

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 PUBLIC CONVENIENCE)
AND NECESSITY TO SUPPLY THE PUBLIC)
ELECTRIC SERVICE IN THE S½NW¼ AND)
SW¼, SECTION 26; THE E½SE¼, SECTION)
27; THE SE¼NE¼, SECTION 27; E½SW¼NE¼,)
SECTION 27, THE NE¼NE¼, SECTION 34;)
AND THE N½NW¼, SECTION 35, ALL LOCATED)
IN TOWNSHIP 6 NORTH, RANGE 67 WEST,)
6TH P.M., WELD COUNTY, COLORADO.)

APPLICATION NO. 23718

November 7, 1969

Appearances: Lee, Bryans, Kelly and Stansfield,
Esqs. by
Bryant O'Donnell, Esq., Denver,
Colorado, for Applicant Public
Service Company of Colorado;
Warren H. Price, Esq., Loveland,
Colorado, and
John P. Thompson, Esq., Denver,
Colorado, for Poudre Valley Rural
Electric Association, Inc.;
Hugh Burns, Esq., Denver, Colorado,
for Eastman-Kodak Company;
Harry A. Galligan, Jr., Esq., Denver,
Colorado, and
Girts Krumins, Esq., Denver, Colorado,
for the Staff of the Commission.

PROCEDURE AND RECORD

The above-entitled application was filed by Public Service Company of Colorado (Public Service or Applicant) on May 2, 1969. By this application Public Service seeks a certificate of public convenience and necessity to supply electric service in the S½NW¼ and SW¼, Section 26; the E½SE¼, Section 27; the SE¼NE¼, Section 27; E½SW¼NE¼, Section 27, the NE¼NE¼, Section 34; and the N½NW¼, Section 35, all located in Township 6 North, Range 67 West, 6th P.M., Weld County, Colorado.

A plant is now under construction by the Eastman-Kodak Company in the territory described. Poudre Valley Rural Electric Association, Inc. (Poudre Valley), filed a protest to the application on June 13, 1969,

praying that the application be denied. After due and proper notice to all interested parties, the matter was set for hearing beginning on June 24, 1969 at 10 o'clock a.m., in the Commission Hearing Room, 1845 Sherman Street, Denver, Colorado, at which time and place the matter was duly heard by the Commission.

Poudre Valley at that time filed a motion to dismiss which was taken under advisement. The Commission on its own motion ordered the parties to present evidence as to the needs of Kodak and the willingness and ability of the parties to serve and other matters. Subsequently, Poudre Valley filed a petition in the Supreme Court of the State of Colorado for a Writ of Prohibition seeking an order from the Supreme Court requiring the Commission to dismiss the application and permanently prohibit the Commission from otherwise proceeding further until such time as "someone makes some allegation of grounds on which Poudre Valley could lawfully be deprived of its right to serve the Poudre Valley Kodak land." On July 17, 1969, the Supreme Court ordered the proceedings in this application stayed and directed the Commission to show cause why the relief requested in the petition should not be granted. On September 16, 1969, the Supreme Court of the State of Colorado did issue an order discharging the Rule to Show Cause without prejudice stating that the Commission had not yet made a determination whether the premises involved are within the third category or the fourth category of territory under the decision in Public Utilities Commission vs. Home Light and Power Co., 163 Colo. 72, 428 P.2d 928. The Home Light and Power Case, *supra*, concerns Commission Decision No. 62653 which, among other things, certificated the territory involved herein to Poudre Valley. It was subsequently affirmed in part and reversed in part.

Accordingly, the Commission by Decision No. 73655 set the matter for hearing on the sole issue of whether the territory involved is within the third or the fourth category of territory, to be held on October 21, 1969 at 10 o'clock a.m., in the hearing room of the Commission, 1845 Sherman Street, Denver, Colorado, at which time and place further hearings were held. As a

result of this phase of the hearings, the Commission by its Decision No. 73730 determined that the territory involved was in the fourth category of territory as set forth in the Home Light and Power case and that no utility held an effective certificate of public convenience and necessity to provide electric service in such territory, and the application was set for continued hearing on October 28, 1969, at 10:30 o'clock a.m. At the latter hearing further evidence by both utilities was heard by the Commission on the Application, and the matter was taken under advisement at the conclusion thereof.

Applicant's Exhibits 1 through 9 and Poudre Valley's Exhibits 1, 2, 3, 4, 6 and 7 were offered and admitted into evidence. Poudre Valley's Exhibits 5 and 8 were offered but not admitted. At the request of the Staff, the Commission has taken official notice of the 1968 Annual Reports filed with the Commission by Public Service and Poudre Valley.

FINDINGS OF FACT

From the record herein the Commission finds as fact that:

1. Public Service Company of Colorado is a public utility, operating under the jurisdiction of the Commission, engaged primarily in the generation, transmission, distribution, purchase and sale of electric energy, and the purchase, distribution and sale of natural gas in various areas in the State of Colorado.

2. Poudre Valley is a public utility operating under the jurisdiction of the Commission, engaged primarily in the purchase, distribution and sale of electric energy in several counties on the eastern slope in the State of Colorado.

3. The subject matter of this application is within the jurisdiction of the Commission.

4. The territory involved in this application includes: the S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 26; the E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 27; the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27; E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27, the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 34; and the N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 35, all located in Township 6 North, Range 67 West, 6th P.M., Weld County,

Colorado. Eastman-Kodak Company is constructing a plant in the territory described above which is hereinafter referred to as the Kodak Plant Site.

5. Eastman-Kodak Company owns additional land in the area not involved in the instant application.

6. The Kodak Plant Site is within the fourth category of territory as described in the Home Light and Power case, supra. The particular facts of this issue are contained in Decision No. 73730, and the Findings of Fact contained in said decision are specifically adopted and incorporated herein by reference. In addition, and to be more specific, the Commission finds that a reallocation of the territory involved in the Kodak Plant Site on the basis of the Supreme Court Decision in the Home Light and Power case without regard to the particular facts involved concerning the Eastman-Kodak load would result in certification to Public Service of a strip of land along its distribution line near the west section lines of Section 26 and Section 35, T6N, R67W of the 6th P.M., in which Public Service has been rendering complete and adequate service since the construction of the line. This strip of land would possibly extend from one-quarter to three-quarters of a mile on each side of the said distribution line, and possibly result in the division of the Kodak Plant Site between two utilities providing electric service.

7. Public interest and public convenience and necessity require that the load of this single customer on one plant site be served only by one utility providing electric service, as a division of the load between two utilities would result in unnecessary and wasteful duplication of facilities.

8. The Eastman-Kodak load to be served at the Kodak Plant Site is conservatively estimated to be:

Year 1971 --	6,200 KW
Year 1972 --	13,000 KW
Year 1976 --	25,000 KW
Year 1980 --	31,000 KW

A load of this size requires a supply by 115 KV electric transmission line.

9. Eastman-Kodak will at some point in the future be engaged in a manufacturing process requiring extremely large amounts of power and high reliability of service, necessitating the looping of the transmission line supplying it to assure continuity of service.

10. Public Service proposes to extend a 115 KV line from its planned Weld substation to the site together with the required substation equipment at the Plant Site at a cost of \$545,000 by the time service is required on July 1, 1971. The loop service will be provided by another 115 KV line from its Greeley Substation, at a cost of \$1,016,000 when the need for loop service arises and such service is requested by Eastman-Kodak.

11. Public Service has an extensive central 230 KV and 115 KV transmission system connected to all its major generating plants and has adequate transmission and generating capacity to serve the estimated ultimate load at the Kodak Plant Site. While the Fort St. Vrain Nuclear Power Generating Station will be the closest generating station, and it is expected to provide direct service to the transmission lines serving the Kodak Plant Site, Public Service has adequate generating capacity at its other plants to provide the service even if the Fort St. Vrain Station is delayed or not completed on schedule.

12. Poudre Valley proposes to serve the initial load to the Kodak Plant Site by extending 115 KV transmission lines from the U.S. Bureau of Reclamation transmission line, known as the Flatirons-Greeley Line, located approximately two miles south of the Kodak Plant Site. Cost of this extension and the substation facilities is estimated at \$672,000. The said U.S. Bureau of Reclamation line does not now have the capacity to provide the ultimate load of Eastman-Kodak, nor can it provide the level of reliability that can be expected of Public Service transmission system because of the high existing loading on the Bureau of Reclamation line. The capacity of the Bureau of Reclamation line is approximately 80 megawatts and the present load on this line is approximately 65 MW.

13. Poudre Valley does not own any electric generating plants, but instead purchases its requirements from the Tri-State Generation and Transmission Association, Inc. Tri-State, in turn, purchases its requirements from the Colorado River Storage Project and the Missouri Basin Project, both projects of the United States Bureau of Reclamation, and from Basin Electric Cooperative in North Dakota. Poudre Valley made no showing as to its contracted power supply or its ability to procure the additional supply necessary to serve the Kodak Plant Site.

14. Poudre Valley has no definite plans or contractual rights to obtain additional transmission line capacity to the Kodak Plant Site.

15. Public Service at present has a generating capacity of 1,936,600 KW, and the maximum demand on December 17, 1968 was 1,267,700 KW. The St. Vrain Nuclear Power Generating Station will add another 330,000 KW generating capacity in 1972, resulting in a total capacity at that time of 2,266,600 KW, while the estimated total maximum demand in 1972 for the entire Public Service system is 1,694,000 KW. It is the Company's policy to provide a generating capacity reserve equal to at least the capacity of the largest unit on its system. The Commission finds that such a policy is prudent and reasonable.

Poudre Valley in 1968 had a maximum demand of 13,072 KW which was obtained in December of 1968.

16. As of December 31, 1968, Public Service had total assets of \$651,178,045, net investment in electric plant of \$455,245,129 and served an average of 448,894 electric customers in 1968. Net income for 1968 was \$27,799,483. Internally generated cash funds available for payment of dividends and reinvestment totaled approximately \$44,000,000.

17. Poudre Valley on December 31, 1968, had total assets of \$6,771,824, net investment in electric plant of \$5,735,156 and served an average of 6,201 electric customers during 1968. Net margins for 1968 totaled \$151,081. Internally generated cash funds available for payment of debt, refund of patronage capital and reinvestment amounted to approximately \$350,000.

18. Public interest and public convenience and necessity require that service to present and potential customers within the defined service area of a utility not be jeopardized by extending service to new areas that can be provided by another utility without such jeopardy.

19. Public interest and public convenience and necessity require financial stability of the utility serving the public, and such stability is best served, among other things, by a reasonable mixture of various loads and types of customers. The utility serving predominantly a single industrial customer cannot hope to achieve such stability.

20. A load in the magnitude of Eastman-Kodak at the Kodak Plant Site would result in an undesirable predominance of this load over all the combined loads of other customers served by Poudre Valley; consequently, the financial and power resources of Poudre Valley would be stressed unreasonably and service to present customers of Poudre Valley may be jeopardized in the future when Poudre Valley is compelled to seek relatively large amounts of additional power supply and transmission capacity, the source and cost of which is unknown at this time. Poudre Valley already serves one relatively large industrial customer, the Rocky Mountain Cement Plant at Lyons.

21. The addition of the said Eastman-Kodak load to the electric system of Public Service would not materially affect its financial condition, nor its ability to provide service to its present customers.

22. Public Service expects to finance the facilities to serve the Kodak Plant Site with internally generated funds and is amply able to do so.

23. Poudre Valley expects to request a loan from the Rural Electrification Administration of the United States Government to finance facilities it proposes to serve the Kodak Plant Site. There is no assurance such a loan would be forthcoming, in which event Poudre Valley would use its reserve funds which are barely sufficient at this time to finance even the initial facilities required.

24. Public convenience and necessity require, and will require, that a certificate of public convenience and necessity be granted to

Public Service Company of Colorado to provide electric service to the public at the Kodak Plant Site and to provide the entire electrical power requirements of the customer at such plant site.

25. The Applicant cannot be found guilty of laches in seeking certification to serve the Kodak Plant Site.

DISCUSSION

Both Poudre Valley and Public Service have urged the Commission to make its decision based purely on the applicable law, and each claims that it is entitled to a certificate for the territory included in the Kodak Plant Site in accordance with the Supreme Court mandate in the Home Light and Power case. We have, however, specifically found that pursuant to such mandate neither utility holds an effective certificate to this territory. Furthermore, we have been urged to consider the effect this decision would have upon the ultimate disposition of category four territory and upon what territory might be ultimately determined to be in category four as far as Decision No. 62653 is concerned. It is important to note that the Commission is not at this time redrawing service area boundaries of the utilities in the original applications, but is considering only a certificate to provide electric service to the Kodak Plant Site. The only matter before us is the instant application and the protest by Poudre Valley, and the proceeding is limited to those issues. This proceeding cannot in any way collaterally determine what modifications are required of Decision No. 62653 in accordance with the Home Light and Power case.

The decision of the Commission in this proceeding must be based upon the respective abilities to provide the service required at the Kodak Plant Site in its entirety and the effects that the connection of this load would have upon the service to other customers of the respective utilities. Neither should this decision be construed to determine that a smaller utility cannot serve large loads in its territory if it is able to do so as, in fact, even a small utility has both the right and the duty to provide such service. The matter before us involves territory for which neither utility presently holds an effective certificate. In allocating new territory the ability to

serve the prospective as well as present customers must be carefully considered and weighed.

Poudre Valley has asserted a defense of laches against Public Service, alleging Public Service has not pursued the modification of Decision No. 65653 vigorously enough. However, future public interest and public convenience and necessity cannot be permitted to be adversely affected solely because of any past action or lack of action by a utility, even if the latter were the case.

CONCLUSION

The Commission concludes that the application should be granted and a certificate of public convenience and necessity should be issued to Public Service as requested in the application; that the Motion to Dismiss by Poudre Valley should be denied, and the Protest of Poudre Valley dismissed; and that the following Order should be entered.

ORDER

THE COMMISSION ORDERS THAT:

1. A certificate of public convenience and necessity be, and hereby is, granted to Public Service Company of Colorado to provide electric service to the public in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 26; the E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 27; the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27; the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27; the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 34; and the N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 35, all located in Township 6 North, Range 67 West, 6th P.M., Weld County, Colorado, and this Decision and Order shall be deemed and held to be a certificate therefor.

2. The Motion to Dismiss by Poudre Valley Rural Electric Association, Inc., be, and hereby is dismissed, and its Protest likewise be, and hereby is, dismissed.

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Henry J. Furlong
Donald B. Miller
E. R. Cuskey
Commissioners

Dated at Denver, Colorado,
this 7th day of November, 1969.