

original

(Decision No. 49302)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
SAN ISABEL ELECTRIC ASSOCIATION, INC.,)
FOR A CERTIFICATE OF PUBLIC CONVEN-)
IENCE AND NECESSITY TO FURNISH ELEC-)
TRIC SERVICE FOR LIGHT, HEAT, POWER)
AND OTHER PURPOSES, IN THE TERRITORY)
DESCRIBED IN THIS APPLICATION, LO-)
CATED IN PUEBLO, HUERFANO, LAS ANIMAS,)
FREMONT AND CUSTER COUNTIES, COLORADO.)
-----)

APPLICATION NO. 15758

January 13, 1958

Appearances: Preston and Altman, Esqs.,
by Leo S. Altman, Esq.,
Pueblo, Colorado, for
the Applicant;
Claude W. McAnally, Jr.,
and Vail F. Shumaker,
Trinidad, Colorado, for
the City of Trinidad;
Paul M. Brown, Denver, Colo-
rado, for the Commission.

S T A T E M E N T

By the Commission:

The San Isabel Electric Association, Inc., hereinafter referred to as "Applicant" or "San Isabel" is a rural electric cooperative association engaged in the business of purchasing, transmitting, distributing, and selling electrical energy to its member and non-member consumers in Las Animas, Huerfano, Pueblo, Fremont, and Custer Counties in Colorado.

By its present application filed September 20, 1957, applicant seeks from this Commission a certificate of public convenience and necessity to furnish electric service for light, heat, power, and other purposes in the territory applied for and sought in this application.

The matter was set for hearing November 5, 1957, and upon receipt of a petition for extension of time from the City of Trinidad, the hearing was vacated. The matter was re-set for hearing,

and was heard in the County Commissioner's Room, Pueblo County Court House, Pueblo, Colorado, on November 27, 1957, at 10:00 o'clock A. M., after due notice thereof being forwarded to all interested parties. At the conclusion thereof, the matter was taken under advisement.

No petitions of intervention were filed with the Commission prior to the hearing, and no one appeared at the hearing in opposition to the authority sought by the applicant in this matter.

San Isabel is a Colorado corporation, organized and existing under and by virtue of the laws of the State of Colorado as they pertain to cooperative corporations. A copy of its Articles of Incorporation, as amended to date, certified by the Secretary of State of the State of Colorado, has heretofore been filed with this Commission.

Counsel for applicant requested the Commission's permission to amend its application, (1) by changing the 7th line on page 4 of the application, to read:

"Northwest corner of Section 35, Township 33-S,
Range 64-W; then South";

(2) by addition to the application to exclude the areas within the corporate limits of the cities of Trinidad and Walsenburg from the area requested to be certificated in said application; and (3) to substitute, in accordance with the written description offered at the hearing, a complete new description of the area to be included within the non-exclusive certificated territory to be held jointly with Southern Colorado Power Company..

There being no objections to any of these amendments, permission was granted by the Commission.

Applicant's witness, Mr. Edward C. Gaither, introduced and identified a map of the area sought to be certified in this application, marked Exhibit A-B. Applicant already holds two certificates of public convenience and necessity in a part of the territory requested in this application. Its distribution lines within

this certificated area are shown on Exhibit A-B in red. Applicant obtained one of the above-mentioned certificates of public convenience and necessity from Frontier Power Company, and its transfer was approved by this Commission in Decision No. 44499, dated August 18, 1955. Certain areas were excepted from the overall area in the above-mentioned decision and were reserved to Southeast Colorado Power Association. Applicant testified that immediately after the acquisition by it of Frontier Power Company properties, it also acquired certain properties and territories from Southeast Colorado Power Association. This transaction was not subject to the jurisdiction of this Commission. Included in the territories so received were those excepted from the certificate of Frontier Power Company as fully described in Decision No. 44499. The second certificate was obtained from La Veta Light, Heat, and Power Company, transferred to applicant by this Commission in its Decision No. 44620, dated September 15, 1955.

The operation in the area served by the distribution lines of applicant shown in blue on Exhibit A-B has not heretofore been subject to the jurisdiction of this Commission, and such jurisdiction is now being sought. Witness further testified that in the area on the map inclosed by the solid blue line an exclusive certificate is being sought. The area is substantially all within the counties of Huerfano and Las Animas. Within the area inclosed by the blue dash and black dash lines, a non-exclusive certificate is being sought. This area is located within portions of Pueblo, Custer, and Fremont counties. Southern Colorado Power Company, an operating public utility, is now serving in all three of these counties by virtue of its "Grandfather Rights."

The approximate population of the area requested herein is 132,500 people, and the population of the area that is requested to be served by the applicant, including the non-exclusive territory, is 35,000. With the exception of the electric utility service of

Southern Colorado Power Company in the area wherein a non-exclusive certificate is being sought, no other electric utility operates. Applicant is ready and willing to continue service to all those now served and holds itself forth as being willing and able to serve all new applicants for service, including members and non-members, uniformly, whenever requested by them, in accordance with the rules and regulations and extension policies of the applicant now on file with this Commission and to be filed upon receipt of a Certificate of Public Convenience and Necessity.

Witness testified that in the area where a non-exclusive certificate is being sought, an agreement had been worked out between San Isabel and Southern Colorado Power Company (hereafter called Southern), for electric service. It contemplated the company most feasibly able to serve would provide electric service to applicants; however, each party would notify the other of such applications and if after discussions between themselves they would be unable to agree as to which company should provide the service, the facts in the matter would be referred by an application to the Public Utilities Commission of the State of Colorado for a decision as to which company should provide the service.

Cross-examination developed that no agreement between San Isabel and Southern to supply electric service in territory sought as non-exclusive by applicant had been reduced to writing. In the event of disputes between themselves as to which utility should supply service, it was witness' opinion that the Commission could proceed under its statutory powers in the determination of which utility should serve. He further testified that should an applicant request service of one utility which could more economically be supplied by the other utility, economic factors should determine which utility would serve.

Applicant presently has invested approximately \$4,800,000 in electric transmission and distribution system. Applicant is

financed by loans obtained from the Rural Electrification Administration. In support of its financial ability, Exhibit C was introduced and identified as a balance sheet of San Isabel at September 30, 1957, and Exhibit D, an operating statement showing the results of its operations for the twelve-month period ending September 30, 1957.

Cross-examination revealed that San Isabel, in addition to its original rate schedules, is operating under the rate schedules instituted by Southeast Colorado Power Association, Inc., Frontier Power Company, and La Veta Light, Heat and Power Company, and applicable in the territories acquired by San Isabel from these companies. For residence service alone throughout the territory sought San Isabel now has in effect not less than six distinctly different residential rate schedules. It was suggested that the total number of rate schedules under which San Isabel now operates could be combined and reduced in number. Witness stated there is presently under way a rate study being conducted primarily to the end that the rate schedules of San Isabel applicable throughout its entire territory will be simplified and reduced in number. San Isabel is working to the end of completing this study at an early date. In answer to an inquiry as to the magnitude of the present system demand and available capacity to supply this demand, witness advised as follows: the present system demand on a 30-minute basis is 6,000 KW, and through power purchase agreements with three different suppliers a maximum of 35,000 KW is available.

Mr. Shumaker, electric superintendent for the City of Trinidad, asked witness for applicant whether or not the City of Trinidad would be permitted, in his opinion, to continue supplying electric service to a number of customers now served by the city from its municipal system who are located outside the City of Trinidad. Witness replied that the City of Trinidad would continue the service to these customers. Mr. Shumaker, as a witness for the

City of Trinidad, testified the City of Trinidad was providing electric service to several customers beyond the city limits of Trinidad and that these customers were acquired from Frontier Power Company at the time the municipality entered into the business of generating and distributing electric energy to consumers on January 2, 1949. Mr. Shumaker identified city's Exhibit No. 1 which he indicated was an agreement between Frontier Power Company and the City of Trinidad, transferring to the City of Trinidad a number of customers located beyond the city limits along with Frontier Power Company's Certificate of Public Convenience and Necessity under which these customers were served. Witness for applicant stated it is the intention of San Isabel to honor any and all contracts and agreements entered into by and binding upon Frontier Power Company, the Company which formerly served these customers.

F I N D I N G S

THE COMMISSION FINDS:

That this Commission has jurisdiction of subject matter of the instant application, and is fully advised in the premises.

That the above Statement, by reference, should be made a part of these Findings.

That public convenience and necessity require, and will require, that San Isabel be declared to be a public utility.

That the Commission has jurisdiction over the applicant herein.

That the issuance of a certificate of public convenience and necessity is consistent with the provisions of Chapter 115, Colorado Revised Statutes, 1953.

That applicant is and will be performing the functions of a public utility in providing electric service in the area sought, and it should be granted an exclusive certificate of public convenience and necessity in a part and a non-exclusive certificate of public convenience and necessity in the remainder of the territory

sought in this application as more fully described in the Order to follow.

That San Isabel should be granted a certificate of public convenience and necessity for that part of its electric system as now constructed in the territory herein sought on a non-exclusive basis.

That Southern is an electric public utility operating among other locations, in Pueblo, Fremont and Custer Counties, subject to the jurisdiction of this Commission. It operates as an electric public utility by virtue of its "Grandfather Rights." It thus is entitled to the protection of this Commission against "invasion" of its territory by other utilities. When, hereafter, agreement between applicant and Southern cannot be reached as to which utility shall supply requested electric service to a customer in the non-exclusive territory sought herein, the Commission shall retain effective control of the orderly expansion of such electric plant and electric service. The Order to follow shall provide the means.

That San Isabel should set up and maintain its books and accounts in accordance with the Uniform System of Accounts as prescribed by this Commission.

That San Isabel should file with this Commission its rates, rules and regulations applicable in the exclusive and non-exclusive area set forth in the Order herein.

That it should maintain its operations as an electric utility in accordance with Rules Regulating the Service of Gas and Electric Utilities, as ordered by this Commission now in effect and as they may be amended.

O R D E R

THE COMMISSION ORDERS:

That public convenience and necessity require and will require San Isabel Electric Association, Inc., be declared a public utility authorized to distribute electricity non-exclusively in the territory described as follows:

"Beginning at a point in the NE corner of Section 1, Township 19-S, Range 62-W; thence South along the East boundary of Range 62-W to a point in the SE corner of Section 13, Township 22-S., Range 62-W; thence diagonally in a Southeasterly direction across Sections 19, 20, 21, 28, 27, 26, 35 and 36, Township 22-S., Range 61-W; thence continuing in a Southeasterly direction diagonally across Section 31, Township 22-S., Range 60-W, Sections 6, 5, 4, 9, 10, 11, and 13, Township 23-S, Range 60-W; thence continuing in a Southeasterly direction diagonally across Sections 18, 20 and 21 to a point in the SE corner of Section 21, Township 23-S, Range 59-W; thence bearing to the South in a Southeasterly direction and continuing diagonally across Sections 27, 34, and 35, Township 23-S., Range 59-W; thence continuing in a Southeasterly direction diagonally across Sections 2, 1 and 12 to a point in the SE corner of Section 12, Township 24-S, Range 59-W; thence continuing South along the East boundary of Range 59-W to a point in the Southeast corner of Section 36, Township 25-S, Range 59-W; thence continuing in a Southeasterly direction diagonally across Sections 6, 7, 8, 17, 16, 21, 27, 34 and 35, Township 26-S, Range 58-W; thence continuing in a Southeasterly direction diagonally across Sections 2, 1, and 12, Township 27-S, Range 58-W; thence continuing in a Southeasterly direction diagonally across Sections 18, 19, 20, 29 and 33 to the SE corner of Section 33, Township 27-S, Range 57-W; thence West along the Otero-Las Animas County Line to the Southwest corner of Otero County; thence North along the Otero-Las Animas County Line to a point common to Otero, Las Animas and Pueblo Counties; thence Northwesterly along the Pueblo-Las Animas County Line to a point common with Pueblo, Las Animas and Huerfano Counties; thence continuing Northwesterly along the Pueblo-Huerfano County Line to a point common to Pueblo, Huerfano and Custer Counties; thence continuing Northwesterly along the Custer-Huerfano County Line to the Southwest corner of Section 31, Township 24-S, Range 70-W; thence North along the West boundary of Range 70-W to the Southwest corner of Section 31, Township 22-S, Range 70-W; thence East along the South lines of Sections 31, 32 and 33 to the Southeast corner of Section 33, Township 22-S, Range 70-W; thence North along the East lines of Sections 33, 28, 21 and 16 to the Northeast corner of Section 16, Township 22-S, Range 70-W; thence East along the South lines of Sections 10, 11 and 12 to the Southeast corner of Section 12, Township 22-S, Range 70-W; thence North along the East boundary of Range 70-W to the Northwest corner of Section 6, Township 19-S, Range 69-W; thence East along the North boundary of Township 19-S to the point of intersection with the Fremont-Pueblo County Line; thence continuing East along the North boundary of Township 19-S to the Northeast corner of Section 1, Township 19-S, Range 62-W, which is the point of beginning."

That San Isabel Electric Association, Inc., is granted a certificate of public convenience and necessity for its electric

distribution system in the above non-exclusive territory as such system now exists and as it may be extended from time to time. If and in the event San Isabel and Southern fail to agree on the right to serve any customer or customers, pursuant to their agreement on service in this non-exclusive territory, then, either or both San Isabel or Southern may appeal to the Commission for a determination of said rights. San Isabel shall furnish this Commission with fully executed copies of any memoranda, agreements or other instruments intended by San Isabel and Southern to eliminate or reduce the competition between themselves relative to such extensions of service.

That public convenience and necessity require, and will require, extension, from time to time, of its lines and service within the territory described below, and this Order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor:

"Beginning at a point on the Colorado-New Mexico State boundary where the Western line of Las Animas County intersects; thence along the Las Animas-Costilla County line to a point common to Las Animas, Costilla and Huerfano Counties; thence along the Huerfano-Costilla County line to a point common to Huerfano, Costilla and Alamosa Counties; thence along the Huerfano-Alamosa County line to a point common to Huerfano, Alamosa and Saguache Counties; thence along the Huerfano-Saguache County line to a point common to Huerfano, Saguache and Custer Counties; thence along the Huerfano-Custer County line to a point common to Huerfano, Custer and Pueblo Counties; thence along the Huerfano-Pueblo County line to a point common to Huerfano, Pueblo and Las Animas Counties; thence along the Pueblo-Las Animas County line to a point common to Pueblo, Las Animas and Otero Counties; thence along the Las Animas-Otero County line to a point of intersection with the Northeast corner of Section 3, Township 28-S, Range 56-W; thence South along the East lines of Sections 3, 10, 15, 22, 27 and 34, Township 28-S, Range 56-W; thence continuing South along the East lines of Sections 3, 10, 15, 22, 27 and 34, Township 29-S, Range 56-W; thence continuing South along the East lines of Sections 3, 10, 15, 22, 27 and 34, Township 30-S, Range 56-W; thence continuing South along the East lines of Sections 3, 10, 15, 22, 27 and 34, Township 31-S, Range 56-W; thence continuing South along the East lines of Sections 3, 10 and 15 to a point in the Southeast corner of Section 15, Township 32-S, Range 56-W; thence East along the South

lines of Sections 14 and 13, Township 32-S, Range 56-W; thence continuing East along the South lines of Sections 18, 17 and 16 to a point in the Southeast corner of Section 16, Township 32-S, Range 55-W; thence South along the East lines of Sections 21, 28 and 33, Township 32-S, Range 55-W; thence continuing South along the East lines of Sections 4, 9, 16, 21, 28 and 33, Township 33-S, Range 55-W; thence continuing South along the East lines of Sections 4, 9, 16, 21, 28 and 33, Township 34-S, Range 55-W; thence South along the East lines of Sections 4 and 9, to a point in the Southeast corner of Section 9, Township 35-S, Range 55-W; which is the point of intersection with the Colorado-New Mexico border; thence West along the Colorado-New Mexico boundary to a point which would be the intersection of the East line, if extended, of Section 32, Township 34-S, Range 63-W; thence North along said line to the Northeast corner of Section 32, Township 34 S, Range 63-W; thence West along the North lines of Sections 32 and 31 to the Northwest corner of Section 31, Township 34-S, Range 63-W; which is its point of intersection with the East boundary of Range 64-W; thence North along the East boundary of Range 64-W approximately six miles to the Northeast corner of Section 36, Township 33-S, Range 64-W; thence West along the North lines of Sections 36 and 35, to a point in the Northwest corner of Section 35, Township 33-S, Range 64-W; thence South along the West line of Section 35, Township 33-S, Range 64-W; thence continuing South along the West lines of Sections 2, 11, 14, 23 and 26, Township 34-S, Range 64-W, to a point in the Southwest corner of Section 26, Township 34-S, Range 64-W; thence West along the North lines of Sections 34 and 33 to the Northwest corner of Section 33, Township 34-S, Range 64-W; thence South along the West line of said Section 33, if extended, to a point of intersection on the Colorado-New Mexico border; thence West along the Colorado-New Mexico boundary to the point of beginning at the intersection of the West line of Las Animas County with the Colorado-New Mexico boundary."

Excluding, however, from the above-described territory, all the areas lying within the corporate limits of the City of Trinidad and the City of Walsenburg, and any customers now being served by said cities through prior agreement between San Isabel and, or, its predecessors in interest and the Cities of Trinidad or Walsenburg.

That service shall be available to members and non-members alike and without discrimination.

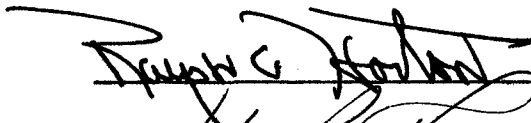
That San Isabel shall set up its books and accounts in accordance with the Uniform System of Accounts as prescribed by this Commission.


That within sixty (60) days of the effective date of this Order, San Isabel Electric Association, Inc. shall file with this Commission its PUC Tariff #6, which will include all its currently effective rates, rules and regulations applicable within the exclusive and the non-exclusive territories set forth herein.


That it shall maintain its operations as a public electric utility in accordance with the Rules Regulating the Service of Gas and Electric Utilities as ordered by this Commission now in effect and as hereafter amended.

That this Order shall become effective twenty-one (21) days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO







Commissioners.

Dated at Denver, Colorado,
this 13th day of January, 1958.

ea