

(Decision No. C80-1318)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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| IN THE MATTER OF PROPOSED INCREASED)  | INVESTIGATION AND SUSPENSION |
| RATES AND CHARGES CONTAINED IN )      | DOCKET NO. 1420              |
| TARIFF REVISIONS FILED BY PUBLIC )    |                              |
| SERVICE COMPANY OF COLORADO, 550 )    | ORDER OF THE COMMISSION      |
| 15TH STREET, DENVER, COLORADO )       |                              |
| UNDER ADVICE LETTER NO. 791-ELECTRIC) |                              |
| ADVICE LETTER NO. 293-GAS; AND )      |                              |
| ADVICE LETTER NO. 23-STEAM. )         |                              |

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July 1, 1980  
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STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On June 20, 1980, the Colorado Office of Consumer Services, Vera Gilde, Concerned Congress of Northeast Denver and Colorado Association of Community Organizations for Reform Now (hereinafter collectively referred to as "Consumer Intervenorers" filed a "Forthwith Motion for Enforcement of Stay of Commission Decision No. C80-1039". In said Motion, Consumer Intervenorers state that they filed with the Commission on June 16, 1980, an application for rehearing, reconsideration or reargument of Decision No. C80-1039 and mailed copies of said application to all parties to this proceeding, including Public Service Company of Colorado. Consumer Intervenorers refer to C.R.S. 1973, 40-6-114(2), which states:

"Where application for rehearing, reargument, or reconsideration of a decision of the commission is made in accordance with the provisions of this section and the rules and regulations of the commission, the decision shall be stayed or postponed pending disposition of the matter by the commission; except that orders of the commission issued for the installment of automatic or other safety appliance signals or devices at railroad crossings shall be processed and handled to completion when such application deals solely with the matter of allocation of the costs thereof among the railroad company and the state and the political subdivisions pursuant to section 40-4-106."

Consumer Intervenorers state that upon information and belief Public Service has since June 16, 1980, continuously charged Consumer Intervenorers and the other customers of Public Service the rates outlined in Advice Letter 799-Electric and 299-Gas in violation of C.R.S. 1973, as amended, 40-6-114(2). In its Motion, Consumer Intervenorers request that the Commission order Public Service to cease billing companies for increased rates outlined in Advice Letters 299-Gas and 799-Electric and to refund to customers all money collected pursuant to these new rates schedules for gas or electric provided on or after June 16, 1980.

On June 27, 1980, Public Service filed a "Response of Public Service Company of Colorado to Forthwith Motion for Enforcement of Stay." In essence, Public Service states that it did not know of Consumer Intervenor's filing until June 17, 1980, the day Public Service, through its counsel received notice of the application. Public Service further argues that inasmuch as the Commission on June 19, 1980, by Decision No. C80-1222, denied Consumer Intervenor's application for rehearing, reargument and reconsideration, which had been filed on June 16, 1980, a stay for the intervening period between June 16, 1980, and June 19, 1980, is meaningless and would construe the statutory provision of C.R.S. 1973, 40-6-114(2) to require an absurd and unintended result. Public Service argues that, for example, if a common carrier were conducting operations and subsequently learned that a petition or application for rehearing was filed, it would be doubtful that the carrier must take steps to make it sound like it had never carried on operations during the period after the petition was filed and before the Commission acted.

The Commission, of course, is required to enforce the Public Utilities Law as it has been enacted by the General Assembly, not as the Commission may believe certain portions of the same should have been enacted. The Commission recognized that C.R.S. 1973, 40-6-114(2) provides for an automatic stay of a Commission decision pending disposition of an application for rehearing, reargument or reconsideration. It is certainly arguable that a more sensible provision would have been to provide that a party filing an application for rehearing, reconsideration and reargument simultaneously could file a motion for a stay, which the Commission would have the authority to grant or deny depending on the particular circumstances. However as already indicated, C.R.S. 1973, 40-6-114(2) does not afford the Commission this option.

Premises considered, the Commission states and finds that to the extent Public Service collected increased rates and pursuant to Decision No. C80-1039 dated May 27, 1980, it must refund such increases in electric, gas and steam rates made operative by that decision over and above the rates, that were in effect prior to said decision. The Commission also states and finds that the operative period of time that the period of suspension, or stay, of Decision No. C80-1039 was in effect would be from June 17 through June 19, 1980. From a hypertechnical point of view, it is arguable that the stay became effective instantaneously upon filing on June 16, 1980. The precise time of filing on June 16, 1980 of Consumer Intervenor's "Forthwith Motion" is not known. However, even if the precise time were known, and for purposes of illustration we shall use a presumed time of 4:00 p.m., it would be totally impracticable to allow all bills dispatched prior to 4:00 p.m. to charge the higher rates whereas all bills dispatched at 4:00 p.m. or thereafter would not be permitted to charge the higher rates. The Commission perceives no practicable way that Public Service would even make such a differentiation, especially when it was not even aware that the Motion had been filed until June 17, 1980.

The same considerations regarding impracticability of "splitting a day" are equally applicable at the other end of the stay and the effective time of the Commission's denial insofar as the dispatch of bills is concerned should be considered to be on the first full day after the Commission's denial, that is, June 20, 1980.

Recapitulating, the Commission states and finds that the stay of Commission Decision No. C80-1039 insofar as the dispatch of the bills by Public Service is concerned, should be construed to have been in effect for the three-day period June 17 through June 19, 1980.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The "Forthwith Motion for Enforcement of Stay of Commission Decision No. C80-1039" filed on June 20, 1980, by the Colorado Office of Consumer Services, Vera Gilde, Concerned Congress of Northeast Denver and Colorado Association of Community Organizations for Reform Now be, and hereby is, granted to the extent the same is consistent with the decision and order herein, and in all other respects, the same be, and hereby is, denied.
2. For purposes of dispatching of electric, gas and steam bills by Public Service Company of Colorado, Decision No. C80-1039 dated May 27, 1980, be, and hereby is, deemed to have been stayed or under suspension for the period of June 17 through June 19, 1980, inclusive.
3. Public Service Company of Colorado shall effect such measures as may be necessary to refund any increase in electric, gas and steam rates that were collected pursuant to Decision No. C80-1039 dated May 27, 1980, to its customers for the period June 17 through June 19, 1980 inclusive. In the event Public Service Company of Colorado has not billed its electric, gas and steam customers for the increased rates authorized pursuant to Decision No. C80-1039 for the period June 17 through June 19, 1980, it shall not do so in the future.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 1st day of July, 1980.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

Daniel E. Inuse  
L. Duane Woodard  
Commissioners

CHAIRWOMAN EDYTHE S. MILLER ABSENT  
BUT CONCURRING IN THE RESULT