

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE RULES OF)
THE PUBLIC UTILITIES COMMISSION)
OF THE STATE OF COLORADO REGULATING)
THE SERVICE OF GAS UTILITIES WITHIN)
THE STATE OF COLORADO: RULE 18)
RELATING TO CONSTRUCTION REQUIRE-)
MENT.)

CASE NO. 5321

COMMISSION ORDER ADOPTING
AND REISSUING RECOMMENDED
DECISION NO. R84-943-I

May 14, 1985

STATEMENT AND FINDINGS

BY THE COMMISSION:

On June 12, 1984, the Commission issued Decision No. C84-656, reopening Case No. 5321, and notice of proposed rulemaking with respect to Rule 18.

The notice issued in this matter by the Public Utilities Commission states that Rule 18, PUC Gas Rule, presently has included only the first 14 amendments to Part 192, Code of Federal Regulations. The United States Department of Transportation has issued a current Part 192, Code 49 CFR 178.0, which now includes 48 amendments. As a condition of certification of the Colorado Public Utilities Commission as federal agent for the Federal Pipeline Safety Program, Colorado is required to adopt and use all the above amendments. The proposed revised rule was issued to adopt and incorporate the above current amendments. The Commission concluded that it should reopen Case No. 5321 for the purpose of amending Rule 18 of the Rules Regulating the Service of Gas Utilities before the Public Utilities Commission by the amendments to Rule 18 as proposed.

On May 22, 1984, the Commission submitted proposed Rule 18 to the Office of Regulatory Reform as required by § 24-4-103.5, C.R.S.

A Petition for Leave to Intervene was filed by Public Service Company of Colorado on June 27, 1984, and the petition was granted on July 9, 1984, by Executive Ruling No. 84-207. A Petition for Leave to Intervene was filed on July 5, 1984, by the City of Colorado Springs and was granted on July 9, 1984, by Executive Ruling No. 84-203. Suggested modifications of the proposed revision were submitted on July 12, 1984, by Gas Utility Consulting Engineers of Colorado Springs, Colorado.

Hearing was held on August 1, 1984, before Hearings Examiner John B. Stuelpnagel. No exhibits were marked for identification or admitted into evidence. At the conclusion of the hearing, the subject matter was taken under advisement.

On August 31, 1984, Hearings Examiner John B. Stuelpnagel issued Recommended Decision No. R84-943-I, where it was recommended that Rule 18 be amended to adopt current Part 192, Code 49, CFR 178.0, so as to include the 46 new amendments thereto, excluding the first 14 amendments, which are presently contained in Rule 18. Also, that Amendments 47 and 48, separately issued be, incorporated into such rule.

No exceptions were filed to Recommended Decision No. R84-943-I, therefore such recommended decision became the decision of the Commission by operation of law on September 21, 1984. In order to effectuate amended Rule 18 as established by Recommended Decision No. R84-943-I, it was necessary that the Executive Secretary of the Commission obtain an opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of proposed Rule 18, and that such proposed rule and Attorney General's opinion, be filed with the Office of the Secretary of State and published in the Rules Register of the Secretary of State. However, it has recently come to the attention of the Commission that the foregoing procedural steps necessary to effectuate Rule 18 were not complied with. Accordingly, the Commission will readopt Recommended Decision No. R84-943-I as its own, and will reissue such Recommended Decision on this date, but will not issue or adopt amended Rule 18 until this decision and order become effective, which will be 30 days from the date that this decision is physically issued. The Commission will also provide the opportunity for any parties to file petitions for rehearing, reargument, or reconsideration of this decision.

When Rule 18 is finally adopted, which date will be no sooner than 30 days from the date of the issuance of this decision, the Commission will order the Executive Secretary to submit the Rule to the appropriate committee of reference of the Colorado General Assembly, or the committee on legal services, for its opinion as to whether Rule 18 conforms with § 24-4-103(8)(a), C.R.S. The Commission will also order the Executive Secretary to request an opinion of the Attorney General regarding the constitutionality and legality of Rule 18, and to file the rule with the Office of the Secretary of State and a copy of the Attorney General's opinion, when obtained. The Commission will also require the Executive Secretary to publish Rule 18 in accordance with § 24-4-103(11)(k), C.R.S. The Commission also notes that both Rule 18 together with proposed statement of basis, specific statutory authority and purpose was made available to any person at least five days prior to scheduled hearing. No proposed fiscal impact statement was made available with the proposed Rule 18 because it will not have a financial impact.

The incorporated change in proposed final Rule 18 is set forth in Recommended Decision No. R84-945-I and therefore has been available to the parties since August 31, 1984. Any party to this proceeding may submit written comments with regard to the Rule as recommended by Recommended Decision No. R84-943-I, and as set forth in this decision and such written comments shall be considered by the Commission at the time of consideration of any petitions for rehearing, reargument, or reconsideration, or if none is filed, then by themselves.

THEREFORE THE COMMISSION ORDERS THAT:

1. Recommended Decision No. R84-943-I, including the statement of the case, findings of fact, and conclusions thereon, and Ordering Paragraph Nos. 1, 2, 3, 4, 5, and 6 are adopted by the Commission as its own without modification.

2. Any parties to this proceeding may submit written comments regarding proposed Gas Rule 18, within the time period authorized for the filing of the petitions for rehearing, reargument, or reconsideration of this Decision. The Commission shall, in its decision on any petition for rehearing, reargument, or reconsideration consider any comments received. If no petitions for rehearing, reargument, or reconsideration are filed, the Commission shall consider such comments by themselves, and will issue a decision thereon.

3. Recommended Decision No. R84-943-I, as above adopted by the Commission, is reissued on the date of this Order, as the Decision and Order of the Commission in Case No. 5321. However, proposed amended gas Rule 18 is neither issued nor adopted by this decision, until this decision is effective. This Order shall be effective 30 days from May 14, 1985 which will be June 13, 1985. Accordingly, amended and proposed Rule 18 shall not be issued or adopted any sooner than June 13, 1985.

DONE IN OPEN MEETING the 14th day of May, 1985.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller
Arthur Schmidt
Ronald L. Lehr
Commissioners

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