

Decision No. C04-0312

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02M-573E

IN THE MATTER OF THE 2001 EARNINGS TEST FILING OF PUBLIC SERVICE
COMPANY OF COLORADO.

**DECISION DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: March 29, 2004

Adopted Date: March 17, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) by the Colorado Office of Consumer Counsel (OCC) filed on February 26, 2004. The OCC requests reconsideration of Decision No. C04-0143 (Decision). In that Decision, we partially granted exceptions filed by Public Service Company of Colorado (PSCo), and denied exceptions filed by the OCC to the Recommended Decision. We concluded that it was appropriate to include consideration of the gain generated by the sale of Boulder Hydro in the 2001 earnings test rather than conduct a separate docket, and clarified that PSCo must be able to substantiate its decisions affecting rates because they have the burden of proof. However, we declined to order PSCo to manage its records in any particular way. The application for RRR addresses the Commission's reasoning with respect to its decision to include the gain from the sale of Boulder Hydro in the 2001 earnings test.

2. Having carefully considered the matter, we deny the OCC's application for RRR.

II. DISCUSSION

3. The OCC states, “[t]he PUC’s reinterpretation of the Partial Stipulation in Docket No. 00A-351E reverses what the OCC intended to achieve by entering into that agreement. The OCC requests that the Commission reconsider its interpretation of the Partial Stipulation in Docket No. 00A-351E so that the OCC can continue to resolve individual issues with confidence that the Commission will not negate such agreements after the fact.” We note that the OCC does not specifically ask for a change in the results of the Decision.

4. We find that our reading of the plain language of the partial stipulation is reasonable. We cannot divine what the OCC intended by entering into the partial stipulation. We must interpret the language of a stipulation based upon the language used in the entire stipulation. The partial stipulation, in relevant part provides:

2. In the applicable earnings test filing (e.g., in 2001 for calendar year 2000 if the sales transaction closes this year), Public Service will explicitly propose to treat the Gain as an item to be considered *in the earnings test proceeding*.

3. Staff and the OCC reserve the right to take any position that either wishes *with regard to the propriety of the proposed earnings test treatment of the Gain* in the proceeding referenced in Paragraph 2 above. (emphasis added)

The OCC contends that in paragraph 3 of the partial stipulation, as set forth above, the OCC reserved the right to have the treatment of the gain addressed in yet another docket. We read the plain language of the partial stipulation to mean that Staff of the Commission and the OCC reserved the right to take any position with regard to the propriety of the proposed *earnings test treatment* of the gain. The OCC focuses on the phrase “any position” and ignores the rest of the language.

5. Given that the parties had resolved all issues save treatment of the gain in the main stipulation, if any of the parties wanted to treat the gain in a separate docket, it could have stated this position clearly in the partial stipulation. Moreover, such a party would not have agreed to include consideration of the gain in the 2001 earnings test. As we noted in the Decision, we do not believe a separate docket would be an efficient use of the Commission's resources.

6. Similarly, we do not believe we misinterpreted the context of the joint motion for hearing. We did not construe the paragraph cited by the OCC as a waiver of a "previously reserved right to raise the issue of the appropriate procedural forum," because we do not believe that the OCC previously reserved that right. As noted above, the plain language of the partial stipulation indicates that OCC reserved its right to contest the earnings test treatment of the gain in any way.

7. The Decision does not discourage parties from entering into stipulations; our decision reasonably interpreted the plain language of the partial stipulation. Because we believe we have correctly interpreted the partial stipulation, we deny the OCC's Application for RRR.

III. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, and Reconsideration filed by the Colorado Office of Consumer Counsel is denied.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 17, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners