

(Decision No. R93-1214)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE INVESTIGATION AND SUSPENSION)
OF TARIFF SHEETS FILED BY PUBLIC)
SERVICE COMPANY OF COLORADO WITH)
ADVICE LETTER NO. 1197-ELECTRIC.)
)

DOCKET NO. 93S-151E
RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
JOHN B. STUELPNAGEL

- - - - -
Mailed Date: October 5, 1993
- - - - -

Appearances: Kenneth V. Reif, Esq., Denver,
Colorado, for Respondent
Public Service Company of
Colorado;

Deborah S. Waldbaum, Assistant
Attorney General for Intervenor
Colorado Office of Consumer
Counsel; and

Mana Jennings-Fader, Assistant
Attorney General for Staff
of the Public Utilities
Commission.

STATEMENT OF THE CASE

On March 5, 1993, Public Service Company of Colorado ("PSCo"), filed Advice Letter No. 1197-Electric, dated March 5, 1993. PSCo stated that the purpose of this filing is to establish a qualifying facility ("QF") Capacity Cost Adjustment Clause in the company's PUC No. 6-Electric and PUC No. 10 (Home Light Division) tariffs. PSCo requested that the tariffs accompanying Advice Letter No. 1197-Electric become effective on 30 days' statutory notice or, in this instance, on April 11, 1993.

By Decision No. C93-342, issued April 1, 1993, the effective date of tariffs filed by PSCo on March 5, 1993, pursuant to Advice Letter No. 1197-Electric dated March 5, 1993, were suspended for 120 days until August 3, 1993, or until further order of the Commission. Additionally, the matter was set for hearing on August 16, 1993.

On June 11, 1993, a Motion to Extend Prefiling Dates was filed by PSCo requesting that PSCo prefile testimony on July 7, 1993 and Staff and Intervenor's prefile answer testimony on or

before August 9, 1993. On July 6, 1993, a Motion to Vacate Hearing Dates and for Prehearing Conference was filed by PSCo, noting that the Commission had rescheduled hearing dates in Docket No. 93S-001EG beginning August 16, 1993. By Decision No. R93-832-I, issued July 21, 1993, the Motion to Extend Prefiling Dates was granted. PSCo was directed to file exhibits and direct testimony on or before August 6, 1993, and Intervenor (including Staff) were directed to file all exhibits and testimony on or before ten days prior to the first day of hearing. Hearing in this matter was rescheduled for September 10, 1993 at the same and place as previously scheduled. By Decision No. C93-812, issued July 16, 1993, the effective date of tariff sheets filed by PSCo with its Advice Letter No. 1197-Electric were further suspended until November 1, 1993. By Decision No. R93-1029-I, hearing in this matter was rescheduled for September 9, 1993.

Hearing commenced on September 9, 1993 as rescheduled and Exhibit Nos. 1 through 28 were marked for identification and admitted into evidence. At the conclusion of hearing the matter was taken under advisement. Pursuant to the provisions of § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding along with this written recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon drawn:

1. PSCo is a public utility providing electric and gas utility service throughout various certificated areas in the State of Colorado. By this Application, PSCo seeks to establish a QF Capacity Cost Adjustment Clause ("QFCCA") in the company's PUC No. 6-Electric and PUC No. 10 (Home Light Division) Tariffs.

2. A QF is a small power producer or cogeneration facility that meets certain fuel requirements or efficiency standards set forth by the Public Utility Regulatory Policy Act of 1978 (PURPA). If the facility meets these standards and qualifies under PURPA, a utility must purchase the capacity and energy at prices determined by the utility's avoided costs.

3. The Colorado Public Utilities Commission issued rules in September 1972 and ordered all Colorado jurisdictional utilities to file tariffs in conformance with those rules. PSCo filed tariffs on December 10, 1982. After extensive hearings, the PUC ordered PSCo to base the price the company would pay QFs for capacity on a hypothetical 1,000 MW unit (Pawnee I & II) coming on-line the year the QF achieved commercial operation.

4. On May 27, 1992, as a part of a PSCo decoupling case (Docket No. 91A-480EG), a Settlement Agreement was reached among PSCo, the Staff of the Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel ("OCC") to make certain modifications to the Electric Cost Adjustment ("ECA") as a part of the company's next general rate case.

One of the major revisions agreed upon was that the capacity related costs of all purchased power would be removed from the ECA and recovered through base rates in general rate case filings. Recognizing the rapidly increasing nature of the capacity related costs of QFs, recovery of these costs only through base rate adjustments in general rate cases would not allow adequate or timely recovery. The parties agreed to the specific exception found at paragraph 6 of the Settlement Agreement. Paragraph 6 states as follows:

The parties expressly recognize that the capacity related costs of Qualifying Facilities (QFs) are a major cost component, rapidly increasing, and outside the control of the company. The parties further recognize that these costs are recoverable from Public Service customers and may require separate rate treatment. Public Service will seek to recover these costs from its customers in a timely manner. The Staff and OCC reserve the right to review the proposed recovery method and oppose or present alternative methods.

The QF Capacity Cost Adjustment Tariff which PSCo is proposing in this docket is intended to continue the timely recovery of QF capacity costs in a manner very similar to the way they are being recovered today through the ECA mechanism.

5. During 1987, over 1,000 MW of capacity was offered by QFs, most of which was to come on-line in 1991. This would have resulted in excess capacity on PSCo's system and excess costs to PSCo's customers. A partial moratorium was granted by the Public Utilities Commission and a proceeding initiated to solve the over capacity problem. A bidding procedure was initiated as a result of this proceeding, and PSCo was ordered to negotiate with all QFs which had contacted the company prior to November 4, 1987. All contracts from this "grandfathering" had to be executed by December 31, 1988. As a result of that order, PSCo executed 51 contracts with QFs for 807 MW of capacity.

6. PSCo currently has 40 QF contracts in effect representing 693 MW. Facilities representing 29 contracts for a total of 251 MW are currently on-line, and facilities for 11 more

contracts totaling 442 MW are expected to come on-line between January 1994 and April 1995.

7. PSCo was not allowed to force the QFs to negotiate the capacity price the QFs would be paid. The QF could opt to take the administratively set price at the time the contract was executed or take the similar price at the time the facility achieved commercial operation. All but one of the large QFs opted to take the price at the time the contract was executed. The 1988 capacity payment rate, using the hypothetical Pawnee I & II 1,000 MW unit coming on-line in 1988, was \$18.02 per KW-mo. The capacity price to be paid to these QFs is clearly beyond the control of PSCo.

8. QF capacity costs are currently recovered through the company's ECA mechanism as one component of the company's purchased power costs. In PSCo's ECA Application, the Commission found that PSCo's ECA proposal would reduce regulatory lag, inhibit attrition, and provide a greater degree of flexibility and response to changing costs. The Commission further found that the costs involved were significant, relatively beyond the company's control, and subject to fluctuation with the amount of electricity generated. The criteria agreed to by PSCo, Staff of the Public Utilities Commission, and the OCC in paragraph 6 of the Revised Settlement Agreement in Docket No. 91A-480EG are similar to those used by the Commission in establishing an adjustment clause.

9. If all QFs presently under contract come on-line, the total annual capacity costs will be approximately \$161,000,000. The QFs presently on-line account for approximately \$64,000,000 of these costs with the remaining \$97,000,000 from QFs who are expected to achieve a date of commercial operation by 1996. The \$161,000,000 annual capacity payments to be made to these QFs is a significant dollar amount. The total capacity costs fluctuate from year-to-year. The capacity costs are projected to increase by approximately \$54,000,000 in 1994, \$40,000,000 in 1995, and \$4,000,000 in 1996. The purchase of this capacity and the price to be paid for this capacity are beyond the control of PSCo, because the company was obligated by federal law and Commission rules to enter into contracts with the QFs at administratively set purchased prices.

10. One issue raised by the OCC is the potential for double recovery of costs. OCC notes that the QFCCA mechanism proposed by PSCo would provide for \$40,466,498 additional annual revenues for a period when annual costs increased \$42,780,297. With a growth in base rate annual revenues of \$31,321,000, OCC states the combined recovery of QFCCA and base rate revenues totaling \$71,787,498 is in excess of the \$42,780,297 additional costs incurred for QF capacity.

Should there be a decline in base rate annual revenues OCC states that, earnings may be maintained by the company as a decline in costs could also occur. OCC has not considered any increase in costs, however, should there be a growth in base annual revenues. Furthermore, the rationale of OCC would suggest that the entire growth in base rate annual revenues is or should be allocated to QF capacity costs included in base rates.

Evidence in this proceeding established that the QFCCA tariff is an annual adjustment clause mechanism designed to recover, on a dollar for dollar basis, those QF capacity costs which are not recovered through base rates.

11. OCC asserts that an "earnings test" is vital in protecting customers from paying increased rates through an adjustment clause at a time when the utility is already earning revenues in excess of authorized levels. OCC requests that the Commission deny any proposal for a QFCCA which does not include such "earnings test".

Whenever a utility is earning revenues in excess of authorized levels, there is or should be concern that rates for consumers may not be just and reasonable. This concern should be addressed in a proceeding to determine the precise cause for excess earnings and not merely offset in the QFCCA mechanism or other Cost Adjustment Clause. Finally, an earnings test may be improper if revenues in excess of authorized levels were received from one class of customers and overall revenues were reduced equally to all classes by disallowance in the QFCCA.

12. Staff of the Public Utilities Commission has made recommendations in this proceeding, many of which should be raised or reviewed in a separate docket or dockets.

Initially, in the testimony of Saeed Barhagi, Staff requests an interpretation of Commission Decision No. C87-10, issued January 6, 1987, to provide that a combination of equivalent availability and capacity factor be used as a check for payment limit. While reference to payment limits was made in ordering paragraph 1e, the clear language of the decision is set forth in paragraph 7 of the findings of fact and conclusions thereon. The Commission stated:

Accordingly, Public Service's categories 4A and 4B will receive full capacity payments when maintaining an 80 percent equivalent availability factor on a 12-month rolling average basis, rather than when maintaining a capacity factor. (Emphasis supplied)

Staff further recommends that the Commission address the significance of Pawnee I fuel efficiency and non-fuel operating

and maintenance cost reduction. Staff requests the Commission order the company to actively pursue the objectives of a broad efficiency and cost reduction program at Pawnee station with the goal of reducing Pawnee's total production costs to the system's incremental fuel cost. Staff raises further questions regarding the utilization of dispatchable QFs and the company's responsibility in efficiently using that capacity. These issues raised by Staff may be valid and support the disallowance of certain expenses to PSCo. They should, however, be addressed in a new or separate docket.

13. The formula proposed by PSCo to determine the QF Capacity Cost Adjustment amount is the Projected QF Capacity Cost less Base QF Capacity Cost plus or minus Deferred QF Capacity Cost. Any over or under recovery would incur interest at a rate equal to the currently effective customer deposit rate. PSCo asserts the projected costs and revenues are used in order to make the recovery of these rapidly escalating costs as accurate and timely as possible. PSCo asserts that Projected QF Capacity Costs are in reality historical costs which have been adjusted for changes which are known, measurable, and required by contract. The use of historical costs without adjusting for known and measurable additional costs occurring during the effective period of the rate, will almost certainly result in a substantial under recovery. Staff of the Public Utilities Commission recommends the QFCCA's calculation be based on actual costs with allowance for adjustments of known and measurable changes.

The projected costs and revenues used by PSCo are reasonable, however, should over recovery occur, the interest rates set forth in tariff sheets filed by PSCo with Advice Letter No. 1197 to be applied to Deferred QF Capacity Costs is unreasonable. The Projected QF Capacity Cost is determined by PSCo, and to assure accuracy in Projected QF Capacity Costs, should over recovery occur, a reasonable rate of interest would be equal to the current composite cost of capital for PSCo. Should under recovery occur, interest should remain at the currently effective Customer Deposit Rate.

14. Tariff sheets filed with Advice Letter No. 1197 provide for an annual adjustment clause mechanism which will reasonably recover capacity related costs of QFs which are not recovered through base rates. These costs are a major cost component, rapidly increasing, and outside the control of the company. These tariffs filed are acceptable with the exception of the interest rate modification established by Paragraph No. 13 above.

15. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended the Commission enter the following order.

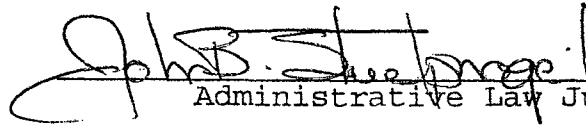
ORDER

THE COMMISSION ORDERS THAT:

1. Tariffs filed with Advice Letter No. 1197-Electric dated March 5, 1993, are permanently suspended.
2. Within ten days of the effective date of this Order, Public Service Company of Colorado shall file a new advice letter amending pages 148A of Colorado PUC No. 6-Electric and page 61A of Colorado PUC No. 10 to provide that the interest rate applied to negative deferred QF capacity costs on an average monthly basis shall be equal to Public Service Company of Colorado's current composite cost of capital. The interest rate applied to positive deferral QF capacity costs on an average monthly basis shall be equal to the currently effective Customer Deposit Rate.
3. Docket No. 93S-151E is closed.
4. 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.
5. 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.

6. 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

JBS:srs