

(Decision No. C86-1259)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE REMAND OF HOME)
BUILDERS ASSOCIATION OF METROPOLITAN)
DENVER v. PUBLIC UTILITIES)
COMMISSION OF THE STATE OF)
COLORADO AND PUBLIC SERVICE COMPANY)
OF COLORADO: CIVIL ACTION)
NO. 82CV1747, DIVISION 9,)
DENVER DISTRICT COURT, CITY AND)
COUNTY OF DENVER, DENVER,)
COLORADO.)

APPLICATION 32602-Reopened

PROCEDURAL ORDER OF
THE COMMISSION REOPENING
APPLICATION NO. 32602
TO COMPLY WITH REMAND
ORDER OF THE DENVER
DISTRICT COURT

September 24, 1986

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

The Commission is reopening the docket in Application No. 32602 to implement the order of the Denver District Court in the case of Home Builders Association of Metropolitan Denver (HBA) v. Public Utilities Commission of the State of Colorado and the Public Service Company of Colorado (Public Service or Company) which was entered on September 9, 1986. The background of this matter is as follows:

On February 28, 1980, Public Service filed Application No. 32602 seeking to make substantial and significant changes in its electric extension policy, particularly in the amounts customers would be required to advance or deposit for the construction of electric distribution facilities, service laterals, and street lights. The advances are commonly known as "customer advances in aid of construction." The other parties to the proceeding, in addition to Public Service, were the Cities of Lakewood and Arvada (Cities), Colorado Energy Advocacy Office (CEAO) and the Colorado Office of Consumer Services (COCS). The Staff of the Commission also appeared.

Hearings were conducted before Examiner Loyal Trumbull and were completed on September 12, 1980. Testimonies of various witnesses were presented, and 24 exhibits were offered and admitted into evidence. Thereafter, statements of position were filed by various parties, including HBA and the Cities.

On December 22, 1980, the Examiner issued his Recommended Decision No. R80-2380, recommending that Application No. 32602 be denied. There Examiner Trumbull made extensive findings of fact and conclusion of law, and found that the Public Service had failed to present sufficient evidence to support the proposed changes in its electric extension policies. Further, his recommended decision contained findings of fact and conclusions of law to the effect that the existing electric extension policies of Public Service were just and reasonable.

Public Service and COCS filed exceptions to the recommended decision of Examiner Trumbull. The Cities and HBA responded to these exceptions. On April 21, 1981, the Commission set forth a different methodology based upon embedded gross distribution investment for determining electric extension customer advances, which it described as "general extension policy parameters." The Commission then remanded Application No. 32602 to the Examiner for the limited purpose of taking evidence to implement these "policy parameters."

On May 5, 1981, HBA and the Cities filed a joint motion requesting an extension of time for filing applications for rehearing, reargument, or reconsideration of Commission Decision No. C81-752. On May 8, 1981, Public Service filed its response to the joint motion for extension of time, stating that Decision No. C81-752 was not subject to an application for rehearing, reargument, or reconsideration under § 40-6-114(1), C.R.S.

Further hearings were held on July 22, 1981, before Examiner Trumbull for the sole purpose of taking evidence on the then current embedded costs of Public Service's distribution plant.

On September 29, 1981, Examiner Trumbull issued Recommended Decision No. R81-1650 as his recommended decision upon remand under Commission Decision No. C81-752. The recommended decision purported to comply with the Commission's mandate regarding the "general extension policy parameters."

On October 29, 1981, the Cities and HBA filed exceptions to Recommended Decision No. R81-1650 on remand, and on November 13, 1981, CEAO and COCS filed a joint reply to the exceptions of HBA and the Cities. On November 19, 1981, Public Service filed its response to the exceptions previously filed by the other parties.

On December 1, 1981, the Commission issued its Decision No. C81-1985 granting the exceptions in part and denying the exceptions in part. The decision further ordered Public Service to file implementing tariffs within ten days and was effective forthwith.

On December 14, 1981, the HBA moved for an extension of time within which to file an application for reconsideration. On December 17, 1981, the Cities also filed motions for extension of time within which to seek reconsideration. Both motions were granted and the time for filing petitions for reconsideration was extended to December 31, 1981.

On December 31, 1981, the HBA timely filed its application for rehearing, reargument, and reconsideration. On the same date HBA filed a motion for leave to file a brief in support of its petition for rehearing, reargument, and reconsideration. That motion was granted by the Commission on January 5, 1982, in its Decision No. C82-16.

On January 15, 1982, HBA timely filed its brief in support of petition for rehearing, reargument, and reconsideration. On February 4, 1982, the Commission in its Decision No. C82-178 denied HBA's petition for rehearing, reargument, and reconsideration.

On March 5, 1982, HBA timely filed its petition in the nature of a writ for certiorari or review and complaint. On the same date, the Denver District Court issued its order for issuance of writ in the nature of certiorari or review and for issuance of a citation to show cause. The order also required Respondents to certify the record of the Commission proceedings by April 2, 1982. By stipulation of the parties, the date for filing the record of the proceedings in Application No. 32602 was extended to May 3, 1982, and then to May 27, 1982. The record was filed on May 27, 1982.

Following the briefing schedule, oral argument before the District Court was held on April 25, 1983. On February 1, 1984, Judge Harold Reed of the Denver District Court ruled that Commission Decisions No. C81-752 and No. C82-178 were null and void and were thereby set aside, and that Advice Letter No. 842-Electric and the accompanying tariff sheets filed December 4, 1981, in accordance with said decisions were therefore null and void.

On February 16, 1984, Public Service and the Commission filed a joint motion to alter or amend a judgment under Rule 59(e), C.R.C.P., and request for oral argument. The motion was denied by the Denver District Court on April 18, 1984.

Notice of intent to seek appellate review was filed by Public Service and the Commission with the Denver District Court on May 17, 1984.

On June 2, 1986, the Colorado Supreme Court entered its decision affirming the decision of the Denver District Court. The Commission and Public Service filed timely petitions for rehearing which were denied, with two justices voting on June 23, 1986, to grant rehearing.

On September 9, 1986, the Denver District Court in Civil Action No. 82CV1747 issued the following order:

1. The Home Builders of Metropolitan Denver ("HBA") is entitled to its reasonable interim attorneys' fees to date in connection with the prosecution of this action (including appeal to the Colorado Supreme Court) in the amount of \$16,777, plus costs to date of \$325.50, to be paid by Public Service Company of Colorado to the HBA. Public Service

Company of Colorado shall deduct these fees and costs pro rata from each refund to be made to electric distribution customers at such time as refunds are made in accordance with paragraphs 2 and 3 of this Order.

2. It is hereby ORDERED that Public Service Company of Colorado promptly refund all monies which have been improperly collected by Public Service Company for electric distribution facilities to those companies, persons and municipalities who paid such monies to Public Service Company of Colorado during the period December 4, 1981 to April 30, 1986 for the construction of electric distribution facilities.

3. It is further ORDERED that the Public Utilities Commission and its Commissioners are to promptly institute an appropriate proceeding for such refund, with interest on such refund if so determined by the Commission, in such manner and through such methods of distribution as the Public Utilities Commission may prescribe in compliance with C.R.S. § 40-6-116(5).

4. It is further ORDERED that this Court shall retain jurisdiction of this matter and jurisdiction over the parties until the refund proceeding ordered herein shall have been finally determined and concluded.

As indicated above, and in compliance with paragraph 3 of the order of the Denver District Court entered on September 9, 1986, the Commission is reopening the docket in Application No. 32602 to determine the amount and manner of refund to be made by Public Service in compliance with ordering paragraph 2 in the order of the Denver District Court entered on September 9, 1986. Public Service should propose a refund plan to the Commission plan will be subject to comment by HBA and the other parties in Application No. 32602. The Commission will make the final determination as to the amount and manner of the refund by further order. At this time, the Commission will leave open the question of whether or not further oral hearings should be held on the refund plan to be implemented.

THEREFORE THE COMMISSION ORDERS THAT:

1. Application No. 32602 is reopened to comply with the order of the Denver District Court, issued on September 9, 1986, set forth in the Statements and Findings of Fact, above in the case of Home Builders Association of Metropolitan Denver v. Public Utilities Commission of the State of Colorado and Public Service Company of Colorado, Civil Action No. 82CV1747.

2. Within 60 days of the effective date of this Order, Public Service Company of Colorado shall submit to the Commission a proposed refund plan to comply with the order of the Denver District Court.

3. Within 30 days after the submission of the refund plan by Public Service Company of Colorado to the Commission, Home Builders Association of Metropolitan Denver and other interested parties in Application No. 32602 may, at their option, submit to the Commission any response to the refund plan filed by Public Service Company of Colorado.

4. Further procedural orders will be entered in this Docket from time to time as may be necessary.

This Order is effective forthwith.

DONE IN OPEN MEETING the 24th day of September 1986.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller
Rudolf Schmitt
Commissioners

CHAIRMAN RONALD L. LEHR ABSENT