

(Decision No. C83-618)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION)	
OF THE TARIFF SHEETS ACCOMPANYING)	CASE NO. 6044
ADVICE LETTER NO. 42 FILED BY)	
POUDRE VALLEY RURAL ELECTRIC)	INITIAL DECISION AND ORDER
ASSOCIATION FOR REVISION OF)	OF THE COMMISSION
TARIFF COLORADO PUC NO. 2.)	

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April 19, 1983
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STATEMENT OF THE CASE

BY THE COMMISSION:

On August 6, 1981, Poudre Valley Rural Electric Association (hereinafter "Poudre Valley") filed with the Commission its Advice Letter No. 42, dated August 6, 1981, accompanied by a number of tariff sheets, including the following:

COLORADO P.U.C. NO. 2

Colo. P.U.C. Sheet No.	Title of Sheet	Cancels Colo. P.U.C. Sheet No.
Third Revised No. 21	Farm and Home Service	Second Revised No. 21
Third Revised No. 22	Farm and Home Service	Second Revised No. 22

Poudre Valley states that the purpose of the filing is to reduce the service connection fee to more nearly reflect the average cost of connecting a customer and to increase their base rates to provide the last authorized rate of return on rate base of 6.79%.

On September 9, 1981, the Commission issued Decision No. C81-1569 whereby Case No. 6044 was instituted with respect to the particular tariffs filed by Poudre Valley under Advice Letter No. 42 and hearing with respect to the reasonableness of said tariffs was set for November 30, 1981. On September 21, 1981, Poudre Valley filed a motion for continuance of hearing date and for change of filing deadlines. Therein, Poudre Valley requested that the prefiling requirements established in Commission Decision No. C81-1569 be changed so that Staff of the Commission would first prefile ten days in advance of Poudre Valley. On October 15, 1981, interim Decision No. R81-1755-I was issued. By this interim order, it was stated that the request of Poudre Valley for a change in the order of prefiling would be inappropriate in that Poudre Valley will have the burden of going forward to establish that its proposed rates are just and reasonable. Accordingly, it was ordered in Decision No. R81-1755-I that scheduled hearing date of November 30, 1981 be vacated and the matter reset for December 14, 1981. It was further ordered in Decision No. R81-1755-I that the prefiling requirements established by Commission Decision No. C81-1569 be modified so that Poudre Valley should prefile on or before November 24, 1981 and Staff of the Commission should prefile on or before December 4, 1981.

On September 22, 1981, Staff of the Public Utilities Commission (Staff) entered its appearance through the office of the Attorney General of the State of Colorado. The Colorado Rural Electric Association (CREA) filed a petition for leave to appear as an amicus curiae on October 30, 1981. This petition was granted by ER No. 81-255, dated November 5, 1981.

On November 20, 1981, Poudre Valley filed a motion seeking consolidation of Case No. 6044 for hearing on a joint record with Case No. 6053. Staff filed response to this motion on November 30, 1981. CREA also filed a motion on December 4, 1981 requesting vacation and rescheduling of January 14, 1982 hearing date. CREA further requested that a single hearing be scheduled by the Commission for all rural electric associations so that the propriety of the tariffs herein filed by Poudre Valley can be determined. On December 8, 1981, the Commission issued Decision No. C81-2037 and therein stated and found that consolidation of Case No. 6053 and Case No. 6044 will not clarify or assist the finder of fact in determining the matters pending in such cases, and the issue raised by CREA's motion to vacate and reschedule should be resolved on a case-by-case basis. The Commission ordered in Decision No. C81-2037 that CREA's motion to vacate and to reschedule for single hearing, and to consolidate be denied. The Commission also granted by Decision No. C81-2037 Staff's motion filed on November 23, 1981 to require CREA to prefile testimony and exhibits on or before December 4, 1981.

Union REA filed a motion on December 11, 1981 to intervene or consolidate Case No. 6044 with various cases pending for hearing on the issue of the appropriate customer-related cost to be included in the initial customer cost component of REA tariffs. Union REA was granted leave to intervene and its request to consolidate was denied by the Hearings Examiner as a preliminary matter at hearing of December 14, 1981.

On December 18, 1981, Staff of the Commission filed a motion to reopen record pursuant to Rule 14(o), Commission Rules of Practice and Procedure. By such motion, Staff, in summary, states that the Examiner erred in excluding the testimony of Dr. Parkins about certain authorities. Staff, by this motion, seeks to make an offer of proof regarding said authorities. Attached to Staff's motion to reopen record is Attachment 1 (offer of proof) wherein those portions of the authorities which Dr. Parkins intended to read into the record are set forth.

Poudre Valley filed response to motion to reopen record on December 24, 1981. Generally, Poudre Valley contended that the offer of proof proposes evidence beyond that offered at the time of hearing, and thus deprives Poudre Valley of its right to object to the admissibility of the matters set forth in the offer of proof. Poudre Valley also argued that an offer of proof must be made at the time that the initial evidence is offered and rejected.

On January 8, 1982, the Examiner issued interim Decision No. R82-17-I. By this order, the Examiner treated Staff's motion to reopen the record as a post-hearing brief, being in the nature of argument rather than evidence, and made such arguments a part of the record. In all other respects the Examiner denied Staff's motion to reopen the record to receive Staff's offer of proof.

On December 15, 1982, Hearings Examiner Arthur G. Staliwe issued Recommended Decision No. R82-1969 wherein the Examiner recommended, inter alia, that the Commission order that Poudre Valley's proposed revenue requirement be accepted, and that Poudre Valley implement the residential

monthly minimum rate proposed by Staff containing the itemized accounts set forth in Finding of Fact No. 5 of Recommended Decision No. R82-1969. The Examiner further recommended that the Commission order that all other residential rate designs of Poudre Valley remain the same until Poudre Valley must change such in July, 1983.

Poudre Valley filed exceptions to Recommended Decision No. R82-1969 on January 25, 1983. CREA filed its brief as amicus curiae in support of Poudre Valley's exceptions on February 4, 1983. Staff of the Commission filed its response to exceptions and the brief of CREA on February 18, 1983.

In summary, Poudre Valley, by its exceptions, contends:

1. The Colorado General Assembly amended CRS 1973, 40-6-111 by adding a new subparagraph (4) (hereinafter "H.B. 1444") effective July 1, 1981, which establishes that the Commission has no jurisdiction to review the rates of Poudre Valley without a complaint being filed by any member or customer of Poudre Valley.
2. The Commission established rules as defined by CRS 1973, 24-4-103(1) by Decision No. C79-1111 (Generic Decision) and by amending the Generic Decision in Decision No. C81-1185 (Home Light and Power case). The failure of the Commission to comply with the State Administrative Procedure Act (APA) in the Generic Decision or Home Light and Power case causes said rules to be totally unenforceable herein.
3. Under H.B. 1444, and the circumstances of this proceeding, the Commission had the burden of proof, rather than Poudre Valley, to establish that Poudre Valley's rate design was unjust, unreasonable, or improper.
4. The Examiner wrongfully ruled that certain material proposed to be admitted by Staff as evidence should be made a part of the record as argument.
5. In order for the Commission to void the residential rates filed by Poudre Valley herein, there must be a finding, supported by evidence, of a statutory deficiency in such rate. Accordingly, the failure of the Examiner to find that Poudre Valley's residential rate was "unjust", "unreasonable" or "improper" results in no valid or lawful basis for ordering a different rate.
6. The rate design recommended to be ordered by the Examiner for Poudre Valley would result in revenue instability, adverse customer impact, preference in one group of customers over other groups of customers and customer confusion.

Colorado Rural Electric Association filed its amicus brief on February 4, 1983, and therein generally supports the exceptions of Poudre Valley. However, CREA sets forth the following additional contentions:

1. The Home Light case altered or amended the Generic Decision in violation of CRS 1973, 40-6-112, which only allows the alteration or amendment of a final Commission decision on notice to the utility affected and opportunity to be heard. No REA, including Poudre Valley, received notice of the Home Light proceeding, and thus Home Light is void as to any REA.
2. The recommended decision is unlawful to the extent that it orders Poudre Valley to file a different residential rate without a finding of abuse of managerial discretion.

Staff of the Commission filed its response on February 18, 1983 to the exceptions of Poudre Valley and amicus brief of CREA. By this response, Staff contends:

1. The Examiner properly held that a review of Poudre Valley's rates could be held without a complaint being filed as provided by H.B. 1444.
2. The Examiner did not apply a "rule" from either the Generic or Home Light case in this proceeding and one cannot find any "rule" within either the Generic or Home Light case which prescribes the rate recommended by the Examiner. Moreover, the Examiner in Recommended Decision No. R82-1969 recommended a residential rate based upon the evidence adduced of record. Thus, the contention that the Examiner or the Commission entered into illegal rulemaking is irrelevant and has no bearing on this proceeding.
3. It was properly ruled that Poudre Valley had the burden of proof in a review of Poudre Valley's residential rate filed under H.B. 1444.
4. The Examiner erred in not admitting the authorities which Dr. Parkins attempted to read into the record as learned treatises, Colorado Rule of Evidence 803(18), and in ruling that said material should be included as argument and become a part of the record. The Examiner also erred in not allowing Staff to place such material into the record as an offer of proof. Staff further states that the Examiner's ruling to treat the literature as argument is harmless error if the Commission disregards the literature as either evidence or argument, in that there is other sufficient competent evidence of record to support the Examiner's findings of fact and order that Poudre Valley implement the residential rate proposed by Staff.
5. It was not necessary that the Examiner make explicit findings that Poudre Valley's residential rate is "unjust", "unreasonable" or "improper" as the basis for ordering a different rate. Such findings may be implied and need not be made

in any particular form. CREA's contention that rate designs of a fixed utility are a subject of management discretion, and absent a showing of abuse of such discretion, the rate design established by the management of a utility is beyond Commission review, disregards the lawful duties of the Commission. The statutory duty of the Commission is to regulate the rates of public utilities. Therefore, the rate design of a public utility is not a matter of management discretion.

6. The rates recommended by the Examiner do not result in revenue instability, adverse customer impact, a preference in one group of consumers over other groups of consumers, or customer confusion in that the evidence established that said rates are cost tracking.

Although the Commission is not in complete disagreement with the recommended decision of the Examiner, after examination of the record of this proceeding, and for purposes of clarity, the Commission will enter its order containing its own findings of fact, conclusions on findings of fact, and order without regard to Recommended Decision No. R82-1909.

FINDINGS OF FACT AND CONCLUSIONS THEREON

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

1. Poudre Valley Rural Electric Association, Inc. (Poudre Valley) is a cooperative electric distribution utility serving customers in portions of Boulder, Larimer, and Weld Counties, Colorado as more fully set forth in its Certificates of Public Convenience and Necessity. Poudre Valley serves suburban residents, farms, irrigation customers, commercial customers, and large power customers.
2. The test year utilized by Poudre Valley herein is the twelve-month period ending March 31, 1981. The test year selected by Poudre Valley represents a full operating cycle, to include seasonal uses such as irrigation pumping.
3. The uncontroverted evidence of record establishes for the test year, as adjusted, that Poudre Valley had total operating revenues of \$16,313,727. Total operating expenses for the test year were \$15,494,747, which results in margins of \$627,980. The uncontroverted evidence of record also establishes that Poudre Valley's adjusted rate base for the test year was \$27,555,486, which results in a 3.09% rate of return on adjusted rate base.
4. Utilizing the guidelines adopted by the Commission to assist in establishing the range for reasonable rates of return on rate base for rural electric cooperatives, (Decision No. R79-182 in I&S Docket No. 1259, Mountain View Electric Association), results in a range for Poudre Valley between 6.039% and 8.759% for rate of return on rate base. The election of Poudre Valley in this proceeding to propose increased revenues based upon a 6.79% rate of return on rate base is found to be just, reasonable, and proper, in that such rate of return on rate base is near the bottom of the range as suggested by Commission Decision No. R79-182.

It is further found and concluded that the increased operating revenues herein proposed by Poudre Valley are found to be just, reasonable and proper.

5. Poudre Valley's existing residential rate design, which is the subject matter of this proceeding, for the farm and home service class reflects a \$7 per month facilities charge to recover fixed charges, and \$0.044030/kwh for energy. Poudre Valley contends that a monthly service charge of \$7 is required to insure that there is no subsidy by high-use customers to low-use customers within the residential class. Poudre Valley states that it has a great number of low-use residential customers, and due to the fixed costs of providing service to the residential class customers, a monthly service charge of less than \$7 will cause cross-class subsidization.

6. Staff of the Commission proposed a monthly service charge of \$1.62 to recover fixed costs set forth in Accounts 901-905. The energy charge proposed by Staff was not specified. However, by eliminating the service charge and using Staff's \$3.02/month/minimum as the service charge, it is found that the energy charge is \$0.05166 per kwh. Staff further proposed a minimum charge of \$3.02 a month to recover the fixed costs in the following accounts:

- A. 907-910 (Customer Service)
- B. 586 (Meter Expense) Less 451 (Misc. Service Rev.)
- C. 597 (Maintenance of Meters)
- D. Depreciation, Interest and Property Tax Associated With 369 (Services) and 370 (Meters)
- E. Customer Related Portions of the Following A&G Accounts: 924 (Property Insurance); 925 (Injury and Damages); and 926 (Employee Pensions and Benefits). The customer related portions of these accounts should be determined by computing an expense subtotal of all expense accounts except 920-932 (A&G) and finding the percentage of that subtotal that is allocated on a customer basis. That percentage will then be applied to A&G Accounts 924, 925 and 926 to determine customer related portion.

7. Staff further proposed that residential rates be divided into four categories:

- A. General Residential
- B. All-Electric-Grandfathered
- C. All-Electric-New Customer
- D. Seasonal

8. Staff proposed that new all-electric customers are to be placed on a mandatory demand/energy rate, and all-electric-grandfathered was proposed to apply to structures. Staff further proposed that all categories of residential customers other than seasonal pay a minimum monthly customer charge. This minimum monthly charge would consist of

1/12th of the annual per customer figure for the accounts set forth above in paragraph 6, to include Accounts 901-905 (Customer Accounts).

9. For seasonal customers, Staff recommended an annual service charge consisting of the items contained in the monthly minimum charge for all other residential customers as set forth in paragraph 6 above, multiplied by 12, plus all demand-related costs. Staff suggested that this annual charge could be paid in monthly installments or an annual payment, and that such a charge should not include any kwh.

10. Poudre Valley's existing residential rate design, which is the subject matter of this proceeding and which was initially proposed by Poudre Valley's tariffs in Third Revised No. 21 and 22, as above stated, reflects a \$7 per month facilities charge to recover fixed charges, and \$0.044030/kwh for energy. It is found and concluded that the \$7 service charge of Poudre Valley is unjust, unreasonable, and improper because such service charge includes costs which are not properly allocated by the number of customers. In other words, said \$7 service charge includes costs which are not closely related to the number of customers, and such costs should accordingly be recovered in other components of the rate design. Moreover, the evidence of record adduced in this proceeding convinces the Commission that the rate design herein proposed by Staff of the Commission, which is a two-part rate composed of a service charge to recover the costs associated with Accounts 901-905 and a minimum charge which is designed to recover the customer costs associated with those accounts set forth in paragraph 6 above, with all other costs being recovered in the energy component of the rate, which is found to be \$0.05166 kwh should be herein adopted by the Commission for the reason that such rate structure properly allocates those costs associated with the number of customers to the service and minimum charges, and properly allocates all other costs to the energy component of the rate. The Commission will adopt the two-part rate of the Staff by approving the minimum charge of \$3.02 as the service charge which will include all the accounts listed in paragraph 6 above. Accordingly, the rate design herein proposed by Staff and as above approved is found to be just, reasonable and proper and will be established as the appropriate rate design herein for Poudre Valley.

11. Regarding seasonal customers, Staff proposed that seasonal customers should be defined by the following criteria:

- A. Living in an area where many homes are occupied less than nine months of the year;
- B. Billing address outside of territory which people would normally live and if served by the utility;
- C. Low usage;
- D. Address of the customer's employer, i.e., if he worked for an out-of-state firm, the customer might not be a Poudre Valley customer.

It is found and concluded that the evidence adduced of record fails to adequately establish firm criteria to distinguish seasonal customers from conventional low-use residential customers, particularly when using monthly averages of annual use. Accordingly, the Commission will reject the Staff's proposed seasonal rates.

12. Poudre Valley and CREA contend that the Commission entered into illegal rulemaking in the so-called Generic Decision (Commission Decision Nos. C79-1111 and C81-413) and in the Home Light and Power Decision (Commission Decision No. C81-1185). The Commission further notes that the Examiner, in Recommended Decision No. R82-1969, stated that the Commission has articulated the position that it may engage in rulemaking on a case-by-case basis and that such philosophy was expressed in Commission Decision No. C82-460, dated March 30, 1982. The Commission states that the Commission may only establish a formal rule, as defined by CRS 1973, 24-4-102(15), pursuant to CRS 1973, 24-4-101, et seq. However, the Commission further notes that CRS 1973, 24-4-103(1) states:

Rule-Making Procedure. (1) When any agency is required or permitted by law to make rules, in order to establish procedures and to accord interested persons an opportunity to participate therein, the provisions of this section shall be applicable. Except when notice or hearing is otherwise required by law, this section does not apply to interpretive rules or general statements of policy, which are not meant to be binding as rules, or rules of agency organization.

13. It is the view of the Commission that it may establish general policy on a case-by-case basis pursuant to CRS 1973, 24-4-103(1), which general policy statements are not meant to be binding as rules.

14. It is contended that the Commission and the Examiner have herein engaged in unlawful rulemaking. The Commission will reject this contention in that the record of this proceeding establishes that neither the Examiner nor the Commission has applied any "rule" from either the Generic or Home Light case to this proceeding. Moreover, the Commission has reviewed the evidence of record in this proceeding and has determined the issues presented in this matter from such evidence of record, rather than from any prior "rule". Accordingly, the foregoing contention is irrelevant to this proceeding, and will be rejected.

15. It is further contended that a review of Poudre Valley's rates cannot be held without a complaint being filed as provided in House Bill No. 1444. The Commission rejects this contention and finds that House Bill No. 1444, in pertinent part, provides that: "... [B]ut this subsection (4) shall not be construed to exempt such associations from any other provision of this section." Accordingly, it is found that only the authority of the Commission to suspend the rates of a rural electric association has been eliminated by House Bill No. 1444, but not its jurisdiction to otherwise conduct hearings regarding the rates filed by an REA, such as Poudre Valley.

16. It is also argued that it was improperly ruled that Poudre Valley had the burden of proof in a review of its residential rates under House Bill No. 1444. This contention will likewise be rejected. The Commission states and finds that House Bill No. 1444 only eliminated the authority of the Commission to suspend rates filed by rural electric associations. Therefore, the authority of the Commission to investigate such rates and the continuing burden of proof of the utility to establish that such rates are just, reasonable and proper remains with the rural electric association.

17. Poudre Valley and CREA contend that certain material proposed to be admitted by Staff of the Commission as evidence in this proceeding was improperly included as "argument" and thus unlawfully

became a part of the record of this case. After an examination of the record of this proceeding, it is not clear whether the "evidence" referred to by Poudre Valley was offered as foundation for the testimony of Dr. Parkins, or was offered for its own evidentiary weight. If such data was offered as foundation for the opinion testimony of witness Parkins, then such material may be admissible as an exception to the hearsay rule as learned treatises. However, if such material was offered for its own evidentiary weight, then such material should have been listed as an exhibit or within the Staff's prefiled summary of testimony. The ruling of the Examiner that such material was not admissible since not listed as an exhibit or in Staff's summary of testimony was correct if such was offered for its own value. In regard to this matter, the record of this proceeding should have been made clear. Accordingly, the Examiner at the time of objection should have required the parties to fully and concisely state their objection and the purpose for which such material was offered. The Commission further finds that the evidence of record herein contains other adequate evidence of record to support the opinions and testimony of Dr. Parkins in regard to residential rate design. In that the purpose for which said material was offered is not clear from the record, this exception filed by Poudre Valley in regard to the inclusion of such material as "argument" as a part of the record will be granted, and such material will be excluded.

18. Poudre Valley and CREA's contention that no findings that Poudre Valley's residential rate was unjust, unreasonable or improper were herein made, and thus there is no valid basis for ordering a different rate, will be rejected in that the Commission, based upon the evidence of record, has herein found Poudre Valley's residential rates unjust, unreasonable and improper.

19. It is also contended that the adoption of Staff's rate design for Poudre Valley results in revenue instability, adverse customer impact, a preference in one group of consumers over other groups of consumers, and customer confusion. This contention will be rejected because the evidence of record establishes that the rates proposed by Staff, and approved by the Commission, are cost-tracking. Thus there will not be any undue subsidization caused by such rates.

20. Staff of the Commission further herein proposed the establishment of an all-electric rate design for Poudre Valley. The Commission takes notice that Commission Decision No. C80-413, issued March 6, 1980, granted all Colorado jurisdictional electric utilities, except Public Service Company, 24 months thereafter to file all-electric rates similar to those suggested by Staff herein. Accordingly, Poudre Valley has until July 1983 to implement the all-electric rate design specified in the Generic Decision. Therefore, the Commission will in the order to follow, order that Poudre Valley may defer implementing the all-electric rate design proposed by Staff until July 1983.

An appropriate Order will be entered.

ORDER

THE COMMISSION ORDERS THAT:

1. The revenue requirement, rate base and rate of return herein proposed by Poudre Valley Rural Electric Association, Inc., is accepted.

2. Poudre Valley Rural Electric Association, Inc., shall implement the residential rate design proposed by Staff in this proceeding by implementing the residential monthly minimum rate as the service charge,

containing the itemized accounts set forth in Finding of Fact No. 6, along with an energy charge of \$0.05116, within twenty (20) days of the date of this order. Said filing shall include all work papers used to derive the rate, and shall be accompanied by new advice letter setting this Decision as authority, and effective upon one (1) day's notice.

3. The remaining residential rate designs of Poudre Valley Rural Electric Association, Inc., shall remain as presently effective until Poudre Valley must change its rates in July of 1983. Poudre Valley Rural Electric Association, Inc., may defer implementing the all-electric rate herein proposed by Staff of the Commission until July 1983.

4. The exceptions filed by Poudre Valley Rural Electric Association, Inc., on January 25, 1983, are granted to the extent that the material admitted into evidence as argument by interim Decision No. R82-17-1, issued January 8, 1982, is excluded, and otherwise such exceptions are overruled and denied.

5. The twenty (20) day time period provided for pursuant to CRS 1973, 40-6-114(1) within which to file an application for rehearing, reargument, or reconsideration shall commence to run on the first day following the mailing or serving by the Commission of the decision herein.

This Order shall be effective twenty-one (21) days from the day and date hereof.

DONE IN OPEN MEETING the 19th day of April, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Bruce
Andre Schmidt

Commissioners

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