

(Decision No. C92-1217)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF COLORADO SPRINGS)
TO DELETE CERTAIN AREAS IN)
EL PASO COUNTY, COLORADO, FROM)
THE CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY OF)
MOUNTAIN VIEW ELECTRIC ASSOCIA-)
TION, INC.)

DOCKET NO. 92A-124E
ORDER GRANTING EXCEPTIONS
AND REMANDING TO
ADMINISTRATIVE LAW JUDGE

Mailed Date: September 25, 1992
Adopted Date: September 23, 1992

STATEMENT

BY THE COMMISSION:

This matter comes before us for consideration of Exceptions to Recommended Decision No. R92-910. This proceeding was initiated by an application, filed on February 20, 1992, by the City of Colorado Springs ("City"). In that application, the City requested a Commission order deleting certain territory from the certificated service area of Mountain View Electric Association ("Mountain View"). The Commission gave notice of the application on February 24, 1992, and Mountain View intervened.

Before hearing on this matter, the City moved to stay the proceedings. That motion, filed on July 2, 1992, stated that a lawsuit had been filed in the El Paso County District Court seeking declaratory and injunctive relief which would likely affect the proceedings before the Commission. In its response to the motion, Mountain View stated that it had no objection to such a stay of proceedings.

In Decision No. R92-910, the Administrative Law Judge (ALJ) ruled on the Motion for Stay. The ALJ found that it was not appropriate to proceed with the application until resolution of the District Court action. Instead of simply staying further proceedings, however, the ALJ ruled that this matter should be dismissed without prejudice. Mountain View timely filed its Exceptions to the Recommended Decision. No response has been filed. Now being duly advised in the matter, we grant the Exceptions and remand for further proceedings, at the appropriate time, consistent with this decision.

Mountain View correctly notes that neither party requested dismissal, but simply a stay of proceedings. Furthermore, the Exceptions are also correct that a dismissal may unnecessarily require the parties to institute new proceedings in the future (e.g. the refiling of the application, renoticing, and reintervention) depending upon the District Court's rulings. Not knowing how the court will rule, and in light of the parties' request for a stay, we find that dismissal, even without prejudice, is premature.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Exceptions by Intervenor Mountain View Electric Association, Inc., are granted.

2. This matter will be stayed pending further orders from the Commission or the Administrative Law Judge.

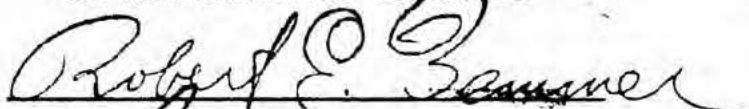
3. The parties are directed to file with the Commission quarterly status reports regarding the District Court Action.

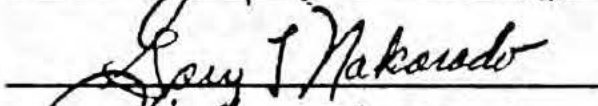
4. This matter is remanded to the Administrative Law Judge for further proceedings, when necessary, consistent with this Decision.

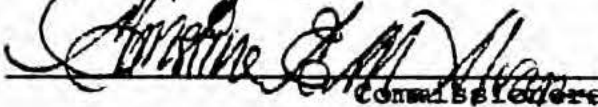
This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING September 23, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO







Commissioners

TM:srs