

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03D-161W

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IN THE MATTER OF THE PETITION FOR A DECLARATORY ORDER FROM THE COMMISSION THAT THE TRANSFER OF THE CAPITAL STOCK OF CASCADE TOWN COMPANY, A COLORADO CORPORATION WHICH OWNS ALL OF THE CAPITAL STOCK OF CASCADE PUBLIC SERVICE COMPANY DOES NOT REQUIRE THE APPROVAL OF THE COMMISSION PURSUANT TO C.R.S § 40-5-105 AND 4 CCR 723-1-55.

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**DECISION GRANTING PETITION  
FOR DECLARATORY ORDER**

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Mailed Date: January 13, 2004  
Adopted Date: December 10, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of a petition for declaratory order filed by Cascade Public Service Company (CPSC). CPSC seeks an order that a transfer of capital stock of Cascade Town Company, a Colorado Corporation which owns all the capital stock of CPSC, does not require Commission approval under § 40-5-105, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-55.

2. On March 10, 2003, the Director of the Commission, based on information and belief, sent a proposed show cause letter to CPSC stating that a controlling ownership of Cascade Town Company had been transferred without proper authorization from the Commission.

3. In response to the proposed show cause letter, on April 9, 2003, counsel for CPSC stated that CPSC did not believe the statute and regulation cited by the Director applied to a transfer of the stock of a corporation which is the owner of the stock of a company which holds a

certificate of public convenience and necessity. Within its letter, counsel for CPSC stated that it anticipated initiating a declaratory order proceeding in order to resolve the uncertainty.

4. On April 21, 2003, CPSC filed the petition for declaratory order. Staff of the Colorado Public Utilities Commission (Staff) filed its notice of intervention and request for hearing on May 30, 2003.

5. At the June 11, 2003, Commissioner's Weekly Meeting, the application was deemed complete and the matter set for hearing. By Decision No. C03-0665, the Commission set a prehearing conference for July 1, 2003.

6. At the prehearing conference CPSC and Staff agreed that an evidentiary hearing in this case was not necessary since the matters in dispute involve questions of law. As a result, the Commission set a procedural schedule for the filing of stipulated facts and briefs, and oral argument.

7. The parties timely filed the stipulated facts and associated briefs. Oral argument was heard on September 16, 2003. Upon the conclusion of the hearing the Commission took the matter under advisement.

8. At the December 10, 2003, Commissioner's Weekly Meeting, the Commission conducted deliberations on this case.

## **B. Findings**

9. CPSC sets forth three arguments as to why it should not have to seek Commission approval for its parent corporation's stock transfer: first, the language of 4 CCR 723-1-55(b) which purports to require CPSC to file with the Commission exceeds the authority given to the Commission in § 40-5-105, C.R.S.; second, that a transfer of a corporation's stock is not a

transfer of its assets; and third, there is nothing in this case that warrants piercing the corporate veil to reach the parent, Cascade Town Company.

10. Staff responds that Rule 55 does not exceed the authority provided the Commission by § 40-5-105, C.R.S., given the Commission's broad delegation of legislative power, and that where a stock transfer effectuates a change in ownership of a whole business, it does constitute a transfer of assets and is thus subject to the provisions of § 40-5-105, C.R.S.

11. Section 40-5-105, C.R.S., provides:

**Certificate or assets may be sold, assigned, or leased.** The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold assigned, or leased as any other property other than in the normal course of business but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe.

12. Commission Rule 4 CCR 723-1-55(b) provides:

Procedure. Any fixed utility applying for the issuance extension or transfer of a certificate of public convenience and necessity, including authority for approval of the exercise of franchise rights, to obtain controlling interest in any utility, or asset transfer, stock transfer, or merger shall proceed as set forth in this rule.

13. Section 40-5-105, C.R.S., requires a public utility to seek Commission approval for the transfer of assets outside the course of normal business. As stated in the rule itself, Rule 55(b) sets forth the procedural obligations of parties that must file with the Commission. It is well settled that procedural rules do not affect substantive rights of parties. *See In re People Ex rel. B.C.*, 981 P.2d 145, 149 fn4, (Colo. 1999); *Crowley v. Hardman Bros.*, 223 P.2d 1045, 1049 (Colo. 1950). Thus, Rule 55(b) does not establish the Commission's authority to require any entity to file anything in the event of an asset transfer.

14. Neither party presents arguments that address the issue we believe crucial to determine the outcome of this case: whether the language of § 40-5-105, C.R.S., provides for

Commission jurisdiction over a regulated utility in a situation where the stock of the utility's unregulated non-utility parent company is transferred, but nothing else changes.

15. No facts in the record indicate that there have been any changes whatsoever in the assets of CPSC, or in Cascade Town Company's ownership of CPSC's stock, or that there have been any changes in the accounting practices of CPSC due to the transfer of the stock of its parent corporation.

16. Moreover, the Commission commonly regulates public utilities as defined by statute. *See* § 40-1-103(1)(a), C.R.S. There are no facts in the record suggesting that the parent, Cascade Town Company, is a public utility. Therefore, we have no jurisdiction to regulate Cascade Town Company or its stock transfer.

17. By requiring CPSC to apply to obtain Commission approval of a stock transfer of Cascade Town Company, a parent corporation that is not a utility, we would expand Commission jurisdiction beyond that which is authorized by statute. We do not find in § 40-5-105, C.R.S., any language which allows the Commission to regulate the stock transfer of CPSC's parent, Cascade Town Company, a non-utility corporation.

### **C. Conclusions**

18. The Commission has no jurisdiction under § 40-5-105, C.R.S., or 4 CCR 723-1-55(b) to require CPSC to file an application for approval of the transfer of Cascade Town Company's stock.

**II. ORDER****A. The Commission Orders That:**

1. The Petition for Declaratory Order filed by Cascade Public Service Company is granted.
2. Cascade Public Service Company is not required to file an application seeking Commission approval for the transfer of its parent company's stock.
3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.
4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 10, 2003.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners