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(Decision No. C92-1647){PRIVATE }

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE)	
QUESTION OF RE-REGULATION OF THE)	
COOPERATIVE ELECTRICAL)	DOCKET NO. 92M-741E
ASSOCIATION, SAN MIGUEL POWER)	
ASSOCIATION, INC., ON PETITION)	

**PROCEDURAL ORDER FOR
POLLING MEMBERS AND CUSTOMERS
ON THE QUESTION OF RE-REGULATION OF
SAN MIGUEL POWER ASSOCIATION, INC.**

Mailing Date: December 31, 1992
Adopted Date: December 30, 1992

Statement of Facts and Issues

This matter came before the Colorado Public Utilities Commission ("Commission") on the petition of the San Miguel Power Association, Inc. ("SMPA") for the Commission to conduct a vote of SMPA to be "re-regulated" by the Colorado Public Utilities Commission as provided in the "Public Utilities Law", Articles 1 to 7 of Title 40 C.R.S. On November 20, 1992, in accordance with C.R.S. § 40-9.5-113, the board of directors of San Miguel Power Association, Inc. ("board") certified to the Commission that at least 5 percent of the members and consumers of SMPA signed a petition requesting election on the question for SMPA to be re-regulated by the Commission. The board certified 593 signatures, the 5 percent required. Accordingly, the Commission is

required by C.R.S. § 40-9.5-113,¹ within 45 days of notification of the petition to conduct an election on the question of re-regulation. The Commission shall thus conduct this election on or before January 4, 1992.

Currently, rate regulation of the cooperative electric association SMPA is by an eight member board of directors elected from the cooperative's constituent districts. In 1986, SMPA customers voted to exempt themselves from Commission rate regulation under "Public Utilities Law", Articles 1 to 7 of Title 40 C.R.S. However, the Commission has retained jurisdiction over safety and retained certain prerogatives in response to consumer complaints, as provided in the statutes.

Policy and Procedure Discussion

For purposes of verification of the petition, by statute, the Commission is to rely upon the board's certification of signers of the petition, that they were in fact, upon signing, members and consumers of SMPA (C.R.S. § 40-9.5-113). The board is instructed by statute to certify the petition signatories, whereby the board exercises its own discretionary powers to identify members and consumers of SMPA in the meaning of the statute.

¹ C.R.S. § 40-9.5-113 provides that any cooperative electric association may vote to be "re-regulated" by the Colorado Public Utilities Commission as provided in the "Public Utilities Law", articles 1 to 7 of this Title 40. Said question shall only be submitted to the members and consumers of a cooperative electric association if at least five percent of the members and consumers of the association sign a petition requesting such an election. Such petition shall be submitted to, and signatures certified by, the association's board of directors at a regular scheduled meeting. After the petition has been certified by the board, the public utilities commission shall conduct an election within forty-five days on the question. If a majority of the persons voting at the election vote in favor of placing their association under public utilities commission regulation, the commission shall reassert its regulation upon determination of the election results.

For purposes of determining eligibility for voting on the question of re-regulation, the Commission itself has responsibility to determine by statute who are members and consumers of SMPA (C.R.S. § 40-9.5-113). The Commission, therefore, must be careful to not defer to the board for determining voter eligibility in the re-regulation election. The Commission is resolved that election eligibility should be ascertained as near to the time of election as member-consumer status can be determined of record and is practicable for preparing the ballot list. Therefore, the Commission considers members and consumers of SMPA on December 4, 1992 entitled to vote on the re-regulation question.

Section 40-9.5-113, C.R.S., limits eligibility for voting in a "re-regulation" election to the members and consumers of a cooperative electric association. Those who are served by a cooperative electric association are identified by statute to be the member-consumers of the cooperative electric association (C.R.S. § 40-9.5-101).² A consumer who is expected to return compensation for services is a customer.³ By C.R.S. § 40-7.5-101(2), C.R.S. (1984),⁴ a customer is identified as the person⁵ responsible for payment for utility services for a premises.

² C.R.S. § 40-9.5-101. Legislative declaration. The general assembly hereby finds and declares that cooperative electric associations which are owned by the member-consumers they serve are regulated by the member-consumers themselves acting through an elected governing body. . . .

³ C.R.S. § 40-1-102. Definitions. (4) "Compensation" means any money, property, service, or thing of value charged or received, or to be charged or received, whether directly or indirectly.

⁴ Civil Remedies Available to Utilities. C.R.S. § 40-7.5-101. Definitions. As used in this article, unless the context otherwise requires: (2) "Customer" means the person responsible for payment for utility services for the premises, and such term includes employees and agents of the customer.

⁵ C.R.S. § 40-1-102(5), § 40-7.5-101(3). Definitions. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.

Parties eligible to vote on the re-regulation question

In conformity with the above outlined principles, the Commission shall apportion one vote on the question of re-regulation to a person or legal entity which was a member-consumer of SMPA on December 4, 1992, at a separate billing address. A resident, business or other legal entity receiving service from SMPA at a separate billing address will be considered a customer consumer of SMPA and be entitled to receive a ballot at that billing address. The Commission determines that the person or entity responsible for charges for services at a billing address is entitled to a vote, since they are thereby identified as the consumer at a premises for the billed services from the SMPA. This formula recognizes a separate billing address as a separate customer account.

For purposes of determining whether a party is a customer of SMPA, it is not necessary for the Commission to determine whether a customer is an individual, a corporation, a business, a landlord, a tenant, an employee, an agent,⁶ a multiple party or a duplicate party. In its vote apportionment, the Commission does not discriminate between customers but objectively awards the account vote to the chargeable party at the billing address whoever that may be.

