

(Decision No. 90066)

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)	APPLICATION NO. 28815
FOR THE CONSTRUCTION, OPERATION)	
AND MAINTENANCE OF A STEAM ELECTRIC)	ORDER OF THE COMMISSION
GENERATING PLANT TO BE KNOWN AS)	GRANTING CERTIFICATE OF
THE PAWNEE STEAM ELECTRIC GENERATING)	PUBLIC CONVENIENCE AND NECESSITY
STATION, NEAR BRUSH, COLORADO.)	

- - - - -
January 25, 1977
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STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On December 1, 1975, Public Service Company of Colorado ("Public Service") the Applicant herein, filed the above-entitled application requesting a certificate of public convenience and necessity, for the construction, operation and maintenance of a steam electric generating station to be known as the "Pawnee Station" near Brush, Colorado, together with the associated transmission facilities.

Hearings were held with respect to said application and on April 30, 1976, the Commission issued Decision No. 88670 which it delineated as an interim decision. In Decision No. 88670 the Commission concluded that the present and future public convenience and necessity requires and will require the construction, operation and maintenance by Public Service Company of an additional plant of 500 megawatt capacity in order for it to meet its projected system maximum net firm demand and also provide an adequate margin of reserve.

In Decision No. 88670 the Commission also cited 40-5-103(1), CRS 1973, which requires the utility involved to present such evidence as this Commission requires to show that it has received the required consents and permits from all local or public authorities which are necessary prior to the construction of the proposed facility. We stated that when Public Service files with the Commission evidence that it has received the required permits and consents, we would be assisted in making our ultimate determination as to whether or not the proposed plant, at the proposed site, will be in the public interest from the standpoint of environmental and land use facilities. Accordingly, the Commission entered the following Order in Decision No. 88670:

"O R D E R

THE COMMISSION ORDERS THAT:

1. Public Service Company of Colorado shall file with the Commission evidence of all consents, permits or other authorities from local, state or federal authorities which are required before construction of its proposed power plant ("Pawnee Station") may begin, including but not limited to evidence of the following:

- a. Rezoning authority from Morgan County Commissioners;
- b. Building permits from applicable authorities;
- c. Air pollution permit from the Air Pollution Control Commission or Division of the Colorado Department of Health;
- d. If applicable, a discharge permit from the Water Quality Control Division of the Colorado Department of Health, or compliance with pertinent water quality laws.

2. Simultaneously with the filing of said evidence, Public Service Company of Colorado shall file an affidavit with the Commission that the evidence as set forth in paragraph 1 of this Order, comprises all consents, permits or other authorities required by any local, state or federal authority to begin construction of the Pawnee Station and shall serve copies of said affidavit and said evidence upon all parties to this proceeding.

3. Within twenty (20) days of the filing of the affidavit and evidence, and service thereof -- required by paragraphs 1 and 2 of this Order -- any party may, if it so desires, file with the Commission comments or objections with respect to the evidence filed by Public Service Company of Colorado or make appropriate motions with respect thereto.

4. This decision is interim in nature.

5. Any motions presently pending and not disposed of otherwise, be, and hereby are, denied.

6. The Commission shall retain jurisdiction of this proceeding to the end that it may make such further order or orders in the premises as to it may seem proper or desirable.

This Order shall be effective forthwith."

On December 23, 1976, Public Service Company filed its "Compliance Filing and Request for Issuance of Certificate of Public Convenience and Necessity", and attached thereto certificated copies of the following authorizations and permits for construction of the proposed Pawnee Steam Electric Generating Station:

(1) Findings and Order of the Air Pollution Control Commission, issued August 12, 1976, and the Emission Permit No. C-10,967 issued pursuant to that order by the Air Pollution Control Division on August 12, 1976, together with the cover letter from Mr. Robert D. Siek, Acting

Director, Air Pollution Control Division to Mr. George Green, Public Service Company of Colorado.

(2) Findings and Order issued by the Board of County Commissioners of Morgan County, Colorado, on October 12, 1976, in In Re The Application of Public Service Company of Colorado For A Change In Zoning From An A-2 District To An H-1 District, granting Public Service Company of Colorado's application for a change in zoning of the plant site of the Pawnee Steam Electric Generating Station.

(3) Findings and Order issued by the Board of County Commissioners of Morgan County, Colorado, on October 12, 1976, approving Public Service Company of Colorado's application for Special Use Permit for the Pawnee Plant.

(4) Public Service Company of Colorado's permit, issued October 12, 1976, by the Morgan County Planning and Zoning Commission granting a certification of compliance with the Zoning Regulations of Morgan County, Colorado, certifying that the construction of the Pawnee Steam Electric Generating Station will be in compliance with Morgan County Zoning Regulations.

(5) Conditional Permit to Commence Construction and Operate issued December 5, 1976, by the Environmental Protection Agency, and letter dated December 23, 1976, from R. F. Walker, President of Public Service Company of Colorado, in connection with that Permit.

(6) Notice of Effectiveness of Construction Order, issued June 30, 1976, by the Federal Energy Administration (Public Service Company of Colorado has been unable to obtain a certified copy of this document).

(7) Affidavit of R. F. Walker, President, Public Service Company of Colorado, stating that items 1 through 6 above comprise all consents, permits or other authorization required to be obtained by Public Service Company of Colorado from any local, state or federal authority (aside from this Commission) prior to commencing construction of the Pawnee Plant.

On January 3, 1977, Intervenor, Information Please, Inc., filed "Intervenor's Objection to Applicant's Compliance Filing and Request for Issuance of Certificate of Public Convenience and Necessity and Intervenor's Petition for Supplementary Order", wherein said Intervenor petitioned the Commission for a supplementary order directing Public Service Company to submit additional evidence to the Commission which shall demonstrate as follows:

1. That there has been a resolution of all pending litigation involving the Applicant's rezoning and special use permit applications;
2. That the Environmental Protection Agency's Conditional Permit to Commence Construction and Operate is fully effective; and
3. That all proceedings pending before the Colorado Land Use Commission under C.R.S. 24-65.1-101 et seq. (1975 Cum. Supp.) have been completed.

On January 10, 1977, Public Service Company filed its "Applicant's Response to Intervenor's Objection to Applicant's Compliance Filing and Request for Issuance of Certificate of Public Convenience and Necessity and Intervenor's Petition for Supplementary Order" wherein it generally alleges that (1) the orders issued by the Morgan County Commissioners are valid unless and until set aside by a reviewing body having jurisdiction and that one may act pursuant to such orders unless they are stayed in accordance with law (which has not occurred), (2) the Environmental Protection Agency permit is fully effective as of December 23, 1976, and (3) the fact that the Land Use Commission may consider the Pawnee Plant at a January 21, 1977 meeting should not deter this Commission from responsibly exercising its jurisdiction.

On January 12, 1977, Intervenor, Information Please, Inc., filed its "Intervenor's Supplemental Objections to Applicant's Compliance Filing", wherein it alleges that a Land Use Commission staff study was completed on January 10, 1977, and wherein it recommends that the proposed Pawnee facility be designated as a matter of state interest for the following area:

- (a) Site selection and construction of major facilities of a public utility (C.R.S. 1973 24-65.1-203(1)(f) (1975 Cum. Supp.));
- (b) Site selection and development of a solid waste disposal site (C.R.S. 1973 24-65.1-203(1)(b) (1975 Cum. Supp.)); and
- (c) Efficient utilization of municipal and industrial water projects (C.R.S. 1973 24-65.1-203(1)(h) (1975 Cum. Supp.)).

Information Please, in its January 12, 1977 filing, alleges that the Land Use Commission will be considering these staff recommendations at the hearing scheduled for January 21, 1977, and that a probable result of the hearing will be a formal request by the Land Use Commission that the Morgan County Commissioners make the designations recommended by the staff study.* Information Please further alleges that, if the Morgan County Commissioners comply with the Land Use Commission's requests, Public Service will be required to obtain additional construction permits from the county, and that so long as the Pawnee facility is the subject of proceedings before the Land Use Commission, this Commission's Interim Decision No. 88670 is controlling and that Public Service cannot obtain a certificate of public convenience and necessity until the Land Use Commission proceedings are concluded.

Information Please also alleges that it is seeking a stay of the rezoning and special use permit in two separate court actions before the Morgan County District Court and that a hearing on a stay of the Morgan County Commissioners' Decisions is likely to be held during February, 1977. Information Please also states that Public Service has not complied with the prerequisites relating to the development of a water supply for the Pawnee facility.

* The Land Use Commission, on January 21, 1977, exempted the proposed Pawnee Plant I from its request to the Board of County Commissioners of Morgan County to designate the site selection and construction of major facilities of a public utility in Morgan County as a matter of state interest.

On January 17, 1977, Public Service Company filed "Applicant's Response to Intervenor's Supplemental Objections to Applicant's Compliance Filing" wherein it alleges that this Commission has the power and authority to proceed with the granting of a certificate of public convenience and necessity by virtue of Section 24-65.1-105, Land Use Act, 1973, which states:

"With regard to public utilities, nothing in this article shall be construed as enhancing or diminishing the power and authority of municipalities, counties or the Public Utilities Commission. Any order, rule or directive issued by any governmental agency pursuant to this article shall not be inconsistent with or in contravention of any decision, order or finding of the Public Utilities Commission with respect to public convenience and necessity..."

Public Service alleges that no action can be taken or, in fact, taken by the Land Use Commission can prevail over a finding of public convenience and necessity by this Commission. Public Service further alleges that there are no permits required to be obtained by Public Service Company in Morgan County under the Colorado Land Use Act, and, therefore, the activities of the Land Use Commission do not fall within the purview of this Commission's Interim Decision requiring the Public Service Company to obtain permits "which are required before construction of its proposed power plant ("Pawnee Station") may begin,..."

Public Service further alleges that whatever permits may be required with respect to the water supply for the plant, such permits are not required before construction may begin.

The Commission states and so finds that Public Service Company has complied with the Order contained in our Interim Decision No. 88670, dated April 30, 1976, and has, in fact, filed all consents, permits, or other authorities from local, state or federal authorities which are required before construction of its proposed power plant (Pawnee Station) may begin. Almost nine months have elapsed from the time the Commission's interim decision was entered.

The table below shows the capacity available for the summer peak, the projected summer peak demand and the resulting margins for Public Service for the years 1976 through 1981. These figures were taken from the Colorado Electric Supply Survey, 1975-1985, published by the Staff of the Commission in October, 1976.

	1976	1977	1978	1979	1980	1981
Capacity as of Jan. 1 - MW	2068	2418	2748	2748	3248	3248
<u>ADDITIONS - MW</u>						
Comanche II, 2/76	350					
Ft. St. Vrain, 1/77		330				
Pawnee, 4/79	—	—	—	500	—	—
Cap. Avail. for Summer Peak - MW	2418	2748	2748	3248	3248	3248
Projected Summer Peak Demand - MW	2020	2140	2261	2380	2495	2643
Margin W/Pawnee - MW	398	608	487	868	753	605
%	16.5	22.1	17.7	26.7	23.2	18.6
Margin wo/Pawnee - MW				368	253	105
%				13.4	9.2	3.8

Several points are noteworthy about the information displayed in this table. First the peak summer demand has been projected at a conservative rate of 5.5% with no allowance for potential oil shale development. This would indicate that the margins (i.e., reserves) may be less than projected. If growth rates are higher than the conservative projections, the future energy picture will be more pessimistic than the above figures indicate.

As indicated in the table, margins are barely sufficient through 1978. The current situation contributed to a power shortage on July 9, 1976, when Public Service Company was forced to activate its emergency load reduction procedures. Large commercial and industrial customers were contacted by phone and asked to voluntarily reduce load, and the mass media were used to request other customers to reduce their consumption. No loss of load actually occurred at that time, but on June 8, 1976, and again on August 11, 1976, loss of load did occur due to transmission system disturbances in other states. These occurrences are symptomatic of the less than robust electric supply situation which currently exists in Colorado.

Margins for the system are not projected to improve until the Pawnee plant is in commercial operation, which originally was anticipated for April, 1979, so that the capacity would be available to meet the summer peak. With delays in obtaining the necessary approvals, it appears highly unlikely that the scheduled operational date will be met, in which case a critical power situation appears to be inevitable during the summer of 1979. As shown in the table, further delays would reduce margins to unacceptable levels. These margins assume that no unit requires maintenance during the summer peak, and that no forced outages occur. Both these assumptions are unrealistic in the practical operation of power systems. In reality, margins of this magnitude are certain to result in loss of load. Since inter-ties with neighboring states are limited in capacity, it is quite likely that Public Service Company would be forced to

install oil-fired turbines to avoid what appears to be a highly probable inability to meet its loads with potentially serious effects on the state's agriculture and industry. Even if fuel oil is obtained for the turbine units, the cost will be quite high and have an unfavorable impact upon all the customers of Public Service Company.

The Commission reiterates its Conclusions on Findings of Fact as contained in its Interim Decision No. 88670 to the effect that the present and future public convenience and necessity requires and will require the construction, operation and maintenance by Public Service Company of an additional plant of 500 megawatt capacity in order for it to meet its projected system maximum net firm demand and also provide an adequate margin of reserve. We further find and conclude that Public Service Company of Colorado should be granted a certificate of public convenience and necessity to construct, operate and maintain its proposed electric generating station and related facilities, known as the Pawnee Steam Electric Generating Station.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

Public Service Company of Colorado be, and hereby is, authorized to construct an electric generating station and related facilities, generally described as the Pawnee Steam Electric Generating Station in accordance with its application herein, and this Order shall be a certificate of public convenience and necessity therefor.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 25th day of January, 1977

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

COMMISSIONER HENRY E. ZARLENGO SPECIALLY
CONCURRING

COMMISSIONER HENRY E. ZARLENGO SPECIALLY CONCURRING:

I concur that the present and future public convenience and necessity requires and will require a construction, operation and maintenance by Public Service Company of an additional plant of 500 megawatt capacity in order to meet its projected system maximum net firm demand and to provide a reasonable margin of reserve. This concurrence, however, is made subject to the position taken in dissent in Commission Decision No. 88670.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Commissioner