

(Decision No. R90-71)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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RE: WATER SERVICES FURNISHED BY)	DOCKET NO. 89C-194W
CASCADE PUBLIC SERVICE COMPANY,)	
P.O. BOX 57, CASCADE, COLORADO)	RECOMMENDED DECISION OF
80909.)	ADMINISTRATIVE LAW JUDGE
)	KEN F. KIRKPATRICK

January 18, 1990

Appearances: Peter Stapp, Assistant Attorney General,
Denver, Colorado, for the Staff of the
Commission;

M. E. MacDougall, Esq., Colorado Springs,
Colorado, for Intervenors Cascade Community
Association and Debra Crane;

John Thompson, Esq., Denver, Colorado, for
the Cascade Public Service Company.

STATEMENT

This proceeding was instituted by Commission Decision No. C89-655, May 16, 1989. The purpose of the proceeding as stated in that order is to examine Cascade Public Service Company's (Cascade) distribution system, its method of providing water, and the appropriateness of construction of a treatment facility as opposed to obtaining treated water from another source. The order set the matter for a hearing to be held July 25 and 26, 1989, in Cascade, Colorado.

Cascade Community Association (Community Association) and Debra Crane filed their Petition to Intervene on May 24, 1989. On June 1, 1989, the Office of the Attorney General entered its appearance on behalf of the Staff. By Decision No. R89-769-I, June 12, 1989, Community Association and Crane were granted intervention.

At the assigned place and time the undersigned called the matter for hearing. During the course of the hearing Exhibits 1-6 and 8-16 were identified, offered, and admitted into evidence. Exhibit 7 consists of Rules 18 and 19 of the Commission's Rules Regulating the Service of Water Utilities, of which administrative notice was taken. At the conclusion of the hearing a briefing schedule was established which provided for final briefs to be filed no later than September 18, 1989. Such briefs were timely filed.

By Decision No. R89-1377-I, October 16, 1989, the matter was placed in suspense until November 15, 1989. The reason was to allow for additional negotiations. By Decision No. R89-1566-I, December 7, 1989, the matter was further suspended until December 15, 1989, for the same reason.

The undersigned requested that Staff and Intervenors respond to a certain letter from the Respondent concerning matters which include the subject of this proceeding. Responses to the letter were filed by Crane on January 8, 1990, and by Staff on January 10, 1990.

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

FINDINGS OF FACT

1. Cascade is in the business of acquiring, treating, and distributing water in its service area. Cascade, an unincorporated residential community located in the Ute Pass area west of Colorado Springs. It is a public utility subject to the jurisdiction of this Commission.

2. This Commission's concern over the quality of water provided by the Respondent goes back many years. The most recent chapter was begun in Case No. 6294, which was a show-cause proceeding against the Respondent concerning the purity of the water provided by the Respondent. That case resulted in a negotiated settlement, a portion of which stated that Cascade would provide filtered water to its customers by January 1, 1986. However, Decision No. R84-1291, which incorporated the settlement, specifically authorized extensions to be sought.

3. A further order in Case No. 6294, Decision No. R87-1502, adopted a revised stipulation entered into between Cascade and Staff which set forth a method to provide adequate filtration as well as a method of funding that filtration. The method chosen and agreed to was construction of a filtration system by Cascade, to be paid for by certain construction surcharge tariffs. The surcharge tariffs were to be filed at a later time, subject to Commission approval.

4. Cascade filed tariffs to put into effect a construction surcharge pursuant to application filed December 28, 1988. The Commission set the matter for public comment on January 31, 1989, which was heard as scheduled, and by Decision No. R89-215, February 21, 1989, it was recommended that the application to put into effect the construction tariffs upon less than statutory notice be granted.

By Decision No. C89-475, April 6, 1989, the Commission granted exceptions to Decision No. R89-215, and remanded the application to the undersigned. The thrust of that decision was that further inquiry was necessary to determine whether circumstances had changed such that

building a treatment plant was no longer appropriate. Cascade subsequently withdrew its application and the proceeding was dismissed by Decision No. R89-1028.

5. Cascade continues to provide unfiltered water to its customers at the present time. The water provided by Cascade to its customers is disagreeable to sight and smell. Further, failure to filter water will allow the presence of giardia cysts in water delivered to the customers.

6. The City of Colorado Springs operates a drinking water treatment plant west of Cascade, Colorado. This purification plant treats water to the extent required by all applicable State and Federal health regulations. It is technically feasible to hook up the Cascade distribution system to the Colorado Springs treatment facility. The initial costs of connecting to the Colorado Springs treatment plant are substantially less, approximately one third, of the costs of Cascade's building its own treatment plant. However, the cost per thousand cubic feet which the City of Colorado Springs would charge, on the order of \$2 per thousand cubic feet, is far in excess of the cost of treating water that Cascade would incur were it to build its own treatment plant.

7. The Colorado Springs Ute Pass treatment plant would consistently provide high quality water to the customers of Cascade. A treatment plant built and operated by Cascade would be less consistent due to a smaller plant having a lesser capability for handling sudden changes in volume and flow. Further, a larger plant has available to it more expertise and resources available for monitoring, sampling, and quality control.

8. The City of Colorado Springs Department of Utilities, Water Division, is willing to recommend to the Colorado Springs City Council that it enter into an agreement with Cascade the terms of which agreement are substantially set forth in Exhibit No. 1.

DISCUSSION

A focus of this proceeding is the quality and purity of water supplied by Cascade to its customers. While the Respondent urges that the U.S. Environmental Protection Agency and the Colorado Department of Health have primary jurisdiction in this matter, a proposition with which the undersigned does not disagree, the fact remains that those agencies have not required Cascade to provide good quality water to its customers. This Commission does have wide jurisdiction over the practices of public utilities. In addition to its general supervisory authority, § 40-3-102, C.R.S., the Commission is specifically charged with ensuring that all commodities furnished by utilities are just and reasonable. Further, a public utility is required to furnish, provide, and maintain service which will promote the safety and health of its customers and the public. See § 40-3-101, C.R.S. Finally, this Commission has specifically adopted rules concerning water quality which require water provided for human consumption to be free from disease-producing organisms and agreeable to sight and smell.

Thus while this Commission is not primarily a public health agency, it does have the authority to require that the public health and safety be protected from improper practices of utilities.

It should be recognized that this Commission has no magic wand to produce a solution satisfactory to all the customers of Cascade. It appears that the customers are perhaps evenly divided between those seeking no changes to the utility's practices; those seeking hook up to the Colorado Springs treatment facility; and those seeking to have the utility build its own treatment facility. Also, this Commission has no money to pay for any system improvements that it might order. Nonetheless, it is apparent to the undersigned that the ratepayers of Cascade are entitled to receive filtered water under the rules of this Commission as well as the Public Utilities Law. Further, it is apparent that the method which will most expeditiously produce that result, and which will provide consistent pure water in the future, is to hook up to the City of Colorado Springs treatment facility. This will also prove to be the most expensive alternative in the long run. The order that follows directs the Respondent Cascade to enter into an agreement with the City of Colorado Springs, if the City is still willing, substantially in accordance with the terms of the agreement contained in Exhibit 1.

CONCLUSIONS

1. The ratepayers of Cascade are entitled to receive filtered water under the rules of this Commission as well as the Public Utilities Law.
2. The most expeditious and dependable method for obtaining treated water for the ratepayers of Respondent is for Cascade to hook up with the City of Colorado Springs treatment facility.
3. The City of Colorado Springs has evidenced a willingness to hook up the Cascade system to its own treatment facility in accordance with the terms of an agreement substantially contained in Exhibit 1 of this proceeding.
4. Cascade should enter into an agreement substantially in accordance with Exhibit 1 offered by the City of Colorado Springs immediately.
5. 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. Cascade Public Service Company, Cascade, Colorado, shall offer to enter into a contract with the City of Colorado Springs the terms of which are substantially in accordance with Exhibit 1 in this proceeding.


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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