The Commission is concerned that every, actual member-consumer of SMPA is identified for voting eligibility for this election. Therefore the following guidelines shall govern in determining consumer eligibility.

1. Renters Renters are consumers of SMPA services within the meaning of C.R.S. § 40-9.5-113. By C.R.S. § 40-7.5-101(2), a customer is the person responsible for payment

⁶ 40-7.5-101. Definitions. (2) "Customer" means the person responsible for payment for utility services for the premises, and such term includes employees and agents of the customer.

for utility services for a premises. Thus, the Commission has a reasonable basis for determining that a renter who is personally responsible for payment of utility bills is a "customer". A renter is entitled to a ballot if the monthly bill for SMPA services is sent to the owner or renter in care of the renter at the renter's address and if the renter also pays the bill.

2. Seasonal customers Only seasonal customers who were customers of record as of December 4, 1992 are entitled to a ballot. It is statutorily inappropriate for the Commission to speculate precisely that a "seasonal" customer will definitely resume connection who may have repeatedly interrupted consumption of SMPA service but has consistently resumed service.

The re-regulation question involves timing; the timing of the petition, November 20, 1992, has necessitated the timing of the re-regulation election, within 45 days of November 20, 1992. Any disadvantage to seasonally connected entities occurs from the timing of the petition. Prior and future opportunity to petition the Commission for re-regulation elections accommodates any seasonal consumer interest and mitigates their present disadvantage, except that only one petition per year may be made by the cooperative electric association (C.R.S. § 40-9.5-113). The two week period after petition certification, November 20th to December 4, 1992, is not an unreasonable period for a seasonal party to remain with the cooperative in order to qualify for voting privileges.

3. Multiple customers The Commission determines that in the meaning of C.R.S. § 40-7.5-101(2), the number of consumers corresponds directly to the number of billing addresses, and that there is one customer per billing address.

Multiple locations of service for one customer does not entitle that customer to more than the one vote awarded each customer. Meter locations are not persons and thus not in themselves billable customers.

In its understanding of the terms "member" and "customer" from the statutes, the Commission does not discriminate against a party who is personally responsible for payment of multiple billings if each is a separate account at a separate billing address. The responsible person for services cannot be divorced from the billing charges to multiple accounts at separate billing addresses.

One man, one vote (rhetoric associated with historical suffrage movements) however valid in public general elections, does not apply in this private election and with regard to multiple parties combined as but one customer of SMPA. Thus, a family or other multiple party with but one billing address is one customer.

Duplicate entries on the customer list of individuals or other legal entities for the same address are invalid and shall be stricken. If an address appears more than once on the customer list, the duplicate is invalid. In the event of controversy, parties may be requested to produce billing and other documentation of their claim that they are the billed party at the billing address.

THEREFORE THE COMMISSION ORDERS THAT:

1. Between January 4, 1993 and February 4, 1993, the Colorado Public Utilities Commission ("Commission") will poll members and consumers of San Miguel Power Association, Inc. whether the association should be "re-regulated" by the Colorado Public Utilities Commission as provided in the "Public Utilities Law", Articles 1 to 7 of Title 40.

2. On January 4, 1993, the Commission will mail a "re-regulation" ballot to each billing address of San Miguel Power Association, Inc. member-consumers who were customers of record as of December 4, 1992. The Commission will receive returned ballots by mail between January 4, 1993 and 5 p.m February 4, 1993 at 1580 Logan Street, Office Level 2, Room 201, Denver, Colorado 80203.

3. The question on the re-regulation ballot shall read: "Shall the San Miguel Power Association be placed under the regulation of the Public Utilities Commission of the State of Colorado?" Voters are to mark a "Yes" or a "No" on the ballot to indicate their choice and return the ballot to the Commission in the self-addressed envelope.

4. The Commission appoints Commission Staff Assistant Joyce Reed to be Election Judge to receive, validate and count returned ballots. The Commission appoints Commission Executive Secretary Bruce N. Smith to preside over opening and counting the ballots on February 11, 1993 at 1 p.m. at the San Miguel Power Association, Inc. board room, 1050 Main Street, Nucla, Colorado.

5. Persons who think they should have received a ballot but have not received one by January 11, 1993 are encouraged to contact Election Judge Joyce Reed at 1580 Logan Street, Office Level 2, Room 201, Denver, Colorado 80203 or by phone at 1-800-888-0170, extension 319 or 303/894-2000 extension 319. In the event of controversy whether a party is entitled to have received a ballot, Ms. Reed may request from the alienated party a copy of billing and other documents which would indicate that the party should have received a ballot at their billing address by virtue of being a member-consumer of SMPA on December 4, 1992. Upon receiving billing and other documentation which would seem to indicate that the alienated party should have

received a ballot, Ms. Reed shall consult with the board of directors of San Miguel Power Association, Inc. ("SMPA") for reasons that a party's name does not and should not appear on the ballot list. Consequently, the Election Judge may enter an alienated party's billing name and address on the customer list and issue them a ballot, subject to review of the Commission at certification of the vote.

6. The Commission will certify the election count in Open Meeting in February 1993. In order to preserve its integrity in certifying the results of the vote, the Commission may, at its discretion, require a party to show proof of service on December 4, 1992 as a member-customer of SMPA at a certain billing address.

7. If a majority of the persons voting at the re-regulation election vote in favor of placing their association under Colorado Public Utilities Commission regulation, the commission shall reassert its regulation upon determination of the election results (C.R.S. § 40-9.5-113).

8. The Commission adopts the foregoing policies and procedures as part of this order.

This order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING December 30, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners