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(Decision No. 72585)

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 CONVENIENCE AND NECESSITY AUTHORIZING THE PURCHASE OF THE GAS DISTRIBUTION SYSTEM AND RELATED FACILITIES OF GAS FACILITIES, INC. IN THE TOWN OF VAIL AND IN THE COMMUNITIES OF WEST VAIL AND BIG HORN, ALL IN EAGLE COUNTY, COLORADO; AUTHORIZING THE ASSIGNMENT OF THE CERTIFICATES OF CONVENIENCE AND NECESSITY OF SAID GAS FACILITIES, INC. WITH RESPECT TO SERVICE IN SAID TOWN AND COMMUNITIES, AND IN THE AREAS DELINEATED IN SAID CERTIFICATES; AND AUTHORIZING THE EXERCISE OF FRANCHISE RIGHTS FOR THE PURCHASE, STORAGE, TRANSMISSION AND DISTRIBUTION OF GASEOUS FUELS UNDER A FRANCHISE TO BE OBTAINED IN SAID TOWN OF VAIL.

APPLICATION NO. 23540

IN THE MATTER OF THE APPLICATION OF GAS FACILITIES, INC., 1130 FIRST NATIONAL BANK BUILDING, DENVER, COLORADO, TO TRANSFER ITS EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE DISTRIBUTION OF NATURAL GAS IN THE TOWN OF VAIL AND ADJACENT AREAS IN EAGLE COUNTY, COLORADO, TO PUBLIC SERVICE COMPANY OF COLORADO, 550 15TH STREET, DENVER, COLORADO.

APPLICATION NO. 23548

February 27, 1969

Appearances: Donald D. Cavelli, Esq. and E. A. Stansfield, Esq. of Lee, Bryans, Kelly & Stansfield, Denver, Colorado, for Applicant, Public Service Company of Colorado; Keith L. Brown, Esq., Arnold Raether and Harley G. Higbie, Denver, Colorado, for Applicant, Gas Facilities, Inc.; Girts Krumins, Esq., Denver, Colorado, for the Staff of the Commission.

STATEMENT OF PROCEDURE AND RECORD

BY THE COMMISSION:

On December 24, 1968 Public Service Company of Colorado (Public Service) filed with the Public Utilities Commission of the State of Colorado

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its application identified above as Application No. 23540. On January 3, 1969 Gas Facilities, Inc. (Gas Facilities) filed with the Public Utilities Commission of the State of Colorado its application identified above as Application No. 23548.

The two applications were set for hearing on January 21, 1969 at 10 o'clock a.m. in the Hearing Room of the Commission, at which time both applications were called up for hearing. Upon order of the Commission at that time entered, the hearing was consolidated on both applications on a joint record.

At the conclusion of the hearing the Commission ordered, upon motion of the Staff, that certain exhibits be late-filed, and the Commission thereafter reopened the hearing by its Decision No. 72511 for the purpose of receiving testimony with respect to such late-filed exhibits and such additional evidence as might be properly tendered. The said petition to reopen was made by the Staff and consented to by the respective applicants, and the matter was set for further hearing on February 4, 1969. At the conclusion of said hearing, the Commission took both applications under advisement.

Testifying on behalf of Public Service, J. K. Fuller showed that Public Service and Gas Facilities had, on December 19, 1968, entered into a contract for the sale by Gas Facilities to Public Service. Gas Facilities agreed to sell and Public Service agreed to buy and acquire all of the assets of Gas Facilities for a purchase price of \$595,000 and, in addition, pay to Gas Facilities the amounts of its accounts receivables with arrearages not in excess of 120 days, subject to certain adjustments set forth in said contract which was admitted into evidence as Exhibit G.

The take-over by Public Service of the assets of Gas Facilities, according to said contract, is to be February 28, 1969, subject to a favorable order by this Commission.

Gas Facilities is the natural gas distribution company in the Town of Vall and the nearby communities of Vall Village West and Big Horn,

Eagle County, Colorado. On December 15, 1968, it served 305 residential customers and 83 commercial customers. Admitted into evidence as Exhibits A, B and C were maps showing the gas distribution systems of Gas Facilities in the area in question.

The Town of Vail and the nearby areas served by Gas Facilities is a well-known ski area and, in recent years, has been developed into a year-round recreational area. In addition to a number of single family residences, the area is well developed with lodges, motels and attendant commercial establishments. The Vail area is all relatively new in development, having first commenced operations in 1962. Since that time, it has grown to be recognized as one of the major ski areas in Colorado and is well known internationally.

Since no official census has been taken in Vail, population estimates can only be made on the basis of the number of residential meters served and, even at that, they fail to adequately reflect the large influx of transient tourists and other skiers for whom housing accommodations are available.

Public Service has estimated a substantial growth in a number of customers and natural gas usage in the Vail area, and that by 1973 approximately 650 customers will be served at year-end. It was shown that there have been very large increases in the number of ski lift ticket sales reflecting wintertime activity in the area, and that the rate of growth of gas sales by Gas Facilities has been substantial. Its sales for the year ended June 1965 were 36.6% in excess of the same period ended June of 1964. The subsequent 12-month period ending in June 1966 showed 61.7% increase over the prior period, and 1967 showed a 33% increase over 1966.

Exhibit F admitted into evidence demonstrated the above described increases in ski lift ticket sales and gas usage.

The gas distribution system to be acquired by Public Service was initially constructed in 1963 as a propane system. In 1965 Western Slope Gas Company extended natural gas into the area and to Gas Facilities, in which year the West Vail system and Big Horn system were also installed.

Gas Facilities presently holds certificates of public convenience and necessity granted by this Commission authorizing the operation of its facilities in the Vail area. These certificates are contained in Decision No. 59729 dated November 30, 1962 to provide a distribution system for gas service to be initially derived from liquefied petroleum products and later to be natural gas, when available. The area to be served, as described in said decision, was all of Sections 2 through 12, Township 5 South, Range 80 West, in Eagle County, which is the area of the initial townsite of what is now the Town of Vail. The second certificate was Decision No. 65380 dated July 20, 1965, granting authority to Gas Facilities to enlarge its service area to encompass Sections 1, 11, 12, 13 and the north half of Section 14, Township 5 South, Range 81 West, and included therein was the area in the vicinity of West Vail Village.

Exhibit D admitted into evidence was a map showing the boundaries of the above described certificates held by Gas Facilities and also showed thereon the gas transmission pipeline of Western Slope Gas Company and the certificated area granted Public Service in the vicinity of the gas transmission line of Western Slope Gas Company under Decisions Nos. 65237 and 65314. The above described certificates held by Gas Facilities are those which Public Service proposes to acquire along with the assets of Gas Facilities by this application.

It was noted that although Gas Facilities does serve certain customers who are not connected to its natural gas transmission system by means of liquefied petroleum, Public Service proposes to turn such customers over to a local propane distributor unless it can economically extend natural gas service to them.

Included in the assets to be acquired from Gas Facilities by Public Service are some 11 miles of distribution main, 367 meters, 383 regulators, two pickup trucks, and certain land and land rights upon which are situated meter and regulating equipment, a liquefied petroleum peak shaving plant and a building used for storage and office space. It was

indicated in the testimony that Public Service would propose to sell or otherwise dispose of the peak shaving plant.

Exhibit H admitted into evidence was a balance sheet of Gas Facilities prepared by its officers to reflect the financial condition of the company as of December 31, 1968. It was shown that a review of the books and records of Gas Facilities by personnel of Public Service revealed that such books and records had been very well kept, in accordance with the Uniform System of Accounts as prescribed by this Commission.

Although Gas Facilities is presently operating in the Town of Vail without a franchise, Public Service has made application to the Town for the grant of a franchise to it to be effective upon its acquisition of the assets of Gas Facilities. Exhibit E admitted into evidence was a certified copy of the franchise which has been obtained from the Town of Vail by Public Service. The franchise is for a term of 25 years authorizing Public Service to operate and maintain a natural gas system within and through the Town of Vail, and provides for a franchise tax of 2% of the gross sales of natural gas within the Town, excluding all revenues in excess of \$2500 sold to any one customer at any one location.

It was shown that Public Service proposes to make available in the area of service being acquired by it from Gas Facilities the same rates presently available to Public Service's customers in the adjoining towns of Minturn and Red Cliff and the city of Leadville. These rates presently on file with this Commission for natural gas service are Colorado PUC-4 residential service schedule RG-8 which is Fifth Revised Sheet No. 33 and First Revised Sheet No. 33A. For commercial service the rate schedule is CG-8 which is Fifth Revised Sheet No. 61 and Third Revised Sheet No. 61A. If there is a need for Interruptible Industrial service, the service will be provided under Schedule E-6, which is Sixth Revised Sheet No. 87, Second Revised 87A, Third Revised 87B, and First Revised 87C. The above described tariff sheets will be refiled by Public Service to make the rates provided therein available to the service area to be acquired from Gas Facilities.

It was shown that these rates are approximately 20% to 22% less than the rates presently charged by Gas Facilities to its customers. In addition to reduction in rates proposed by Public Service, it was also shown that an increased level of service to the customers in Vail will be provided, i.e., service and adjustment to appliances, turning pilot lights on or off, and similar matters.

Public Service will continue to purchase natural gas from Western Slope Gas Company for the Vail area. Exhibit I admitted into evidence was a letter from Western Slope Gas Company agreeing that Public Service could combine its contract demand for natural gas to supply the Vail area with the demand requirements of the remainder of its Mountain Division.

The proposed acquisition will be financed by Public Service from internally generated funds. The balance sheet and income statement of Public Service as of September 30, 1968 was admitted into evidence as Exhibit J.

At the reopened hearing, Public Service introduced Exhibit K -- a feasibility study of the acquisition and Exhibit L -- a comparison of actual 1968 revenues and expenses of Gas Facilities to estimated 1969 revenues and expenses by Public Service with respect to the properties to be acquired. The latter exhibit indicates a reduction in costs as follows:

Operating and maintenance expenses (exclusive of cost of gas)	\$54,053
Depreciation expense	6,477
Taxes--other than income	(4,365)
Income taxes - federal	(3,473)
Income taxes - state	246
Investment tax credit - net	<u>(750)</u>
Total reduction in expenses	\$52,135

() denotes increase in expenses

In comparison, the amortization of the acquisition adjustment as proposed results in increased expense of \$9,160 annually.

Both Exhibits K and L were admitted into evidence. Also admitted were Exhibits M -- Calculation of Income Taxes and Exhibit N -- Comparison of old and new rates.

Gas Facilities offered into evidence its Exhibit No. 1 -- copies of balance sheet and operating statement for 1968 and Exhibit No. 2 -- statement regarding sales price, both of which were admitted.

Staff Exhibit No. 1 illustrating the tax effects of an acquisition adjustment was also admitted into evidence.

F I N D I N G S

From the record herein the Commission finds as fact that:

1. Applicant Public Service Company of Colorado is a Colorado corporation and is a public utility subject to the jurisdiction of this Commission, engaged, inter alia, in the business of purchase, distribution and sale of natural gas in various areas in the state of Colorado.

2. Applicant Gas Facilities, Inc., a Colorado corporation, is a public utility subject to the jurisdiction of this Commission engaged in the business of purchase, distribution and sale of natural gas in the town of Vail and the areas adjacent thereto, all in Eagle County, state of Colorado.

3. The Commission has jurisdiction over the subject matter of these proceedings.

4. Applicant Gas Facilities, Inc., now holds from this Commission certificates of public convenience and necessity granted by Decision No. 59729 in Application No. 19384 and by Decision No. 65300 in Application No. 21141.

5. The transfer of the above mentioned certificates of public convenience and necessity by Gas Facilities, Inc., to Public Service Company of Colorado and the acquisition of the properties and other assets of Gas Facilities by Public Service are in the public interest and should be authorized.

6. The acquisition and operation of the public utility properties of Gas Facilities, Inc., by Public Service Company of Colorado will result in lower operating costs and, consequently, in cost benefits to the ratepaying public.

7. The above mentioned acquisition will result in an acquisition adjustment in the amount of approximately \$310,000, the amortization of which, as an operating expense over a period of thirty-five years by Public Service Company of Colorado, will result in a cost burden upon the ratepaying public, which burden, however, is more than exceeded by the cost benefits mentioned in Finding No. 6 above.

8. The above described acquisition as proposed, including the amortization of the acquisition adjustment as an operating expense, will create sufficient net benefits to the ratepaying public and is therefore in the public interest and should be authorized.

9. Applicant Public Service Company of Colorado has acquired franchise rights for the purchase, storage, transmission and distribution of gaseous fuels in the Town of Vail from said Town, and public convenience and necessity requires, and will require, the exercise of such franchise rights by said Applicant.

10. The amount to be invested by Applicant Public Service Company of Colorado within the Town of Vail during the term of the franchise is at least \$375,000.

D I S C U S S I O N

Applicants Gas Facilities, Inc., and Public Service Company of Colorado by their respective applications seek the Commission's approval of the sale and purchase of Gas Facilities' assets and transfer of certificates of public convenience and necessity in accordance with Agreement, Exhibit G in this proceeding.

The Agreement provides that the base purchase price is \$595,000 with adjustments up or down for other assets acquired such as for accounts receivable. Testimony revealed that the plant acquisition adjustment would

be approximately \$310,000 to be amortized over 35 years. Applicant forcefully urged that it be granted permission to amortize this amount as a deduction from revenue, Account No. 406, Amortization of Utility Plant Acquisition Adjustments, whereby it would theoretically recover such costs from the ratepayers.

Plant acquisition adjustment, the amount paid over or under net book plant, becomes a matter of particular concern in a regulated industry. Commission approval of the transfer of certificates of public convenience and necessity is the vital element in the approval of the purchase and sale of public utilities. For such transfer to be approved, it must be in the public interest and this degree of public interest must be evaluated in dollar amounts where possible; and otherwise, where the benefits do not lend themselves to actual dollar evaluation.

By various exhibits and testimony, Applicants, particularly Public Service Company, have shown that it would be in the public interest for Public Service Company to own and operate the gas distribution properties of Gas Facilities located at Vail, Colorado.

The important issue in this case, as in all changes of ownership of public utilities, is whether or not the change adversely affects the ratepayers of the utility being sold and whether or not it places a burden upon the consumers of the purchasing company. This Commission will not impede the purchase, sale and transfer of public utilities when such transactions do not adversely affect the public interest, the consumers and communities served.

Public utilities as regulated monopolies are responsible for rendering public utility service at the lowest reasonable cost. In considering the acquisition of another public utility, the buyer must keep in mind this basic principle of regulation. Unless the buyer is willing to share the benefits to be derived from the change of ownership and perhaps merged operations, he should not look for full recovery of plant acquisition costs from the ratepayers of the company being sold. That is

to say that the ratepayers of the company being sold should not, forever, (over the life of the property) be held to the level of costs of the selling company when the buyer is a public utility operator who can and does render public utility service at a lower cost than the selling company.

This requirement of sharing does not limit absolutely the amount a buyer may pay for a public utility. He may see fit to pay more and stand the additional cost which may be amortized as a deduction from income or written off to surplus, in which case this amount would be excluded to a degree from rate-making processes. It must be borne in mind, however, that the cost of money is a factor in regulation. Thus the cost of capital for the financing of a large acquisition will be part of the capital costs borne by all the ratepayers. Obviously there is a limit to the extent a buyer may burden the public utility with capital costs not properly recoverable from ratepayers.

It can be stated that generally the purchaser can expect to recover plant acquisition adjustment equal to actual tax benefits resulting from the acquisition plus an amount representing a shared net cost reduction and other evaluated benefits. For example, if the buyer could prove no benefits other than reduction in income taxes, that is all it could expect to recover through amortization of acquisition adjustment. The fact is, because of changes in income tax rates from the 22% bracket to the 48%, the income tax effects could be negative and therefore a detriment rather than a benefit. If it could show benefits substantially in addition to net tax benefits, particularly reduction in cost of operations, possibly it could expect to recover part of such reduction in cost depending upon the circumstances. A decrease in rates to consumers over a number of years would be a manifestation of sharing the improved benefits with the consumers resulting from a change in ownership. By the method outlined herein for the handling of Plant Acquisition Adjustment, we eliminate the inclusion of this item in rate base in any future rate proceeding.

The record in this proceeding clearly indicates that by virtue of this acquisition, operating costs (not considering the cost of gas, which will remain unchanged) applicable to the utility properties of Gas Facilities, Inc., may be reduced as much as \$52,000 annually as compared with the increased cost due to amortization of the acquisition adjustment of \$9,160 annually (Exhibit L). Thus the benefits to ratepayers will considerably exceed the burden of the amortization of the acquisition adjustment as proposed, and the acquisition is in the public interest in its entirety.

Additionally, it should be mentioned that an immediate rate reduction will accrue to the present customers of Gas Facilities. In the long run, however, rate reductions are of concern to the public interest only if supported by actual lower costs, such as in the instant case. Otherwise rate reductions to a segment of the public, occasioned by an acquisition, may only be a subsidy by other ratepayers, or else an adjustment that should have been made in any event regardless of the acquisition.

O R D E R

THE COMMISSION ORDERS THAT:

1. The transfer of certificates of public convenience and necessity now held by Applicant Gas Facilities, Inc., described in Finding No. 4 above, to Applicant Public Service Company of Colorado and the purchase of the gas distribution system, related facilities and other assets of Gas Facilities by Public Service be, and hereby are, authorized and approved.

2. The amortization of an acquisition adjustment resulting from this transfer in the amount of approximately \$310,000 by Applicant Public Service Company in equal annual amounts over a period of thirty-five years by charges to Account No. 406, Amortization of Utility Plant Acquisition Adjustments, be, and hereby is, authorized and approved.

3. Applicant Public Service Company of Colorado be, and hereby is, authorized to exercise franchise rights as described in Finding No. 9 above, according to the terms of the franchise ordinance of the Town of Vail,

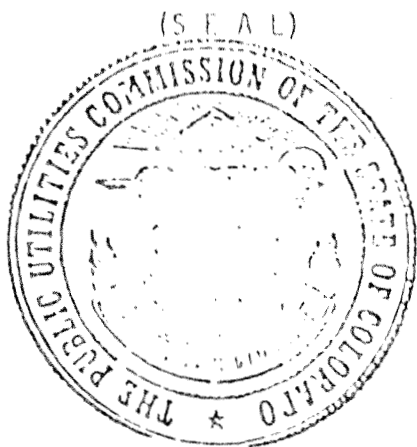
identified as Exhibit E in these proceedings, which exhibit is hereby made a part hereof by reference, and that this Order shall be deemed and held to be a CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY therefor.

4. The Applicant Public Service Company of Colorado shall, within thirty days of the completion of the acquisition contemplated herein, file with this Commission a report showing the various journal entries occasioned by such acquisition and the amount to be amortized annually.

5. The Applicant Public Service Company shall operate the utility property to be acquired from Gas Facilities, Inc., in accordance with the Rules and Regulations of this Commission with respect to service, construction, maintenance, operation, accounting and other matters applicable to gas utilities.

6. Applicant Public Service Company of Colorado shall file with this Commission rates and tariffs as necessary to make available to the customers served from the properties acquired from Gas Facilities, Inc., the same rates and tariffs in effect with respect to Applicant's Mountain Division, such rates and tariffs to be effective with meter readings immediately subsequent to the date of the acquisition.

This Order shall be effective forthwith.



ATTEST: A TRUE COPY

William D. Mitchell, Executive Secretary

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

HENRY E. ZARLEIGO

HOWARD S. BJELLAND

EDWIN R. LUNDBORG

Commissioners

Dated at Denver, Colorado,
this 27th day of February, 1969.
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