

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE RULES OF THE)	CASE NO. 5321
PUBLIC UTILITIES COMMISSION OF THE)	
STATE OF COLORADO REGULATING THE)	ORDER OF THE COMMISSION
SERVICE OF GAS UTILITIES)	ADMINISTRATIVELY AMENDING
WITHIN THE STATE OF COLORADO:)	DECISION NO. C83-1734
RULE 13 RELATING TO DISCONTINUANCE)	NUNC PRO TUNC
OF SERVICE.)	

November 21, 1983

STATEMENT AND FINDINGS

BY THE COMMISSION

On September 27, 1983, the Commission entered Decision No. C83-1508 adopting a revision of Rule 13 relating to the discontinuance of gas utilities. Decision No. C83-1508 provided that the decision would become effective thirty days from September 27, 1983, that is, on October 28, 1983, unless stayed or postponed according to law.

Subsequent to September 27, 1983, applications for rehearing, reargument or reconsideration were filed by Rocky Mountain Natural Gas Company, Public Service Company of Colorado and Ralph Behr and Kou Yang. These applications were denied on October 25, 1983 by Decision No. C83-1664. Accordingly, Decision No. C83-1508 became final on October 27, 1983.

Before new or revised rules can be put into effect, it is also necessary to comply with certain additional statutory requirements such as submission of the rules adopted by a commission or agency to the Attorney General for his opinion as to the constitutionality and legality of the same. This must be done within ten days of the effective date of the adoption of the rules. In addition, it is necessary to have the rules published by the Secretary of State in the Rules Register. CRS 1973, 24-4-103(5) and (11) provide that the rules become effective twenty days after the Secretary of State's publication of the rules, as finally adopted or on such later date as is stated in the rules themselves.

Inasmuch as the Commission's adoption of the revised Rule 13 relating to the discontinuance of gas service became final on October 27, 1983, the Commission was required to submit the same to the Attorney General on or before November 7, 1983. (On October 27, 1983, the Commission's companion Decision No. C83-1507 relating to the discontinuance of service by electric utilities also became final. The revised electric Rule 13 was submitted to the Attorney General on October 27, 1983 and an affirmative opinion as to its constitutionality and legality was obtained from the Attorney General on November 4, 1983.) Although it intended to do so at the same time it submitted the revised electric Rule 13 to the Attorney General, by administrative inadvertence the Commission did not simultaneously request a ruling from the Attorney General as to the constitutionality and legality of revised gas Rule 13. CRS 1973, 24-4-103 (11)(d) states, in part:

Each rule adopted on or after September 1, 1977, together with the attorney general's opinion rendered in connection therewith, shall be filed pursuant to subsection (12) of this section within ten days thereafter [which is the effective date of the order thereafter having been construed as being the date of final adoption of the rule] with the secretary of state for publication in the Colorado register.

Since this procedural step was not complied with, it was technically necessary for the Commission to administratively readopt the same revised gas Rule 13 as it did pursuant to Decision No. C83-1508, in order to start the "ten-day clock" running again. This was necessary in order to obtain an opinion as to constitutionality and legality from the Attorney General and in order to file with the Secretary of State the revised Rule 13, together with the Attorney General opinion thereon, within the statutory ten days.

On November 18, 1983, the Attorney General gave his affirmative opinion with respect to the constitutionality and legality of the rule.

The Attorney General has advised that CRS 24-4-103(4) 1982, Repl. Vol.(10) requires the agency to incorporate by reference in the rule a concise written statement of its basis and purpose. This can be accomplished either by stating the basis and purpose in the rule itself, or by setting forth in the decision adopting the rule, a concise statement of the basis and purpose and the publication of the decision along with the rule. In order to accomplish the requirements set forth in the preceding paragraph, the Commission will amend its Decision No. C83-1508, dated September 27, 1983, in order to state that the basis and purpose of Gas Rule 13 is to set forth the requirements to be observed by a gas utility prior to a discontinuance of gas service.

The Commission shall request the Secretary of State to publish the instant decision, which sets forth the basis and purpose of Gas Rule 13, along with Gas Rule 13 itself.

An appropriate Order will be entered.

ORDER

1. Decision No. C83-1734, adopting a revision of Rule 13 related to the discontinuance of gas service, is amended, nunc pro tunc as of November 10, 1983, so as to set forth therein the following basis and purpose of Gas Rule 13:

The basis and purpose of Gas Rule 13 is to set forth the requirements to be observed by a utility prior to a discontinuance of gas service.

DONE IN OPEN MEETING the 21st day of November, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Muse

Commissioners

COMMISSIONER ANDRA SCHMIDT CONCURS
IN PART AND DISSENTS IN PART.

COMMISSIONER ANDRA SCHMIDT CONCURRING IN PART AND DISSENTING IN PART

I generally concur with the decision reached by the majority in this matter. However, I dissent on the issue of no interest for deferred payments for the reasons set forth in Decision No. C83-150E, entered on September 27, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Andra Schmidt
Commissioner

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