

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE JOINT APPLICATION)
OF COLORADO-UTE ELECTRIC ASSOCIATION,)
INC., AND INTERMOUNTAIN RURAL ELECTRIC)
ASSOCIATION, FOR AN ORDER AUTHORIZING)
OR APPROVING THE FOLLOWING: THE)
MEMBERSHIP OF INTERMOUNTAIN RURAL)
ELECTRIC ASSOCIATION IN COLORADO-UTE)
ELECTRIC ASSOCIATION, INC.; THE)
TRANSFER OF CERTAIN PROPERTY AND)
ELECTRICAL FACILITIES TO COLORADO-UTE)
ELECTRIC ASSOCIATION, INC., FROM)
INTERMOUNTAIN RURAL ELECTRIC ASSO-)
CIATION; THE FINANCIAL ARRANGEMENTS)
FOR THE ABOVE TRANSFER; A WHOLESALE)
POWER CONTRACT BETWEEN COLORADO-UTE)
ELECTRIC ASSOCIATION, INC., AND)
INTERMOUNTAIN RURAL ELECTRIC ASSOCI-)
ATION; THE TRANSFERS TO COLORADO-UTE)
ELECTRIC ASSOCIATION, INC., OF A)
WESTERN AREA POWER ADMINISTRATION)
WHOLESALE POWER CONTRACT WITH INTER-)
MOUNTAIN RURAL ELECTRIC ASSOCIATION)
AND OF A PUBLIC SERVICE COMPANY OF)
COLORADO POWER PURCHASE AGREEMENT)
WITH INTERMOUNTAIN RURAL ELECTRIC)
ASSOCIATION; AND FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
AUTHORIZING COLORADO-UTE ELECTRIC)
ASSOCIATION, INC., TO PROVIDE SERVICE)
OF WHOLESALE ELECTRIC POWER AND)
ENERGY TO INTERMOUNTAIN RURAL ELECTRIC)
ASSOCIATION.)

APPLICATION NO. 33516
RECOMMENDED DECISION OF
EXAMINER LOYAL W. TRUMBULL
GRANTING APPLICATION

May 29, 1981

Appearances: Howard S. Bjelland, Esq., and
John C. Ohrenschall, Esq., for
Applicant Colorado-Ute Electric
Association, Inc.;

Richard L. Banta, Esq., Englewood,
Colorado, for Applicant Intermountain
Rural Electric Association;

Dudley P. Spiller, Jr., Assistant
Attorney General, Denver, Colorado,
for the Staff of the Commission;

James R. McCotter, Esq., Denver, Colorado,
for Public Service Company of
Colorado.

PROCEDURE AND RECORD

The above-entitled application was filed by Colorado-Ute
Electric Association, Inc. (hereinafter called "Colorado-Ute"), and
Intermountain Rural Electric Association (hereinafter called
"Intermountain") on February 10, 1981.

By this application the Applicants requested an order of this Commission approving the membership of Intermountain Rural Electric Association in Colorado-Ute Electric Association, Inc., approving the transfer of certain property and electric facilities from Intermountain to Colorado-Ute, and the general financial arrangements for such transfer, approving various agreements and contracts, to-wit, assignment of Intermountain's contract with Western Area Power Administration (hereinafter called "WAPA"), and Intermountain's contract with Public Service Company of Colorado (hereinafter called "Public Service") to Colorado-Ute, and the approval of Intermountain Wholesale Power Contract with Colorado-Ute, and issuing a Certificate of Public Convenience and Necessity authorizing Colorado-Ute Electric Association, Inc., to provide service of wholesale electric power and energy to Intermountain Rural Electric Association.

On February 13, 1981, the Executive Secretary of the Commission issued a Notice of Application Filed giving due and proper notice of the filing of the application to all interested persons, firms or corporations as required by the provisions of 40-6-108, CRS 1973.

On March 18, 1981, the Commission on its own motion, issued a Notice of Hearing setting the above-entitled application for hearing before the Commission at 10 a.m., on Thursday, May 14, 1981, in the hearing room of the Commission, 1525 Sherman Street, Denver, Colorado.

On March 13, 1981, Public Service Company of Colorado filed its Petition to Intervene, which Petition was granted by Decision No. C81-501, issued March 17, 1981. Upon commencement of the hearing, counsel for Public Service advised the Examiner that, upon review of the application and consultation with the Applicants, Public Service had concluded that it supported the granting of the application; Public Service was allowed, upon request of its counsel, to withdraw as a party to this proceeding, with the exception that it desired to be provided with copies of Commission orders in the matter. On April 9, 1981, the City of Colorado Springs filed a Petition for Late Intervention, which Petition was set for hearing on May 7, 1981, at which time the petition was allowed to be withdrawn upon request by the petitioner.

After due notice to all interested persons, a hearing was held on the above-entitled application before Hearings Examiner Loyal W. Trumbull, to whom the matter was assigned pursuant to law.

Except as set forth above, no persons intervened or appeared at the hearing to protest the application.

Four witnesses for the Applicants testified at the hearing and a total of 22 exhibits were admitted into evidence.

Colorado-Ute's Articles of Incorporation are on file with this Commission and official notice was taken of the Articles as filed in Application No. 19098. Intermountain's Articles of Incorporation are on file with this Commission and official notice was taken of the Articles as filed in Application No. 24822.

At the conclusion of the hearing, the matter was taken under advisement.

FINDINGS OF FACT

From the record herein, it is found as fact that:

1. Colorado-Ute is an electric cooperative association, and a corporation organized and existing under and by virtue of the laws of the State of Colorado. It is a public utility as defined in 40-1-103, Colorado Revised Statutes, 1973, and it is subject to the jurisdiction of this Commission. It is engaged in the generation and transmission of

electric power and energy for sale at wholesale to certain of its members within the State of Colorado, as follows:

Delta-Montrose Electric Association;
Empire Electric Association, Inc.;
Grand Valley Rural Power Lines, Inc.;
Gunnison County Electric Association, Inc.
Holy Cross Electric Association, Inc.
La Plata Electric Association, Inc.;
San Isabel Electric Association, Inc.;
San Luis Valley Electric Cooperative, Inc.;
San Miguel Power Association, Inc.;
Sangre De Cristo Electric Association, Inc.;
Southeast Colorado Power Association;
White River Electric Association, Inc.;
Yampa Valley Electric Association, Inc.

Service to these above members has been authorized by this Commission in Decision No. 70608 dated December 22, 1967, and Decision No. 81335 dated September 22, 1972.

2. Intermountain is a public utility subject to the jurisdiction of this Commission, and it is engaged in the purchase, transmission, and distribution of electric power and energy for sale at retail to its customers who are located within the State of Colorado. The general service area of Intermountain is located in the counties of Adams, Arapahoe, Clear Creek, Douglas, El Paso, Elbert, Fremont, Jefferson, Park and Teller. As of December 31, 1980, Intermountain served approximately 30,000 meters, of which 85% were for residential customers. Johns-Manville, located southwest of Denver, is the only large industrial load on the Intermountain system (8 mw in 1979). The certificated service areas of all members of Colorado-Ute, including Intermountain, are depicted on Exhibit 1.

3. It should be noted at the outset that the issue in this matter is not whether Intermountain should cease buying wholesale power and energy from WAPA and Public Service and join Colorado-Ute; that decision is the responsibility of, and has been made by, Intermountain's Board of Directors. If such decision cannot be said to constitute an abuse of discretion, approval should be given to the proposed transfer of assets and facilities and the proposed price and means of payment by Colorado-Ute should be considered for approval as required by 40-5-105 and 40-1-104, CRS 1973. The basic question in this matter is really whether or not Colorado-Ute should be authorized to undertake the responsibility of providing service to another member.

4. By resolution adopted by the Intermountain Board of Directors on November 5, 1980, Applicant Intermountain, after a study made by its staff, determined that the best source of an adequate long-term supply of electric power and energy at reasonable rates was Applicant Colorado-Ute. By the above resolution, adopted November 5, 1980, Intermountain authorized the execution of a Colorado-Ute Wholesale Power Contract. By resolution adopted November 14, 1980, the Colorado-Ute Board of Directors accepted the aforesaid application of Intermountain for membership in Colorado-Ute, and authorized the execution of the Intermountain Wholesale Power Contract.

5. Pursuant to the authority referenced in Paragraph 4 hereinabove, Applicant Colorado-Ute forthwith executed the Wholesale Power Contract with Intermountain, and issued to Applicant Intermountain a certificate for one (1) share of stock in Colorado-Ute, which under Article I of the Colorado-Ute Bylaws, constitutes the Membership Certificate.

6. Colorado-Ute made an investigation into the financial effect that providing power and energy to Intermountain would have upon the original 13 members of Colorado-Ute. Colorado-Ute compared the cost

to its original 13 distribution members from 1980 with and without service to Intermountain. It appears from these investigations that, beginning in the year 1981, Colorado-Ute's serving Intermountain would result in a slight decrease in the cost to the original 13 members of Colorado-Ute.

7. Colorado-Ute also considered what effect the service to Intermountain would have on Colorado-Ute and the members it presently serves and determined it would have no adverse effect, and that Colorado-Ute, from a physical facility standpoint and from a power and energy standpoint, would be able to provide service to Intermountain.

8. Intermountain is party to an existing Wholesale Power Contract with WAPA, and to an existing Power Purchase Agreement with Public Service, and presently receives wholesale electric power and energy under these contracts. Applicants propose that said contracts be transferred and assigned by Intermountain to Colorado-Ute so that Colorado-Ute shall become party thereto in the place and stead of Intermountain, and for that purpose the Applicants seek Commission approval. Because of these assignments, no development fee will be required from Intermountain, which might otherwise be required by Colorado-Ute's bylaws. Said transfers will not cause any displacement of existing electric power and energy transmission arrangements within the State of Colorado, inasmuch as Colorado-Ute intends to continue existing service to Intermountain under these contracts and agreements. Colorado-Ute has come to an understanding with Public Service in regard to service to be provided under the Public Service contract, however, nothing contained in this decision should be construed as either express or implied approval of such contract or its basic concept inasmuch as it is not the subject matter of this proceeding.

9. Approval of the Intermountain Wholesale Power Contract with Colorado-Ute, and the transfer and assignment to Colorado-Ute of the WAPA Contract and the Public Service Contract, are and will be consistent with the public interest, and the purposes thereof are permitted and consistent with the Colorado Public Utilities Law.

10. There exists the need for delivery of wholesale electric power and energy service to Intermountain, and the proposed service by Colorado-Ute will meet this need. Colorado-Ute is ready, willing, and able to render the proposed service. No physical or economic duplication of the services of any other utilities will be caused by or result from the service proposed herein. The proposed service is in the public interest, and is and will be required by the present and future public convenience and necessity.

11. Applicants propose that certain property and electrical facilities located at the Palmer Lake Substation, the Waterton Substation, and the Smoky Hill Substation, presently owned or controlled by Intermountain, which will be necessary for Colorado-Ute to provide wholesale power and energy service to Intermountain, be transferred to Colorado-Ute at net book value as of the date of transfer, now proposed to be July 1, 1981. The net book value of these facilities is estimated at an amount not in excess of \$1,200,000. The transfer of these facilities was authorized by the Membership Application of Intermountain and the resolution by Colorado-Ute accepting such application.

12. Applicants propose that the consideration for the transfer of these facilities shall consist principally of the assumption by Applicant Colorado-Ute of certain indebtedness of Applicant Intermountain in the amount of the net book value of the facilities at the time of transfer owing to the Rural Electrification Administration (hereinafter called "REA"), of the United States of America (hereinafter called "USA"), or to the National Rural Utilities Cooperative Finance Corporation (hereinafter called "CFC"). Any notes to be issued by Colorado-Ute relating to such debt assumption will be secured by a Supplemental Mortgage and Security Agreement heretofore issued in favor of the USA and CFC. Colorado-Ute, by the above-entitled application did not seek

approval of any specific security, since the exact details of the financial arrangements have not been finalized, and prior to the issuance of any required securities will make appropriate application to the Commission for authority.

13. The property and facilities proposed to be transferred and acquired are needed by Colorado-Ute in order to provide wholesale power and energy service to Intermountain. At the point in time when Colorado-Ute initiates such wholesale power and energy service to Intermountain, such property and facilities would no longer be needed or used by Intermountain.

14. Public convenience and necessity and the public interest require that the aforesaid property and facilities be transferred to Colorado-Ute by Intermountain and acquired by Colorado-Ute from Intermountain.

15. The financial position of Colorado-Ute and its ability to serve will not be impaired by this merger.

16. The rates to Intermountain under the Wholesale Contract with Colorado-Ute will be slightly higher initially, but will be lower in the long run, than rates under its present contracts.

17. No rate increase will be made by Colorado-Ute to its members as a result of the merger.

18. Colorado-Ute is and will be financially and otherwise able to render electric service to Intermountain as provided in the Wholesale Contract with said members.

19. It is in the public interest that the membership of Intermountain in Colorado-Ute, the wholesale power contract between Colorado-Ute and Intermountain, and the assignment of the Intermountain contracts with WAPA and Public Service be approved by this Commission.

20. It is in the public interest that Colorado-Ute be authorized to render wholesale electric power and energy service to Intermountain.

CONCLUSIONS ON FINDINGS OF FACT

1. The membership of Intermountain in Colorado-Ute should be approved.

2. Public convenience and necessity require that Colorado-Ute be authorized to serve Intermountain as requested in this application.

3. Colorado-Ute should be authorized to acquire the facilities proposed to be transferred to it from Intermountain.

4. The Intermountain Wholesale Power Contract with Colorado-Ute and the assignment of the Wholesale Power Contract with WAPA and the Power Purchase Agreement with Public Service should be approved.

O R D E R

THE COMMISSION ORDERS THAT:

1. The addition of Applicant Intermountain Rural Electric Association, as a member of Applicant Colorado-Ute Electric Association, Inc., be, and the same hereby is, authorized and approved.

2. The Intermountain Wholesale Power Contract between Colorado-Ute Electric Association, Inc., and the Intermountain Rural Electric Association be, and the same hereby is, authorized and approved.

3. The assignment to Colorado-Ute Electric Association, Inc., by Intermountain Rural Electric Association of the Wholesale Power Contract with WAPA and the Power Purchase Agreement with PSCo be, and the same hereby is, authorized and approved.

4. The transfer of certain property and electrical facilities as proposed in the application which are presently owned or controlled by Intermountain Rural Electric Association to Colorado-Ute Electric Association, Inc., be, and the same hereby is, authorized and approved, as required by the provisions of 40-5-105, CRS 1973.

5. A Certificate of Public Convenience and Necessity is hereby granted to Colorado-Ute Electric Association, Inc., to render wholesale electric power and energy service to Intermountain Rural Electric Association.

6. Colorado-Ute Electric Association, Inc., shall initiate service to Intermountain Rural Electric Association upon the filing of an appropriate advice letter, together with the contract, the effective date of service to be set forth in the advice letter.

7. The Commission retains jurisdiction of this proceeding to the end that it may make such further order or orders in the premises as to it may seem proper or desirable.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

9. As provided by 40-6-109, CRS 1973, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of 40-6-114, CRS 1973.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner

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