(Decision No. R92-38)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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EARL LEONARD BOLAND, et al., Complainants, v. SAN MIGUEL POWER ASSOCIATION, INC., Respondent.	DOCKET NO. 91F-056E
JEROME L. SHAIN, et al., Complainants, v. SAN MIGUEL POWER ASSOCIATION, INC., Respondent.	DOCKET NO. 91F-231E RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE KEN F. KIRKPATRICK

Mailed Date: January 14, 1992

Appearances: Jerome L. Shain, Ridgway, CO, pro se;

Earl L. Boland, Golden, CO, pro se;

Neil L. Tillquist, Assistant Attorney General, Denver, CO., for the Office of Consumer Counsel;

Richard P. Tisdel, Esq., Ouray, CO., for San Miguel Power Association, Inc.

STATEMENT

These two dockets are formal complaint cases filed against San Miguel Power Association, Inc. (San Miguel). Docket No. 91F-056E (Boland Complaint) was filed on January 17, 1991. The complaint alleges that a rate increase, effective January 10, 1991, contained an unreasonably high rate increase for the customer service charge for single phase customers

compared with the increases for the other three classes of service. The complaint sought reduction in the customer service charge for single phase customers. The Commission issued its Order to Satisfy on January 31, 1991. San Miguel filed its Answer on February 21, 1991, generally denying any unreasonableness and raising certain affirmative defenses.

Docket No. 91F-231E (Shain Complaint) was filed on March 15, 991. The Shain Complaint objected to the January 10, 1991, increase, as well as an August 29, 1989, increase in the customer service charge for single phase customers from $2.39 per month to $8.00 per month. The Commission issued its Order to Satisfy or Answer on March 18, 1991. The Office of Consumer Counsel (OCC) filed its Intervention in this proceeding on April 5, 1991. San Miguel filed its Answer on April 8, 1991, generally denying any unreasonableness in the increases and setting forth certain affirmative defenses.

By order and notice of March 20, 1991, the Boland Complaint was set for a hearing to be held on April 22, 1991, at 9:00 a.m. in a Commission hearing room in Denver, Colorado. By Decision No. R91-496-I, May 3, 1991, the Boland Complaint and the Shain Complaint were consolidated. Also, the hearing date of April 22, 1991, was vacated and rescheduled for June 19, 1991, at 9:00 a.m. in Ouray, Colorado. At the request of the OCC, that hearing was vacated and rescheduled for October 8, 1991, at 9:00 a.m., in Ouray, Colorado.

At the assigned place and time the undersigned called the matter for hearing. As a preliminary matter Complainant Shain and Complainant Boland were designated as Lead Complainants with the understanding that they would be allowed to conduct examination and cross-examination in lieu of all complainants. In addition, it was announced that public comment by non-parties would be permitted.

The matter then proceeded to hearing. The Complainants and Intervenor OCC completed their case-in-chief and public comment was received. San Miguel started but was unable to conclude its case in chief. By Decision No. R91-1430-I, October 31, 1991, the matter was set for an additional day of hearing on November 19, 1991, at 9:00 a.m., in Ouray, Colorado. The hearing was completed on that day. The parties were authorized to file closing statements of position on or before December 20, 1991. Such statements of position were timely filed by the OCC and San Miguel.

In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and the exhibits of this proceeding, along with a written recommended decision.

FINDINGS OF FACT

1. San Miguel is a cooperative electric association serving all of San Miguel, Ouray, and San Juan Counties and parts of Montrose, Mesa, Dolores, and Hinsdale Counties. In accordance with the provisions of Article 9.5 of Title 40 of the Colorado Revised Statutes, the members

of San Miguel affirmatively voted to exempt themselves from regulation by the Public Utilities Commission. As required by § 40-9.5-109, C.R.S., the Board of Directors of San Miguel has adopted procedures for members and consumers of San Miguel to register complaints concerning the rates charged by San Miguel.

2. In June 1989, San Miguel increased its customer service charge for single phase service from $2.38 per month to $8.00 per month. On January 10, 1991, the charge was increased to $18.50 per month. These changes were implemented after at least 30 days' notice.

3. San Miguel performed a 1989 cost of service study. As part of its rate design, San Miguel utilized in part a minimum system methodology, specifically, a minimum distribution method of cost allocation. The 1989 cost of service study was the basis for the increase in the customer service charge for single phase residential service from $2.38 per month to $8.00 per month.

4. An additional cost of service study was prepared by San Miguel on November, 1990. This cost of service study also utilized a minimum system methodology.

5. San Miguel established its rates by first considering revenue requirements based on a forecasted test year or budgeted test year. The revenue requirement for 1991 was established in order to maintain a Times Interest Earned Ratio (T.I.E.R.) of 1.82. This was designed as part of an overall program of increasing San Miguel's system equity from 26% to approximately 32% over the next 20 years.

6. A TIER of 1.82 is below the median TIER of rural electric cooperatives in the State of Colorado and of the southwest region (Arizona, California, Colorado, Kansas, Nebraska, New Mexico, Nevada, Oklahoma, Texas, and Utah). San Miguel's current indicated equity of 29% is less than 14 other cooperatives in the State of Colorado and greater than 11. See Exhibit JDL-19.

7. The minimum distribution methodology utilized by San Miguel is used by at least one-fourth of all rural electric distribution cooperatives in the United States, including some in Colorado. The minimum system methodology results in a higher allocation of costs to customer service charges than do some other methodologies such as the average and excess demand (AED) methodology.

8. In the future, San Miguel will increasingly borrow funds from other than the Rural Electrification Administration (REA).

9. The OCC has presented an alternative proposal. It suggests that a TIER of 1.50, rather than 1.82, should be utilized in establishing revenue requirements. The OCC urges a lower TIER in order to act as an incentive to management to be as efficient as possible. The OCC discounts the need to raise equity levels, contending that funds available to San Miguel as a cooperative will not require increased equity levels.

10. The OCC performed a cost of service study and proposed a rate design utilizing the AED cost allocation method. The AED method creates allocation factors based on maximum system demand, customer class demand, and annual customer class load factor. This method results in low load factor customers being allocated a smaller amount for a customer service charge than they would be allocated under a minimum system demand or minimum distribution method allocation. The OCC's rate design also contains an adjustment from a pure AED method. The OCC assigns 25% of the demand component to the energy charge to mitigate the effect of a high demand charge. This is in order to create an incentive for conservation.

11. The OCC's rate design contains differences concerning the demand charge for single phase customers. San Miguel does not charge a demand charge for single phase customers with demand less than 35 kw. Nor does San Miguel have a demand charge for three phase customers with demand less than 20 kw. The OCC's rate design includes a demand charge of $10.53 per kw for single phase customers and $13.02 per kw for three phase customers.

DISCUSSION

This Commission's jurisdiction over San Miguel's rates as challenged by these complaint proceedings is found in § 40-9.5-106(2) and (3), C.R.S. Subsection (3) provides in pertinent part as follows:

> No rates, charges, rules, or regulations of a cooperative electric association shall be unjust or unreasonable. Any complaint under this subsection (3) shall be resolved by the Public Utilities Commission in accordance with the hearing and enforcement procedures established in Articles 6 and 7 of this title if the complaint alleging a violation is signed ...by not less than 25 customers or propective customers of such association.

San Miguel contends since it has been required by § 40-9.5-109, C.R.S., to adopt procedures dealing with complaints that this Commission may not assert jurisdiction under § 40-9.5-106, C.R.S., until complainants have exhausted their remedies by these complaint procedures of San Miguel. This argument, while creative, must fail. There is nothing in the statutory language that indicates that San Miguel's regulations and complaint procedures must be followed first. In addition, the language of § 40-9.5-109, C.R.S., requiring San Miguel to have its own procedures seems to envision an informal process whereby customers "register" complaints. On the other hand, § 40-9.5-106, C.R.S., specifically establishes threshhold requirements to challenge rates and indicates that complaints shall be resolved by the Commission under the formal hearing and enforcement procedures established in Articles 6 and 7 of Title 40. There is no indication whatsoever that "registering" a complaint with San Miguel is a necessary precedent to filing a formal complaint with the Commission. Further, the 25

signature requirement would indicate a desire to leave the formal procedures available but on a more limited basis than the internal procedures adopted under § 40-9.5-109, C.R.S.

The issue is thus whether the complainants have established that any rate, charge, rule, or regulation of San Miguel is unjust or unreasonable. The undersigned concludes that they have not.

The OCC in its statement of position goes into great detail as to why its proposal is just and reasonable. It also refers to a TIER of 1.72 (effective) as proposed in the OCC rates as "a reasonable compromise" on the TIER issue. Nowhere in its statement of position does it even contend that the revenue requirements or rate design of San Miguel are unreasonable. The OCC states that this is no flaw and claims that the Commission is free in this proceeding to choose whatever cost allocation methodologies or rate designs that it feels are best. It cites two cases for this proposition, Public Service Company v. Public Utilities Commission, 644 P.2d 933 (Colo. 1982); Mountain States Telephone and Telegraph v. Public Utilities Commission, 513 P.2d 721 (Colo. 1973).

Neither case is on point. The Public Service Company case involved an application by a utility with the Commission to allow certain costs to be included in the gas cost adjustment charges. After hearing, the Commission determined that the charges should be considered only in future general rate proceedings and not in the gas cost adjustment. In Mountain States, the utility filed tariffs which were suspended by the Commission and after hearing the Commission established rates which produced a rate of return less than originally sought by the Utility. In both cases, the Commission's actions were upheld.

Neither of these cases is on point. In an application proceeding, the applicant has the burden of establishing that it is entitled to the relief that it seeks. When the Commission suspends a tariff and conducts hearings, it is specifically authorized to establish whatever just and reasonable rates it desires. See § 40-6-111(2)(a), C.R.S., which provides:

> If a hearing is held thereon, whether completed before or after the expiration of the period of suspension, the Commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, or regulations proposed, in whole or part, or others in lieu thereof, which it finds just and reasonable. (Emphasis supplied)

Thus, when tariffs are suspended, the Commission is free to establish whatever reasonable rates and charges it chooses, perhaps selecting among several choices of reasonable rates and charges.

By contrast, the Commission's limited jurisdiction over cooperative electric associations that have voted for exemption from PUC

regulation is found in § 40-9.5-106, C.R.S. That section authorizes the Commission to resolve complaints where it is shown that some rates or charges are unjust, unreasonable, or unreasonably discriminatory. That section does not authorize the Commission to institute a general rate case under the guise of a complaint. To so hold would totally emasculate the deregulation provisions contained in Article 9.5 of Title 40, C.R.S. Rather, the statutory framework left the Commission with limited jurisdiction to entertain and resolve complaints concerning unjust and reasonable rates. If the complaining party establishes that rates or charges or practices of a cooperative electric association are unjust, unreasonable, or discriminatory, the Commission then may set reasonable rates. In the absence of such a showing, the Commission is not free to pick and choose among two or more sets of rates and charges, even if both may be reasonable.

The complainants have failed to establish that the rates and charges of San Miguel are unreasonable or unjust in any way. San Miguel's revenue requirements and TIER are clearly within a reasonable range for rural electric cooperatives similar to it. Its desire to raise its equity in the fashion set forth is not unreasonable. The cost allocation methodology used to set rates is an acceptable one, again, used by many similar rural electric associations. It cannot be said to be unreasonable.

CONCLUSIONS

1. The complainants have failed to establish that any rate, charge, rule, or regulation of San Miguel is unjust or unreasonable. The complainants have failed to establish that any difference as to rates, charges, service, or facilities between any class of service are unreasonable.

2. 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. Docket No. 91F-056E and Docket No. 91F-231E, being complaints against San Miguel Power Association, Inc., are dimissed.

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

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