

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION)
OF COLORADO-UTE ELECTRIC ASSOCIATION)
INC., P. O. BOX 1149, MONTROSE,)
COLORADO 81402, FOR A DETERMINATION)
BY THE COMMISSION THAT THE CONSTRUCTION,)
OPERATION, MAINTENANCE AND)
TESTING OF AN ATMOSPHERIC FLUIDIZED)
BED COMBUSTION PROJECT AT ITS)
EXISTING NUCLA STATION, DURING THE)
CONSTRUCTION AND TESTING PERIODS,)
IS A RESEARCH AND DEVELOPMENT)
PROJECT THAT DOES NOT REQUIRE A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY OR, IN THE ALTERNATIVE)
FOR A DETERMINATION THAT SUCH)
FACILITIES ARE REQUIRED FOR THE)
PUBLIC CONVENIENCE AND NECESSITY AND)
THAT A CERTIFICATE BE ISSUED)
THEREFOR.)

APPLICATION NO. 35403
ORDER OF THE COMMISSION
GRANTING APPLICATION
IN PART
SUBJECT TO CONDITIONS

March 17, 1983

S T A T E M E N T

BY THE COMMISSION:

On February 9, 1983, Colorado-Ute Electric Association, Inc. (Colorado-Ute) filed Application No. 35403 wherein it seeks a Commission determination that its participating with the Electric Power Research Institute (EPRI) in a research and development project at the existing Nucla Station for the purpose of researching the commercial application of atmospheric fluidized bed combustion ("Fluidized Bed") technology to the electric power industry does not require a Certificate of Public Convenience and Necessity, or, in the alternative, for a determination that such facilities are required for the public convenience and necessity, and that a certificate be issued therefor.

Notice of the within application was sent to interested persons, firms and corporations, including, inter alia, organizations, county planning directors, and an extensive list of print, radio and television media. Said notice of the within application was given by the Executive Secretary of the Commission on February 17, 1983. By direction of the Commission, the notice of the within application provided that anyone desiring to file objection, or intervene in, or participate as a party with respect to Application No. 35403 was to file appropriate pleadings or objections no later than 5 p.m. on March 4, 1983. No objection, or petition to intervene, or protest has been filed with the Commission in connection with Application No. 35403. Accordingly, the within application may be determined and acted upon by the Commission under the modified no-hearing procedure as authorized by 40-6-109(5) and Rule 17 of the Commission's Rules of Practice and Procedure.

FINDINGS OF FACT

1. The business address of Colorado-Ute is P. O. Box 1149, Montrose, Colorado. It is a Colorado Corporation and a copy of its Articles of Incorporation, and amendments thereto are on file with the Commission.
2. Colorado-Ute has been held to be a public utility, subject to the jurisdiction of this Commission, and it is engaged in the generation, purchase, and transmission of electric power and energy for sale at wholesale to its Members who are located within the State of Colorado.
3. Colorado-Ute is a member of EPRI.
4. Colorado-Ute owns and operates the Nucla Station, located in southwestern Colorado. It is a coal-fired, steam electric station and is composed of three 12 MW units. That Station was placed in service in 1959.
5. EPRI intends to cosponsor a demonstration project for fluidized bed combustion steam generators, and to participate in the cost of the project.
6. Colorado-Ute proposes to renovate the existing Nucla Station, to install a new turbine and to install an fluidized bed boiler for research and development purposes.
7. For the first three years of operation, the renovated Nucla Station will be operated as a research and development project and Colorado-Ute will not rely on that Station to provide power and energy to its Members.
8. All expenses, associated with the renovation and installation of Nucla Station and with its three year operation, as a research and development project, would be capitalized to the research and development project, if such project is determined to be a research and development project, and would not be recovered, during that time, in the rates, charged by Colorado-Ute to its Members.
9. Colorado-Ute has the financial ability and experience necessary to construct, operate, maintain and test the Nucla Fluidized Bed Research Project.
10. Colorado-Ute has considered environmental and safety factors in connection with the location, design, construction, operation and testing of the Nucla Fluidized Bed Research Project and it will be constructed, operated and tested in a manner which will comply with all applicable federal, state and local standards, laws and regulations.
11. The public interest would be served by the construction, operation, maintenance and testing of the Nucla Fluidized Bed Project.

In early February 1983, the Commission sent two of its Fixed Utility Staff Personnel to Colorado-Ute Headquarters in Montrose, Colorado, in order to be more fully advised in connection with the proposed Colorado-Ute - EPRI project at Colorado-Ute's Nucla plant. At this time, of course, the proposed Colorado-Ute - EPRI development project, if it comes into being, would be a research and development

project and the costs with respect to the same would not be recovered from Colorado-Ute's ratepayers through rates charged by Colorado-Ute. If this proposed project as approved by EPRI turns out to be successful, there is the possibility that generated power from the renovated Nucla plant would be less costly than power generated by conventional sources.

The Commission has examined the provisions of 40-5-101(1), C.R.S. 1973, regarding new construction and extensions, which statute states:

"40-5-101. New construction - extension. (1) No public utility shall begin the construction of a new facility, plant, or system or of any extension of its facility, plant, or system without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction. Sections 40-5-101 to 40-5-104 shall not be construed to require any corporation to secure such certificate for an extension within any city and county or city or town within which it has theretofore lawfully commenced operations, or for an extension into territory, either within or without a city and county or city or town, contiguous to its facility, line, plant, or system and not theretofore served by a public utility providing the same commodity or service, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system interferes or is about to interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, after hearing, may make such order prohibiting such construction or extensions or prescribing such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable. (2) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that there is or will be a duplication of service by public utilities in any area, the commission shall, in its discretion, issue a certificate of public convenience and necessity assigning specific territories to one or to each of said utilities or by certificate of public convenience and necessity to otherwise define the conditions of rendering service and constructing extensions within said territories and shall, in its discretion, order the elimination of said duplication upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity."

The Commission does not believe that 40-5-101(1), C.R.S. 1973, by its terms or by necessary implication therefrom, exempts the requirement for the certification of a new facility, plant or system merely on the basis that such may be in a research, experimental, or developmental posture. There can be no question that the expenditure of substantial sums of money for the research and development of an atmospheric fluidized bed combustion technology in a joint venture with a research institute such as EPRI is not in the ordinary course of business of Colorado-Ute. It is reasonable to assume that in the event the Colorado General Assembly had intended a "research and development" exception to the certification requirement, it easily could have so stated just as the Colorado General Assembly did in writing in an "ordinary course of business" exception with respect to certain geographical parameters. Accordingly, the Commission believes that the provisions of 40-5-101(1), C.R.S. 1973, apply to Colorado-Ute's application herein.

As indicated above, if the Colorado-Ute - EPRI project turns out to be successful, there is the possibility that generated power would be less costly than power generated by conventional sources. There is no guarantee, of course, that the project will be successful, and the risk of success or failure lies with Colorado-Ute and EPRI in this regard. We believe it is important to condition the grant of a certificate for public convenience and necessity for research and developmental purposes only, and to require request for further certification prior to Colorado-Ute's placing a renovated Nucla plant into its rate base, if such be the case in the future. It is also necessary to place certain accounting restrictions on the grant of the certificate so as to insure that Colorado-Ute's ratepayers will not bear the cost incurred with the Nucla project by rates imposed by Colorado-Ute.

Premises considered, the Commission will deny that portion of Colorado-Ute's application wherein it seeks a Commission determination that its proposed construction, operation, maintenance and testing of an atmospheric fluidized bed combustion project at its existing Nucla station, during construction and testing periods, is a research and development project that does not require a certificate of public convenience and necessity, and grant that portion of Colorado-Ute's application which requests a determination that such facilities are required for the public convenience and necessity and that a certificate will be issued therefor and will be granted subject to the provisions of the order hereinafter.

ORDER

THE COMMISSION ORDERS THAT:

1. Application No. 35403 filed by Colorado-Ute Electric Association, Inc., on February 9, 1983 be, and hereby is, granted in accordance with the decision and order herein and, in all other respects, the same be, and hereby is denied.

2. Colorado-Ute Electric Association, Inc., in conjunction with the Electric Power Research Institute be, and hereby is, authorized to enter upon a research and development project at the existing Nucla station of Colorado-Ute Electric Association, Inc., for the purpose of researching the commercial application of an atmospheric fluidized bed combustion technology to the electric power industry and the decision and order herein shall constitute a Certificate of Public Convenience and Necessity therefor, subject to the conditions and provisions hereinafter set forth in this Order.

3. Colorado-Ute Electric Association's participation in the Nucla project, as authorized by ordering paragraph 2 herein, shall be subject to the joint participation and direction of the Electric Power Research Institute.

4. Colorado-Ute Electric Association, Inc., shall capitalize all expenses associated with the renovation and installation of its Nucla station and all expenses associated with the three year operation as a research and development project, and no such expenses are to be recovered in connection with said project, directly or indirectly, by rates imposed by Colorado-Ute Electric Association with regard to electric service provided for its members and other ratepayers.

5. Colorado-Ute Electric Association, Inc., shall capitalize interest on the Nucla station costs during the construction period only, said capitalized interest costs shall be charged to research and

development and disposition of said capitalized interest costs will be determined at the time Colorado-Ute requests permission to place the renovated Nucla station into rate base, if such be the case.

6. Colorado-Ute Electric Association, Inc., shall contact the Staff of the Commission to establish which accounts within the Rural Electrification Administration Uniform System of Accounts should be used with respect to this project.

7. On or before March 31 of each year, Colorado-Ute Electric Association, Inc., shall advise the Commission in writing as to the progress of the Nucla project and as to the expenditures of funds by it and the Electric Power Research Institute with respect thereto.

8. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 17th day of March, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Innes

Anders Schmitt
Commissioners