raises a new issue that it did not have opportunity to address in previous hearings. However, we disagree with Public Service's assertion that §§ 24-4-105(8), 40-6-109(2), and 40-6-113(6), C.R.S., require further hearing on this issue. Section 24-4-105(8), C.R.S., requires only that when an agency takes administrative notice of a fact, the fact noticed must be specified

in the record or brought to the attention of the parties before a final decision, to allow every party an opportunity to controvert the fact noticed.

24. We took administrative notice of the narrow fact that a rate case occurred in 1997 in Docket No. 96S-290G. Notice to the parties of this administrative notice was set forth in our Decision on Exceptions (Decision No. C03-1093) issued September 25, 2003. This was not a final decision of this Commission. The parties certainly have the opportunity in their applications for RRR to rebut the occurrence of the 1997 rate case. Should Public Service wish to controvert any portion of that fact, it may certainly do so in another RRR filing. However, we do not find it necessary to remand the case back for further hearing on that narrow issue. We further disagree with Public Service that due process requires us to provide Public Service an opportunity to comment on all evidence supporting our Decision on Exceptions. Section 40-6-109(2), C.R.S., provides that we may:

> adopt, reject, or modify the findings of fact and conclusions of such individual commissioner or administrative law judge or, after examination of the record of any such proceeding, enter its decision and order therein without regard to the findings of fact and conclusions of any individual commissioner or administrative law judge.

Since Public Service may still contest our administrative notice of the occurrence of the 1997 rate case in further pleadings in this matter, we deny Public Service's request for rehearing based upon §§ 24-4-105(8), 40-6-109(2), and 40-6-113(6), C.R.S. Therefore, we look to Public Service's discussion of the issue to determine whether rehearing would be relevant.

25. Public Service's argument centers on the notion that the CA can only be changed after a rate case in which: 1) the amount of increase is determined in a Phase I proceeding; and 2) the increased level of plant used in Phase I is allocated to customer classes in a Phase II

proceeding. The 1997 rate case did not include a Phase II, and accordingly, Public Service argues that a revision of the CA is not proper.

26. Public Service first argues that a new cost allocation study is required to calculate the CA, and that the Commission must "adopt" the 1994 cost allocation to apply the 1997 gas rate case. We find this argument unpersuasive. We did not use the rate base amounts from the 1997 rate case to determine reparations. Instead, we looked to HBA witness Binz on the record calculations to determine the level of reparations. Binz used rate base amounts separate from the 1997 rate case test year, based on the cost allocations used in the 1994 rate case. We found Binz's calculations to be a conservative representation of the level of plant used in the 1997 rate case.[2] We took administrative notice of the 1997 rate case only to demonstrate that a rate increase occurred at that time.[3] Public Service had ample opportunity to address Mr. Binz's testimony in hearings.

27. Next, Public Service raises examples of language from previous Commission orders, and presents discussion, relating to the issue that the CA should be revised only after both Phase I and Phase II of a rate case is completed. However, these points address how the CA

[2] In footnote 42 of it's RRR, Public Service argues that Mr. Binz's derivation of the $381 CA is improper because he applies ratios derived from the 1994 cost allocation study to allocate current book numbers, and this allocation was never considered or approved by the Commission. Public Service goes on to state that this methodology does not achieve equity between new and existing customers. We agree that, hypothetically, Commission consideration and approval of these cost allocations could result in minor changes to the resulting CA. However, since Binz's calculations are a conservative representation of the proper application of the tariff requirements, as discussed in paragraph 91 of the Decision Granting Exceptions in Part, any such minor differences are addressed by the resulting conservative reparations amount.

[3] Public Service, on page 21, takes exception to the Commission's statement "…Public Service's request to base the rates on the 1994 Phase II allocations…." The Commission's statement here summarizes the results of Public Service's request, and is not intended to be a direct quotation. In the 1997 rate case, Public Service requested that the Commission rescind its requirement for a Phase II rate case, which would leave the Phase I riders in place until changed in Public Service's next rate case. These Phase I riders were to be applied to the rates that were in place at the time, which were based on cost allocations in the 1994 Phase II rate case.

should be recalculated in a conventional rate case containing both Phase I and Phase II rate cases. The points raised by Public Service do not address the circumstances of a Phase-I-only rate case, which is the question at hand. It is undisputed that if Public Service included both phases in a rate case during the period at issue, Public Service was required, per its CA tariff, to adjust the CA after Phase II. Public Service's arguments, which it proposes to further explore in rehearing, are not relevant to the question in this docket of how to address a Phase-I-only rate case.

28. We find that the points raised by Public Service in support of rehearing are not sufficient to warrant further hearings in this docket. The following facts surrounding this issue are undisputed: (1) The 1997 rate case included a Phase I rate case only, and did not include the Phase II rate case component. (2) The 1997 rate case increased rates through a percentage rider applied uniformly to all customers. (3) The 1997 rate rider was applied to rates that were determined in the 1994 Phase II case, based on costs allocations in that case. (4) Public Service did not file either a recalculation of the CA or an annual waiver for that year, as required by its tariff. Given that these facts pertaining to the issue are not disputed, we find that further hearings are not necessary. Public Service had adequate recourse to present arguments relating to the issue in RRR.

D. Reparation Cost Recovery

29. Public Service takes exception to the Commission's holding that it may not recover amounts paid in reparations in future rates. Public Service first argues that our consideration of this matter is premature. In its RRR, Public Service states "the Company has not, at this time, proposed any ratemaking or accounting treatment for amounts that it ultimately may be required to pay HBA in this proceeding." However, Public Service raised the issue at

hearing, and we therefore find it necessary to address it in this docket. In its February 5, 2003, Statement of Position, Public Service states that it "…is essentially a neutral third party in so far as the level of the CA is concerned."[4] Though Public Service did not suggest a specific ratemaking or accounting treatment, it has raised the issue in a manner that suggests it is entitled to recovery of CA costs, including reparations. This raises serious concerns about the possibility of double recovery by Public Service.

30. Public Service implemented a rate increase without a corresponding CA increase. Therefore, Public Service received the higher revenues associated with a rate increase, without paying out the higher CA amounts that would properly match the increased rates. If we allow Public Service to recover reparations costs from ratepayers in addition to the benefits it already reaped from its failure to follow tariff requirements, an improper double recovery would result. It is therefore prudent that we not allow Public Service to pass along any reparations it pays out here, to ratepayers.

31. We further disagree with Public Service's argument that we are precluded from an adjustment of future rates to recoup prior over earnings. We do not agree that *Bd. of Pub. Util. Comm'rs v. N.Y. Tel. Co.*, 271 U.S. 23 (1926) allows a utility to keep accumulations, no matter how earned, even upon a showing that the utility violated its own tariff in accumulating excess earnings. Rather, as we stated previously, we find it prudent to prevent Public Service from passing the costs of reparations on to its ratepayers. Nor are we convinced that any preclusion of recovery of reparations violated the due process requirements of the U.S. or Colorado Constitutions. There are no takings issues associated with reparations awarded pursuant to § 40-

[4]Also see the transcript from January 10, 2003, pages 53-57.

6-119(1), C.R.S. We therefore deny RRR on this issue, as further recovery of these costs from ratepayers would amount to an improper double-recovery of costs.

E. HBA Exceptions

32. In its RRR, HBA advocates that the Commission use actual book amounts from the 1997 rate case instead of those proposed by Witness Binz. We deny this request, as HBA did not advocate the use of such numbers anywhere in the record. We granted reparations based on the fact that Binz's calculations were a conservative representation of the CA that would result from the proper application of the tariff requirements and nothing in HBA's arguments convince us otherwise. Therefore, we deny HBA's argument.

33. Next, HBA requests clarification that reparations apply to commercial and industrial customers. We clarify that reparations apply to HBA members' commercial and industrial CAs, as well as residential CAs. We further clarify that all requirements in the Commission Decision No. C03-1093, granting exceptions in part, shall apply to Commercial and Industrial CAs in the same manner as they apply to residential CAs.[5] Because we are granting clarification here, we will allow HBA to supplement its affidavit that it filed pursuant to ordering paragraph 6 of Decision No. C03-1093, granting exceptions in part. HBA may supplement its affidavit, no later than three weeks after the effective date of this decision, to include a list of its members who were effected pursuant to the complaint under the application of commercial and industrial CAs, and who were members during the period from February 24, 1999 through May 31, 2002.

[5] As noted in footnote 2 of HBA's RRR, the Commercial CA is recalculated to be $1,767, or a difference of $119.

34. HBA, in a separate pleading requested a waiver of additional copies of Affidavit Exhibits and to allow for supplements to affidavit, if necessary, and to shorten response time. HBA first requests a waiver of our requirement to file additional copies of its affidavit. HBA argues that this affidavit is voluminous and additional copies are not warranted. We agree with HBA that one copy to the Commission is adequate in this circumstance, and we grant such relief.

35. Next, HBA requests that the Commission allow for supplements to its affidavit. HBA argues that only a small number of its members have responded, and that additional time is necessary. We disagree. The Commission already extended the deadline once, in Decision No. C03-1227 issued November 3, 2003. We deny any further extension of time to supplement the affidavit, except as allowed for commercial and industrial members above. The request to shorten response time is denied as moot.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C03-1093 filed by Public Service Company of Colorado is denied consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C03-1093 filed by Home Builders Association of Metropolitan Denver is denied consistent with the above discussion.

3. Clarification of Decision No. C03-1093 filed by Home Builders Association of Metropolitan Denver allowing reparations for its members who received small commercial and industrial Construction Allowances is granted, consistent with the above discussion.

4. Home Builders Association of Metropolitan Denver's request for a waiver of additional copies of affidavit is granted.

5. Home Builders Association of Metropolitan Denver's request to allow for supplements to its affidavit is denied. However, Home Builders Association of Metropolitan Denver shall have three weeks from the effective date of this Order to provide Public Service Company of Colorado and this Commission with an affidavit including the list of affected commercial and industrial customers who were members of Home Builders Association of Metropolitan Denver during the relevant period, as discussed above. The request to shorten response time is denied as moot.

6. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING November 12, 2003.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
RECUSED HIMSELF IN THIS DECISION.

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