

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: WATER SERVICES FURNISHED BY	)	DOCKET NO. 89C-194W
RESPONDENT CASCADE PUBLIC SERVICE	)	
COMPANY, P.O. BOX 57, CASCADE,	)	RECOMMENDED DECISION OF
COLORADO 80909.	)	ADMINISTRATIVE LAW JUDGE
	)	KEN F. KIRKPATRICK

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December 11, 1990
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STATEMENT

On September 26, 1990, the law firm of Geddes and MacDougall, P.C. (Firm) filed a pleading entitled "Petition and Request to be Party-Intervenor and Request for Award of Attorneys' Fees." The thrust of this pleading is a request by the Firm for an award of attorneys' fees and costs in the amount of \$8,514.85 in connection with its representation of Deborah Crane and the Cascade Homeowners Association (Association), Intervenor in this proceeding.

By Decision No. R90-1500-I, November 14, 1990, the Firm was ordered to submit affidavits from all attorneys for whom compensation was sought. On November 20, 1990, a supplemental affidavit was filed by M. E. MacDougall of the Firm.

Cascade Public Service Company (Cascade) has not responded either to the petition or the supplemental affidavit filed on behalf of the Firm.

The undersigned has reviewed the affidavits filed in connection with the request for attorneys' fees. The undersigned now transmits to the Commission a written recommended decision containing findings, conclusions, and a recommended order.

FINDINGS OF FACT

1. The Firm represented two Intervenor throughout a substantial portion of this proceeding, namely, Association and Crane. The purpose of the proceeding was to examine Cascade's distribution system, its method of providing water, and the appropriateness of constructing a treatment facility as opposed to obtaining treated water from another source.

2. In addition to Association and Crane, there were two other parties to the proceeding. These were the Respondent Cascade and the Staff of the Commission. Staff presented one witness who gave a general overview of the proceeding; introduced two exhibits which were pleadings in prior cases concerning Cascade; and recommended that Cascade buy water from the City of Colorado Springs. Cascade offered no witnesses or exhibits.

3. The Firm, in its representation of Association and Crane, offered and elicited testimony from the following witnesses: the Program Manager for Drinking Water from the Colorado Department of Health; the Superintendent of Water Resources and Planning for the City of Colorado Springs; the Supervisor of Rates and Revenues for the City of Colorado Springs Utility Department; four ratepayers of Cascade (three residential and one commercial); and an expert engineering analyst. These witnesses identified and supported 13 of the 16 exhibits admitted into evidence.

Firm, on behalf of Association and Crane, was responsible for establishing the current state of water quality provided by Cascade; the public health effect of failure to filter water; the feasibility of connection with the City of Colorado Springs treatment plant; the estimated rates and charges for connecting to the City of Colorado Springs Ute Pass Treatment Plant; and the terms and conditions under which the City of Colorado Springs would be willing to enter into an agreement for the provision of water with Cascade.

4. Firm, on behalf of Association and Crane, also filed a posthearing statement of position.

5. The positions advocated by Firm, on behalf of Association and Crane, were substantially incorporated into the recommended decision resulting from this proceeding, Decision No. R90-71, January 19, 1990. That decision ordered Cascade to enter into an agreement with the City of Colorado Springs for the provision of filtered water.

6. Firm seeks an award of \$8,514.85 which includes \$6,865 in fees for legal services and \$1,649.85 for disbursements (costs and expenses). At the time legal services were rendered Firm's billing rates ranged from \$70 per hour to \$120 per hour. The amount of fees and costs sought are reasonable.

DISCUSSION

The Commission has on recent occasion discussed its authority to award attorneys' fees or costs and the analysis related to such an award. See Decision No. C90-1049, August 14, 1990. There the Commission reiterated that its standard for determining a fee or cost award as approved in the case of Mountain States Telephone and Telegraph Company v. Public Utilities Commission, 195 Colo. 130, 576 P.2d 544 (1978) is as follows:

- (1) The representation and expenses incurred relate to general consumer interest as

opposed to the interest of an individual or class of consumer;

(2) The testimony, evidence, and exhibits provided materially assisted the Commission in reaching its decision; and

(3) The fees and costs incurred are reasonable.

The Commission noted that it had also utilized a more stringent standard when it was concerned that the ultimate payment of the fees would be the responsibility of the ratepayers. See Colorado-Ute Electric Association v. Public Utilities Commission, 602 P.2d 61 (1979). That decision imposed two additional standards. The first was that the services performed be exceptional and the second was that they materially contributed to the decision of the Commission rather than materially assisted the Commission in reaching its decision.

The first criterion has been satisfied. While the Association and Crane are not the only ratepayers of Cascade, the efforts of these individuals in bringing the action have conferred a benefit upon all ratepayers of Cascade, namely, the availability of filtered water. The issue of filtered versus non-filtered water and the manner of obtaining it was the crux of this proceeding and it affected all customers of Cascade.

The second criteria has been established, even under the more stringent standard contained in Colorado-Ute, supra. The testimony, evidence, and exhibits provided by Firm, on behalf of Association and Crane, materially contributed to the decision which ordered hook-up to the City of Colorado Springs. The legal services performed were exceptional in all regards, including but not limited to producing appropriate witnesses, conducting relevant direct and redirect examination, offering probative exhibits (including the single most important exhibit, the contract to be entered into between Cascade and the City of Colorado Springs), and filing the posthearing statement of position in support of Intervenor. Without the evidence presented by Firm on behalf of Crane and Association there would have been no basis for the Commission to enter an order that Cascade enter into an agreement with the City of Colorado Springs for the provision of drinking water from the Ute Pass Treatment Facility.

The third criterion has been established. The fees and costs incurred, as set forth in the supplemental pleadings and affidavits, are reasonable.

In connection with the first criteria, the Commission in previous cases has made an adjustment in the amount of attorneys' fees awarded to reflect that an award should only be for representation of public interest. As the Commission stated in Decision No. C90-1049:

However, if there is a blend of representation of both public and private interest, it has been the

policy of this Commission to award fees only to the extent that the proceeding has benefited the public interest. In most cases it is difficult to determine the exact proportion of public versus private benefit. This difficulty is present in this case. In the absence of a more refined method of proportionalizing the public/private representation, the Commission hereby concludes that Flynn's actions in this case have equally benefitted the public and private interest. Accordingly, the attorneys' fees and costs incurred by Flynn will be reduced by 50 percent.

Firm's representation of Crane and Association is a blend of both private and public interest. This is apparent from the evidence in this proceeding which established that not all ratepayers supported the position advocated by Crane and Association. Following the Commission's lead in Decision No. C90-1049, the undersigned concludes that Firm's representation on behalf of Crane and Association equally benefitted the public and private interest. Accordingly, the attorneys' fees and costs awarded will be reduced by 50 percent.

CONCLUSIONS

1. The law firm of Geddes and MacDougall, P.C., on behalf of Crane and Association, represented general consumer interests; did so in a manner that was exceptional in nature and materially contributed to the decision of the Commission; and charged fees and kept expenses to a level that was reasonable.

2. Firm's representation of Crane and Association was a blend of both public and private interests, in equal parts. Therefore any award of attorneys' fees and costs should be reduced by 50 percent.

3. The law firm of Geddes and MacDougall, P.C., should be awarded attorneys' fees and costs in the amount of \$4,257.43.

3. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. The request for attorneys' fees and costs filed by the law firm of Geddes and MacDougall, P.C., Colorado Springs, Colorado, on September 26, 1990, is granted in part. Cascade Public Service Company shall remit the sum of \$4,257.43 to the law firm of Geddes and MacDougall, P.C., Colorado Springs, Colorado, within 30 days of the effective date of this Order.

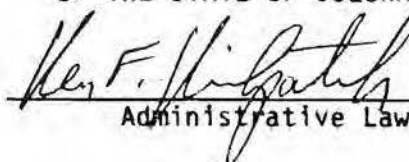
2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.
- b. IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE ADMINISTRATIVE LAW JUDGE AND THE PARTIES CANNOT CHALLENGE THESE FACTS. THIS WILL LIMIT WHAT THE COMMISSION CAN REVIEW IF EXCEPTIONS ARE FILED.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

KFK:srs:3118J