

(Decision No. R91-810-I)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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THE INVESTIGATION AND SUSPENSION OF)
TARIFF SHEETS FILED BY PUBLIC)
SERVICE COMPANY OF COLORADO WITH)
ADVICE LETTER NO. 453-GAS AND ADVICE)
LETTER NO. 1133-ELECTRIC.)

DOCKET NO. 91S-091EG

THE COLORADO OFFICE OF CONSUMER)
COUNSEL,)

DOCKET NO. 90F-226E

Complainant,)

v.)

INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
JOHN B. STUELPNAGEL

PUBLIC SERVICE COMPANY OF COLORADO,)

Respondent.)

June 17, 1991

STATEMENT

By Decision No. R91-155, issued February 11, 1991, certain procedural directives were issued regarding the above captioned matters. Further procedural directives were set forth on April 3, 1991, by Decision No. R91-421-I. Subsequent motions filed by parties to these consolidated proceedings shall be addressed and ruled upon in this decision and order.

On May 7, 1991, Public Service Company of Colorado filed a Motion to Strike Certain Testimony of Ronald J. Binz and David J. Effron. On May 16, 1991, the Colorado Office of Consumer Counsel (OCC) filed a Response to the Motion of Public Service Company of Colorado to Strike Certain Testimony of Ronald J. Binz and David Effron and, Alternatively, the OCC's Motion for Reconsideration. The testimony at issue and the motion filed by Respondent Public Service Company of Colorado regards effective rates of Public Service Company between the dates April 1, 1990, through November 26, 1990. On June 6, 1990, the Public Utilities Commission issued Decision No. C90-756 which granted, in part, a Motion to Dismiss filed by Public Service Company of Colorado. The Commission dismissed that portion of the OCC Complaint which sought retroactive application of Public Service Company's rates to April 1, 1990. The testimony which Public Service Company seeks to strike addresses issues which have already been dismissed from this Complaint. The Motion for Reconsideration of Commission Decision No. C90-756 cites

the case of Federal Power Commission v. Tennessee Gas Transmission Company, 371 U.S. 145, 83 Sup.Ct. 211, 9 L.Ed. 2d 199 (1962). This case does not involve a complaint attacking previously established legal rights and is therefore inapplicable. Accordingly, the Motion of Public Service Company of Colorado to Strike Certain Testimony of Ronald J. Binz and David J. Effron should be granted and the Office of Consumer Counsel's Motion for Reconsideration, filed May 16, 1991, should be denied.

On May 6, 1991, a Motion of Public Service Company of Colorado for conditional extension of time within which to file certain testimony was filed with the Commission seeking to extend the time within which to file responsive testimony on the issue of Public Service's rates from April 1, 1990, through November 26, 1990, as such response is dependent upon Commission ruling on Public Service Company's Motion to Strike. This Motion of Public Service Company of Colorado should be dismissed as moot since the testimony to be addressed has been stricken.

On May 15, 1991, a Motion for Extension of Time to File Written Testimony was filed by the Office of Energy Conservation and the same should be granted.

A Late Filed Motion of IBM Corporation to intervene as a member of multiple Intervenor was filed May 16, 1991, and this motion should be granted and this Intervenor shall take the case as it presently stands, and shall comply with the procedural directives of other Intervenor.

On May 22, 1991, a Motion of Staff to Enlarge Time Within Which to File Direct Testimony and Exhibits of Staff Witness Joe Reed was filed by Staff of the Public Utilities Commission and sufficient grounds have been stated to support a grant of that motion.

A Motion for Late Filing of Affidavits was filed by the Colorado Office of Energy Conservation and this motion should be granted.

ORDER

IT IS ORDERED THAT:

1. The Motion of Public Service Company of Colorado to Strike Certain Testimony of Ronald J. Binz and David J. Effron, filed May 6, 1991, is granted. All references in the testimony of Ronald J. Binz and David L. Effron to Public Service Company's rates from the period of April 1, 1990, through November 26, 1990, are hereby stricken.

2. The Office of Consumer Counsel's Motion for Reconsideration, filed May 16, 1991, is denied.

3. The Motion of Public Service Company of Colorado for Conditional Extension of Time Within Which to File Certain Testimony filed May 6, 1991, is denied. This motion is moot since the testimony requiring a response has been stricken.

4. The Motion for Extension of Time to File Written Testimony filed May 15, 1991, by the Office of Energy Conservation is granted. The Office of Energy Conservation is granted until May 31, 1991, within which to file its written testimony. Any testimony submitted subsequent to that shall be stricken.

5. The late filed motion of IBM Corporation to intervene as a member of multiple Intervenors is granted.

6. The Office of Consumer Counsel's Motion to File Affidavits Late is granted.

7. The Motion of Staff to Enlarge Time Within Which to File Direct Testimony and Exhibits of Staff Witness Joe Reed is granted. An extension of time is granted to and including Tuesday May 28, 1991, within which to file the direct testimony and exhibits of Mr. Joe Reed on behalf of the Staff of the Public Utilities Commission.

8. The Motion for Late Filing of Affidavits filed May 29, 1991, by the Colorado Office of Energy Conservation is granted.

9. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge