

(Decision No. C82-178)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR AN ORDER AUTHORIZING)
IT TO REVISE THE EXTENSION POLICY)
INCLUDED IN ITS PUC - 5)
ELECTRIC TARIFF.)

APPLICATION NO. 32602

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR AN ORDER AUTHORIZING)
IT TO ESTABLISH GAS AND ELECTRIC)
SERVICE PIPE INSTALLATIONS.)

APPLICATION NO. 32845

COMMISSION ORDER
DENYING PETITION FOR REHEARING,
REARGUMENT OR RECONSIDERATION

- - - - -
February 4, 1982
- - - - -

STATEMENT AND FINDINGS

BY THE COMMISSION:

On February 28, 1980, Public Service Company of Colorado (hereinafter "Public Service") filed Application No. 32602. Due and proper notice of this application was issued by the Executive Secretary of the Commission on March 5, 1980. As a result of such notice, numerous requests for leave to intervene were filed and were granted. One of the intervenors was Home Builders Association of Metropolitan Denver (HBA).

On April 30, 1980, HBA filed a motion requesting that Application No. 32602 be consolidated with Case No. 5921, a complaint case which it had filed earlier concerning Public Service's rules, regulations and tariffs about construction advances and deposits and other related subjects, and also requested that these matters be heard by the Commission en banc. After responses and counter-motions by Public Service, the Commission issued Decision No. C80-1138 on June 10, 1980, which granted the motion to consolidate Application No. 32602 and Case No. 5921 for hearing and denied the motion that the Commission hear the matters en banc.

Public Service filed Application No. 32845 on May 15, 1980. Notice of this application was duly issued by the Executive Secretary of the Commission on May 23, 1980.

In response to a motion set forth in the request of HBA for leave to intervene in Case No. 5921, the Commission issued Decision No. C80-1406 on July 15, 1980, ordering that each intervenor in each matter was made an intervenor in the other matter if not already a party thereto.

On July 31, 1980, in response to a motion filed on behalf of Public Service, the Examiner issued an interim order consolidating Application No. 32845 with Application No. 32602 and Case No. 5921.

After numerous settings, continuances and interlocutory matters pertaining to discovery, the matters were finally called for hearing pursuant to due and proper notice on September 11, 1980, in the Commission Hearing Room, Fifth Floor, 1525 Sherman Street, Denver, Colorado. At such time, counsel for Complainant HBA moved for dismissal of Case No. 5921 without prejudice to later refile, which motion was granted. Hearing was held as scheduled on Applications 32602 and 32845. The hearing was completed on September 12, 1980. Testimony was heard from seven witnesses and a total of twenty-four (24) exhibits were offered and admitted into evidence.

The subject matter was taken under advisement by the Examiner at the conclusion of the hearing. Statements of position were filed by some of the parties.

On December 22, 1980, Hearings Examiner Loyal W. Trumbull issued Recommended Decision No. R80-2380 wherein he recommended that Application No. 32602 and Application No. 32845 be denied.

After the issuance of Recommended Decision No. R80-2380, the following pleadings were filed with the Commission:

Motion for Extension of Time filed by
Public Service Company

Motion for Extension of Time filed by
the Staff of the Commission

Exceptions of the Colorado Office of
Consumer Services

Exceptions of Public Service Company
of Colorado

Motion for Extension of Time filed by
the Cities of Lakewood and Arvada

Statement of Adoption of the Colorado
Energy Advocacy Office

Motion to Strike Statement of Adoption
of Home Builders Association

Response to Motion to Strike filed by
Colorado Energy Advocacy Office

Response of the Cities of Arvada and
Lakewood to Exceptions filed by Public
Service Company and the Office of
Consumer Services

Adoption of Responses to Exceptions of
the City of Lakewood and City of Arvada
filed by Home Builders Association of
Metropolitan Denver

On April 21, 1981, the Commission issued Decision No. C81-752 wherein the Commission stated that after consideration of Recommended Decision No. R80-2380 and the foregoing substantive pleadings related thereto, that the Commission: "has determined that the within applications should be remanded to the Examiner for further hearing and entry of a recommended decision in accordance with the policy parameters as hereinafter set forth." (Emphasis added.)

The Commission outlined, by Commission Decision No. C81-752, policy parameters with respect to extension policy for the remanded matter. In Decision No. C81-752 the Commission stated at page 6, Findings and Discussion, fourth and fifth paragraphs from the top of said page:

"Premises considered, the Commission finds and concludes that Application Nos. 32602 and 32845 should be remanded to the Examiner for further hearings in accordance with the policy parameters expressed herein. The further hearings should establish what the current embedded costs are with regard to particular categories of service. The further hearing should further enable the Examiner to make a more particularized determination as to the reasonableness, or nonreasonableness of the proposed meter charges which are the subject of Application No. 32845.

With regard to embedded gross distribution investment per customer, in regard to permanent service, the Commission believes that the embedded gross distribution investment per customer can be updated on an annual basis for implementation in a line extension policy." (Emphasis added.)

On September 29, 1981, Examiner Loyal W. Trumbull issued Recommended Decision No. R81-1650, being his Recommended Decision upon remand pursuant to Commission Decision No. C81-752. By Recommended Decision No. R81-1650, inter alia, the Examiner recommended that embedded gross distribution plant for the classes of residential and commercial customers, and their subclasses, be calculated on the basis of the cost of service study done by Public Service in I&S Docket No. 1330, which study was based on a 1978 calendar year test period. The Examiner further recommended that Public Service Company should be required to exclude distribution substation costs from computation of both the free construction allowance and new customer line extension costs.

By Recommended Decision No. R81-1650, the Examiner additionally determined that free construction allowance should be established on the basis of subclasses within the residential class. The Examiner found and concluded that a \$320 free construction allowance for new street lighting customers is a just and reasonable figure. The Examiner further declined to require Public Service Company to provide an alternate rate for street lighting service which would allow a municipality to pay the entire cost of installing a new street lighting fixture and then pay a rate which does not include a return of fixture. The Examiner also proceeded to recommend the establishment of free construction allowance for each new customer of Public Service for each rate class, and recommended that Public Service Company should be required to update the free construction allowances within thirty days after a Commission decision in a general rate case becomes effective. Finally, the Examiner found and concluded that the installation charges proposed for gas and electric meters in Application No. 32845 and Exhibit No. 3 and No. 5 are just and reasonable and should be allowed to go into effect. The Examiner also proposed certain changes to Public Service Company's herein proposed rules, regulations and tariffs.

On October 29, 1981, the Cities of Arvada and Lakewood, and the Home Builders Association of Metropolitan Denver filed exceptions to Recommended Decision No. R81-1650. On November 13, 1981, the Colorado Energy Advocacy Office and Colorado Office of Consumer Services filed joint reply to Exceptions of Home Builders Association and the Cities of Arvada and Lakewood. On November 19, 1981, Public Service Company filed its response to the exceptions previously filed by other parties.

The Commission issued its Decision No. C81-1985 on December 1, 1981, on the various exceptions filed, and thereby adopted Recommended Decision No. R81-1650 of Examiner Loyal W. Trumbull in all respects other than so much of paragraph 7, Findings of Fact and Conclusions Thereon, which finding and conclusion required Public Service Company to update free construction allowances within thirty days of the effective date of a Commission decision in a general rate case; and so much of paragraph 1, Findings of Fact and Conclusions Thereon, of said Recommended Decision, which recommends use of I&S Docket No. 1330 figures as evidence of embedded costs.

By the ordering portion of Decision No. C81-1985, the Commission required Public Service Company to recalculate the free construction allowances no less than on an annual basis. The Commission further, by the ordering portion of Decision No. C81-1985, required Public Service Company to use I&S Docket No. 1425 financial data to calculate current embedded costs of distribution plant to establish the free construction allowance to be authorized for new customers. The Commission overruled and denied the filed exceptions in all other respects.

HBA filed a motion for extension of time until January 8, 1982 to file application for reargument, rehearing or reconsideration of Commission Decision No. C81-1985 on December 30, 1981. However, HBA timely filed its petition for rehearing, reargument or reconsideration of Commission Decision Nos. C81-752 and C81-1985 on December 31, 1981. On December 31, 1981, HBA also filed a motion for leave to file brief in support of petition for rehearing, reargument or reconsideration. The Commission granted this request by Decision No. C82-16, issued on January 5, 1982, and thereby granted HBA until January 15, 1982 to file such brief. HBA filed its brief on January 15, 1982.

HBA, by both its brief and petition for rehearing, reargument or reconsideration, contends that Decision Nos. C81-1985 and C81-752 should be reversed and the Commission should adopt the initial recommended decision, which denied the applications. In support of this position, HBA argues:

1. The record of this proceeding does not support the general extension policy parameters established by the Commission and such parameters bear no relationship to the extension policies proposed by Application 32602.

2. The policy parameters established by Decision No. C81-752 are Commission line extension rules of general applicability, and were fashioned without compliance with state mandatory rulemaking procedures, in violation of CRS 1973, 24-4-107; 40-3-101, et seq; and 40-6-101, et seq. By conducting rulemaking proceedings without proper notice and compliance with the above statutory requirements, HBA has been deprived of due process of law.

3. The general extension policy parameters established in Application No. 32602, by Decision No. C81-752, represent the adoption of faulty regulatory principles of economic marginalism, previously rejected in the "Generic rate proceeding". These policy parameters also represent economic and legal discrimination between like customers in violation of CRS 1973, 40-3-106(1).

4. The general policy parameters and free construction allowance established herein create an incentive for Public Service to over-estimate the costs of construction.

5. The Commission decisions herein appear to be based on the erroneous premise that existing customers of Public Service are subsidizing the costs of construction and distribution investment associated with new customers. However, the extension policy changes proposed by Application 32602 would result in a subsidy from new customers to old customers.

6. The residential free construction allowance and extension policy practices established herein are unjust, unreasonable, unlawful, and contrary to CRS 1973, 40-3-101, et seq.

HBA contends that the line extension policy parameters established by Commission Decision No. C81-752 was the promulgation of line extension rules of general applicability, established without compliance with state mandatory rulemaking requirements. HBA asserts that the implementation of these "rules", without compliance with rulemaking procedures and proper notice, has deprived HBA of due process of law.

It is important to note that the Commission specifically stated in Decision No. C81-752:

"Application Nos. 32602 and 32845 should be remanded to the Examiner for further hearings in accordance with the policy parameters expressed herein."

In this proceeding, the Commission stated certain line extension policy parameters in response to the filing of Application Nos. 32602 and 32845 and remanded this matter to the Examiner for further hearings in accordance with said policy parameters. Nowhere within the confines of Decision No. C81-752 did the Commission apply such policy parameters to any utility or other entity within the State of Colorado, other than the Applicant, Public Service Company of Colorado.

In the petition for rehearing, reargument or reconsideration of HBA, HBA contends that the Commission's statement of policy parameters expressed in Decision No. C81-752 is a rule of sweeping and general applicability to all utilities in the State of Colorado. The above contention of HBA is not correct. Herein, the Commission specifically stated that the policy parameters enunciated in Decision No. C81-752 were adopted for the purpose of being considered in hearings upon remand. Further, the policy parameters expressed in this proceeding were established in response to the filing of Application Nos. 32602 and 32845. In other words, such policy parameters were established as the consequence of the filing of this application proceeding, and were applied to the Applicant in said application. Premises considered, the Commission finds and concludes that said policy parameters are not rules of general applicability and thus the foregoing contention of HBA should be rejected.

HBA also urges that the adoption of the policy parameters established by Decision No. C81-752 represent regulatory principles of economic marginalism, previously rejected by the Commission in the generic rate proceeding. The Commission has repeatedly stated in this matter that free construction allowance herein is based upon embedded gross distribution investment per customer (see Commission Decision No. C81-752). Nowhere within the confines of this proceeding has the Commission stated, found, concluded or ordered the establishment of free construction allowance on the principles of economic marginalism. A

cursory review of Commission Decision Nos. C81-752, and C81-1985 make it clear that the computation of free construction allowance established in this proceeding is grounded upon embedded gross distribution investment per customer, not upon marginal costs. In establishing the policy parameters for remand hearing, the Commission stated at page 4, Decision No. C81-752:

"The permanent service policy should provide that:

- (a) A permanent service customer will be allowed a free construction allowance equal to the embedded gross distribution investment per customer.
- (b) The gross embedded investment per customer is to be calculated separately for residential customers and commercial-industrial customers.

* * *

- (d) The gross embedded investment per customer is to be calculated to include the service lateral from the distribution.

* * *

- (f) With regard to street lighting, the free construction allowance shall be equal to the gross embedded investment per street light with the extension costs above that amount to be paid by the particular municipality or governmental entity involved. No refunds will be paid.

* * *

- (a) A subdivider and developer will pay to the utility all costs of the extension as a refundable construction advance.
- (b) As customers of a permanent nature take service within the subdivision or development, the subdivider or developer will receive from the utility a refund equal to the gross embedded investment per customer for the type of customer connected."
(Emphasis added)

In view of the above, the Commission concludes that HBA's contention that adoption of the policy parameters set forth in Decision No. C81-752, is founded upon the concept of economic marginalism, is not correct. Accordingly, said contention will be rejected.

The Commission has also reviewed the remaining four contentions of HBA upon rehearing, reargument or reconsideration. Such contentions in summary, are that the record of this matter does not support the policy parameters established, that such policy parameters and free construction allowance established herein create an incentive for over-estimation of the cost of construction, the free construction allowance results in a subsidy from new customers to old, and the free construction allowance and extension policy practices announced are unjust, unreasonable, unlawful and contrary to CRS 1973, 40-3-101, et seq. After considering all of the above contentions, the application for reargument, rehearing or reconsideration and brief of HBA, the Commission states and finds that such fails to assert sufficient grounds to modify Commission Decision Nos. C81-752 and C81-1985, and should therefore be denied.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

The petition for rehearing, reargument or reconsideration filed by the Home Builders Association of Metropolitan Denver on December 31, 1981, and directed to Commission Decision Nos. C81-752 and C81-1985, is denied.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 4th day of February, 1982.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Innes

L. Duane Woodard
Commissioners