4-23-1984

Colorado Energy Advocacy Office v. Public Service Co.

SUPREME COURT, STATE OF COLORADO

Case No. 83 SA 476

APPEAL FROM THE DISTRICT COURT, CITY AND COUNTY OF DENVER

ANSWER BRIEF OF DEFENDANT - APPELLEE
PUBLIC SERVICE COMPANY OF COLORADO

COLORADO ENERGY ADVOCACY OFFICE and
ANN CALDWELL,

Plaintiffs-Appellants,

v.

PUBLIC SERVICE COMPANY OF COLORADO, PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO; and COMMISSIONERS EDYTHE S. MILLER, DANIEL E. MUSE and ANDRA SCHMIDT,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, 83 CV 7390, THE HONORABLE GILBERT A. ALEXANDER, JUDGE, AFFIRMING THE DECISIONS OF THE PUBLIC UTILITIES COMMISSION (PUC CASE NO. 5923)

DATE: April 23, 1984

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STATEMENT OF THE CASE

The instant appeal seeks judicial review of certain decisions issued by the Public Utilities Commission (also referred to as "Commission" or "PUC") in a complaint proceeding. The complaint had been brought by the Colorado Energy Advocacy Office and Ann Caldwell and they will collectively be referred to as "CEAO" or "Complainants". Public Service Company of Colorado was the Respondent in the Commission proceeding and shall be referred to by its full name, "Company" or "Respondent". The Staff of the Public Utilities Commission was a participant

in the proceeding before the Commission and shall be referred to as "Commission Staff" or "Staff".

In summary, the complaint alleged that the Company's Gas Cost Adjustment ("GCA") tariff was illegal and should be set aside. Evidentiary hearings were held before the Commission on August 28, 1980, December 14, 1981 and December 30, 1981. A number of decisions were issued by the Commission and the end result was a denial of the allegations made and the relief requested.

For judicial review purposes, the "final" decision of the Commission was issued on August 4, 1982. An appeal to the District Court In and For the City and County of Denver was then brought, briefs were submitted and oral arguments were presented on July 22, 1983. Upon conclusion of the oral arguments, The Honorable Gilbert A. Alexander issued a bench ruling affirming the Public Utilities Commission. The ruling was reduced to a written order dated September 9, 1983. The instant appeal was then taken by Complainants.

If specific reference to the transcripts of the evidentiary hearings before the Commission is necessary, it shall be cited by date, page number and line number. Similarly, exhibits shall be cited by the exhibit number assigned during the evidentiary hearings. When specific citation to a particular pleading is appropriate, it shall be done by folio number (the Commission assigned folio numbers to the entire record when the record was certified to the District

Court).

With respect to the decisions of the Public Utilities Commission, they generally are very detailed and it is the substance of those decisions which is the subject of judicial review. Therefore, to have same readily available for reference purposes, they are set forth in the Appendices to the instant Answer Brief. References to same shall be by decision number and, where appropriate, to the numbered paragraph and page.

STATEMENT OF THE FACTS

Before discussing the facts surrounding the complaint which is the subject of the instant appeal, it is necessary to discuss two related proceedings before the Commission which had occurred previously.

(a)

Case No. 5721

In January 1977, the Commission issued a decision in which it noted that the operation of the gas cost adjustment clauses of three jurisdictional public utilities (including Public Service Company) was resulting in significant increases in consumers' bills due to the rapid increase in the wholesale price of natural gas and decided it was an appropriate time for a general review of the clauses. The review was to include, but not be limited to, the impact on various customers, administrative costs, effect on ability of utilities to

raise capital, present and projected gas supply situations and the effect of such clauses in relationship to relative efficiencies in the purchase of natural gas.

After an exhaustive schedule, the Commission issued Decision No. C78-414 on April 5, 1978 (Appendix 1). In said decision, the Commission allowed the continuance of such clauses, with certain modifications, because their discontinuance could have substantial adverse effects on the ability of the utilities to raise capital. Also, the Commission ordered the Staff to perform audits of the clauses as necessary and closed Docket No. 5721.

(b)

Application No. 31896

On May 24, 1979, Public Service Company filed an application with the Commission requesting that it be allowed to place into effect revised tariff sheets regarding its GCA clause. On June 19, 1979, the Commission granted said application in Decision No. C79-941 (Appendix 2).

There are two aspects of the tariffs approved in Decision No. C79-941 which should be discussed in detail because they are the subject of the instant appeal. The tariff sheets are attached to Decision No. C79-941 (Appendix 2).

The first provision relates to the over-recovered and under-recovered amounts. Since the 1950's, Public Service

Company has had a GCA tariff to recover the frequent gas cost increases of its suppliers. The calculation of the GCA amount (up until 1979) had always been based upon an historical test year, the assumption being that test year conditions coincided with actual conditions during the time when the rates were in effect. Precise recovery through the retail rates of the Company's purchased gas costs never occurred, with the result that the GCA revenues collected were greater or lesser than the Company's actual purchased gas costs.

In order to correct for the mismatch just described, the Company proposed the new tariff whereby the monthly calculation of the difference between purchased gas costs and recovered gas costs for the previous month would be made and any shortfall or over-recovery between estimated sales and actual sales during the recovery month would be added to or subtracted from the unrecovered gas costs applicable in subsequent months.

Through this mechanism, gas cost revenues would track purchased gas costs, with the exception of the two month lag for recovering unrecovered gas costs. The imperfections resulting from this lag are minor compared to the potential swings inherent in the method then in effect which was based on the demonstrably false assumption that actual experience would mirror the experience during the test year which was the basis on which the GCA was determined.

The other provision in the tariff relevant to the instant appeal is the language addressing "any appropriate adjustments". In calculating purchased gas costs, the tariff provision allowed said amount to be adjusted for related items not technically falling under the umbrella of "purchased gas costs". Typical adjustmentsare: lost and unaccounted for gas; known increases in suppliers' costs; costs of gas purchased for underground storage.

Any change in the GCA amount, including appropriate adjustments, must be submitted by application to the Commission and must receive Commission approval as a prerequisite to being allowed.

(c)

Case No. 5923

The complaint, which was filed on April 16, 1980, challenged the legality of the Company's GCA tariff provisions which had been approved by the Commission in Decision No. C79-941. Various issues were raised, but the two which are involved in the instant proceeding are as follows: whether the tariff provisions addressing over-recovered and under-recovered amounts constitute retroactive ratemaking; and whether the tariff provision allowing for "other appropriate adjustments" is an unlawful delegation of power. (The third issue raised in the instant appeal, i.e., ex parte communications, became an issue later in the complaint proceeding).

On May 8, 1980, Public Service Company filed its Answer wherein it denied all allegations raised by the Complainants. On August 13, 1980, the Staff of the Public Utilities Commission entered its appearance in the proceeding as a participant pursuant to Rule 7(b)(7) of the Rules of Practice and Procedure of the Public Utilities Commission.

The hearing with respect to the complaint was held on August 28, 1980 before Examiner Trumbull. The Complainants Ann Caldwell and William Schroer (Director of CEAO), as well as Harry A. Galligan, Jr. (Executive Secretary of the Public Utilities Commission) and James H. Ranniger, Vice-President of Rates and Regulations for Public Service Company were called as witnesses by Complainants. The hearing was concluded the same day and the matter was taken under advisement pending the issuance of a Recommended Decision.

On April 23, 1981, Examiner Trumbull issued his Recommended Decision (Decision No. R81-731) wherein he found against Complainants on all issues raised. (All decisions issued in Case No. 5923 are set forth in chronological order in Appendix 3). With respect to the claim that the over-recovered and under-recovered provision constitutes retroactive ratemaking, the Examiner's discussion is set forth in Paragraph No. 11 (pp. 9-11); and, with respect to the claim that the provision for "other appropriate adjustments" constitutes unlawful delegation of power, the Examiner's discussion is set forth in Paragraph Nos. 13 and 14 (pp. 12-13).

Although the GCA tariff was found as not constituting retroactive ratemaking, the Examiner amended one aspect of Public Service Company's treatment of over-recovered and under-recovered amounts. Over-recovered and under-recovered amounts were handled by the Company on a system-wide basis rather than specifically tracked to each customer based upon his or her actual consumption, and the Examiner felt the calculations should be based upon actual consumption. The Examiner's discussion of this is set forth in Paragraph No. 2 (pp. 11-12). The Examiner ordered Public Service Company to make refunds to any customer who paid more under the system-wide approach than would have been paid based upon that customer's actual usage (Ordering Paragraph Nos. 1 and 2, p. 13).

Also, although the Examiner did find that the "other appropriate adjustment" provision was not illegal, he concluded that there now was sufficient experience to allow for a specific listing of the adjustments which would be allowed in the future (Paragraph No. 13, p. 12).

Complainants filed Exceptions to the Examiner's decision because of his denial of the relief sought in the complaint.

Public Service Company also filed Exceptions (Folio Nos. 272-285) and the relevant issues addressed were several. The first was the Examiner's conclusion that over-recovered and under-recovered amounts should be calculated based upon each customer's actual consumption. It was the Company's

position that adoption by the Commission of the Examiner's approach was impractical. The second issue addressed was the specific listing of "other appropriate adjustments" without any flexibility provided for including others which could arise and which could not be foreseen. The third was the Examiner's discussion, in Paragraph No. 5 (p.5), of a prior general rate increase proceeding of the Company; the Company's position was that the Examiner's discussion was incorrect and without evidentiary support.

On August 18, 1981, the Commission issued Decision No. C81-1429. Although the Commission was not in complete disagreement with the Examiner's Recommended Decision, for purposes of clarity the Commission decision contained its own findings of fact and conclusions thereon without regard to Recommended Decision No. R81-731. The Commission found against Complainants with respect to the allegation that the over-recovered and under-recovered provision constitutes retroactive ratemaking (Paragraph Nos. 18-26, (pp. 25-28) and ruled against Complainants with respect to the allegation that the "other appropriate adjustment" provision constitutes an unlawful delegation of power (Paragraph Nos. 29-32, (pp. 30-32).

The Commission granted the Company's Exceptions in its entirety. With respect to the Examiner's conclusion that the over-recovered and under-recovered amounts should be calculated on the basis of actual consumption, the Commission

found that the Company's GCA procedure is lawful and the Examiner's proposal is unwarranted (Paragraph Nos. 27-28, pp. 28-29). Also, the Commission (like the Examiner) specifically listed the adjustments which could be included in the GCA application, but also made it clear that the Company could request additional items as the need arose (Paragraph No. 32, p. 32). Finally, the Commission agreed with Public Service Company's statement of the facts as set forth in its Exceptions with respect to the context in which the general rate proceeding (I&S Docket No. 1330) should be placed and reversed the Examiner's discussion of same accordingly (Paragraph Nos. 13-14, pp. 13-14).

On September 8, 1981, Complainants filed a Petition and Application for Reconsideration of Decision No. C81-1429. In addition to all previous grounds which Complainants had raised, Complainants also attacked the Commission's reversal of the Examiner on the basis that the Commission decision contained information which was neither supported in the record nor capable of being derived from evidence in the record. Public Service Company also filed a Petition for Reconsideration. However, the issues raised are not related to the instant appeal and no discussion of same is necessary.

On September 22, 1981, the Commission issued Decision No. C81-1644 wherein the Commission remanded the matter to Examiner Trumbull for the purposes of insuring the right of all parties to fully cross-examine the cost data referred to

in Decision No. C81-1429 and to explore the cost effectiveness of the refund procedure proposed by the Examiner in Recommended Decision No. R81-731. Pending the remand and the issuance of a supplemental recommended decision, the Commission stayed all substantive issues which had been raised.

The remand hearings were held before Examiner Temmer on December 14 and 30, 1981. Although the matter had been remanded to the Examiner who presided on August 28, 1980, Examiner Trumbull had left his position with the Commission prior to the time said remanded hearings could be held and, as a result, the matter was reassigned to Examiner Temmer (Decision No. R82-586 dated 4-19-82, p. 3, 1st paragraph).

During said remand hearings, the following individuals testified: Richard A. Carlson of the Commission Staff; Michael J. McFadden, Director of Federal Regulatory Services Department for Public Service Company; Ronald Binz, an expert witness on behalf of Complainants; Henry G. Minor, Director of the Division of Customer Service for Public Service Company; and Ronald D. Meisner, Supervisor of Commercial-Industrial Billing Systems for Public Service Company. At the conclusion of the hearing on December 30, 1981, Examiner Temmer took the matter under advisement.

In Recommended Decision No. R82-586 issued on April 19, 1982, Examiner Temmer found that: there were no grounds to sustain the allegations of ex parte evidence having been illegally received to the prejudice of Complainants; ordering

a refund as initially recommended in Decision No. R81-731 would not be cost effective; and that the Commission was justified in setting forth the data contained in Decision No. C81-1429.

On May 10, 1982, Complainants filed Exceptions to the Examiner's Recommended Decision No. R82-586 and same was denied by the Commission on June 22, 1982 (Decision No. C82-939). On July 14, 1982, Complainants filed an Application for Rehearing, Reargument and Reconsideration of Decision No. C81-1429 and said Application was denied by the Commission on August 4, 1982 (Decision No. C82-1219).

Complainants then sought judicial review in the District Court in and for the City and County of Denver and same was assigned to the Honorable Gilbert A. Alexander. On September 9, 1983 Judge Alexander issued his written Order affirming the Public Utilities Commission. An appeal was taken to this Court by the Complainants pursuant to 40-6-115(5), C.R.S. 1973 as amended.

ARGUMENT

I

PURSUANT TO THE APPLICABLE STANDARDS FOR JUDICIAL REVIEW, THE DECISIONS OF THE PUBLIC UTILITIES COMMISSION SHOULD BE AFFIRMED AS BEING WITHIN THE COMMISSION'S AUTHORITY, CONSISTENT WITH RELEVANT LEGAL PRINCIPLES, JUST AND REASONABLE AND IN ACCORDANCE WITH THE EVIDENCE.

Judicial review of a Commission decision is specifically detailed in C.R.S. 1973, 40-6-114, 40-6-115 and 40-6-116.

Public Utilities Commission v. District Court, 180 Colo. 388, 390-391, 505 P.2d 1300, 1301 (1973). In reviewing a Commission decision, the Court is required to decide all relevant questions of law, but its review of fact findings is limited in determining whether the decision is just and reasonable and in accordance with the evidence. Union Rural Electric Association v. Public Utilities Commission, 661 P.2d 247, 251 (Colo. 1983); Parrish v. Public Utilities Commission, 134 Colo. 192, 196-197, 301 P.2d 343, 345 (1956).

The Commission's findings and its conclusions on disputed questions of fact shall be final. Answerphone v. Public Utilities Commission, 185 Colo. 175, 178, 522 P.2d 1229, 1230 (1974). A reviewing court will not substitute its judgment for that of the Commission where there is conflicting testimony and disputed issues of fact. Colorado-Ute Electric Association v. Public Utilities Commission, 602 P.2d 861, 865 (Colo. 1979); Answerphone v. Public Utilities Commission, supra; Sangre de Cristo Electric Association v. Public Utilities Commission, 185 Colo. 321, 324, 524 P.2d 309, 310 (1974); Parrish v. Public Utilities Commission, supra.

The decisions of the Commission are presumed to be reasonable and valid. The burden of showing improprieties or illegality of a Commission decision is upon the party attacking the decision; mere allegations will not suffice to

overcome this presumption. Colorado Municipal League v. Public Utilities Commission, 597 P.2d 586, 588 (Colo. 1979); Public Utilities Commission v. District Court, 163 Colo. 462, 467-469, 431 P.2d 773, 776-777 (1967).

The Commission has a general responsibility to protect the public interest regarding utility rates and practices. Morey v. Public Utilities Commission, supra; Public Utilities Commission v. District Court, 186 Colo. 278, 282-283, 527 P.2d 233, 234-235 (1974). A reviewing court will defer to the expertise of the Commission in its exercise of judgment, evaluation and analysis in carrying out its duties. Morey v. Public Utilities Commission, 629 P.2d 1061, 1067 (Colo. 1981); see Peoples Natural Gas v. Public Utilities Commission, 193 Colo. 421, 567 P.2d 377 (1977).

In fulfilling its function in the area of utility regulation, the PUC has broad authority to do whatever it deems necessary or convenient. Mountain States Telephone and Telegraph Co. v. Public Utilities Commission, 195 Colo. 130, 134-135, 576 P.2d 544, 547 (1978). The scope of that authority emanates from Article XXV of the Constitution of the State of Colorado. Mountain States Telephone and Telegraph Co. v. Public Utilities Commission, supra; Miller Bros., Inc. v. Public Utilities Commission, 185 Colo. 414, 525 P.2d 443 (1974); Red Ball Motor Freight, Inc. v. Public Utilities Commission, 185 Colo. 438, 525 P.2d 439 (1974); D & G Sanitation, Inc. v. Public Utilities Commission, 185 Colo. 388, 525 P.2d 455 (1974).

The Commission hires economists, analysts, accountants and others who provide the expertise which is necessary in carrying out its responsibilities. Public Utilities Commission v. District Court, supra, 186 Colo. at 283, 527 P.2d at 235. Its responsibilities exceed responding to issues as framed; it is obligated to use its Staff and investigate on its own. Ohio and Colorado Smelting and Refining Company v. Public Utilities Commission, 68 Colo. 137, 147, 187 P. 1082, 1086 (1920).

II

COMMISSION PROPERLY RELIED UPON ITS STAFF, WHO WAS NOT A "PARTY" TO THE COMPLAINT PROCEEDING, FOR ITS EXPERTISE AND SUCH RELIANCE DOES NOT CONSTITUTE EX PARTE COMMUNICATIONS.

THE INFORMATION RECEIVED BY THE COMMISSION FROM ITS STAFF WAS SPECIFICALLY SET FORTH IN THE COMMISSION DECISION AND THE MATTER WAS REOPENED FOR THE PARTIES TO CROSS-EXAMINE, PRESENT EVIDENCE OR OTHERWISE REBUT SAID INFORMATION. COMPLAINANTS HAVE FAILED TO SHOW ILLEGALITY, MISCONDUCT, BIAS OR PREJUDICE.

The first issue addressed by Complainants is the supposed unlawful Commission reliance on ex parte evidence. Complainants state that there is no known dispute with respect to their assertion of the basic facts and proceed to summarize same.

Contrary to the assertion by Complainants that there is no known dispute about the basic facts, Public Service Company submits that Complainants have distorted the role of the Commission Staff in the complaint proceeding. In

addition to the Statement of the Facts set forth previously herein, certain additional matters must be noted so that the role of the Commission Staff in the complaint proceeding may be properly placed in context.

Part of the relief sought from the Commission by the Complainants was a declaration that the Company's GCA tariff approved in 1979 was unconstitutional and an order directing Public Service Company to refund all monies received under said tariff. Public Service Company defended the tariff, and all circumstances surrounding said tariff, and argued that the relief sought should be denied. In the Examiner's Recommended Decision (Decision No. R81-731), he denied the relief sought by Complainants. However, he directed Public Service Company to calculate over-recovered and under-recovered amounts on a customer-by-customer basis rather than on a system-wide basis as it had been doing. Because of the way the issues had been framed in the pleadings and in the evidentiary hearing, neither Complainants nor Public Service Company had presented evidence with respect to the relief recommended by the Examiner. As a result, Public Service Company's Exceptions (Folio Nos. 272-285) were voluminous and directed at many of the practical problems that would arise if the Examiner's recommendation was adopted.

To further place the circumstances in the proper context, the complaint named Public Service Company as Respondent. The Commission Staff was not named as a party.

On August 13, 1980, the Commission Staff entered its appearance pursuant to Rule 7(B)(7) of the Commission's Rules of Practice and Procedure.

At the hearing held on August 28, 1980, the Commission Staff presented no testimony or evidence (Tr., 8-28-80, p. 138, line 15). Counsel for the Staff conducted limited cross-examination for the purpose of clarifying the records (Tr., 8-28-80, pp. 35-37, 41, 134-135).

In Complainants' post-hearing Statement of Position, certain allegations were made with respect to failings in the Staff's audits of the GCA clause. Staff responded to said allegations, addressing the Staff's procedures for auditing the GCA clause (Folio Nos. 165-168).

In Decision No. C81-1429, the Commission reversed the Examiner's order that Public Service Company re-calculate over-recovered and under-recovered amounts on the basis of a particular customer's usage and make refunds in certain circumstances. The Commission concluded this was not cost effective and its findings are discussed in Decision No. C81-1429, Paragraph Nos. 28, p. 30.

In response to Exceptions, the Commission remanded the matter in order to protect the rights of all parties and stayed all issues pending said remand (Decision No. C81-1644 dated 9-22-81).

On October 5, 1981, the Complainants deposed Staff member Richard A. Carlson. He testified with respect to

the investigation he conducted and the reporting of the results of that investigation.

On December 3, 1981, Complainants filed a motion to compel Mr. Carlson to answer specific questions regarding the substance of his discussions with Commissioner Miller and the Staff filed its response on December 7, 1981 (Folio Nos. 423-428 and 429-433, respectively).

In Decision No. C81-2054 (dated 12-11-81), the Commission referred the motion to the Examiner so as to provide Complainants with the opportunity to show the alleged "illegal action, misconduct, bias or bad faith" on the part of the Commission. Commissioner Miller recused herself from that decision and did so with regard to all subsequent decisions.

At the hearing on December 14, 1981, Complainants called Mr. Carlson as a witness (all references in the instant paragraph are to the transcript of said hearing). Mr. Carlson testified regarding his investigation into the cost effectiveness of the Examiner's proposal in Recommended Decision No. R81-731, his doing so because his supervisor requested it and the reporting of the results (p. 13, line 13 - p. 29, line 13). He also testified that he was not a participant at the August 28, 1980 hearing and that he was not even present at that hearing (p. 11, line 5 - p. 12, lines 15, 23-25); and that the Staff was not an active party in the complaint proceeding (p. 12, lines 10-15). Further, Mr. Carlson testified that the Staff has an internal policy that

a Staff member who testifies in a proceeding cannot provide assistance to the Commission (p. 31, line 15 - p. 32, line 12); that he is the Staff member who is an expert regarding fuel cost, electric cost and gas cost adjustment clauses (p. 8, line 14 - p. 9, line 3, p. 31, lines 5-9); that the duties of the Staff include providing the Commission with technical expertise, and that the specific request made of him and providing the results, in a case in which he was not a witness, was part of his duties (p. 32, line 13 - p. 33, line 8).

In the substantive stage of the hearing on December 14 and 30, 1981, the Staff presented no witnesses and engaged in no cross-examination. The Staff at no point has taken a position on the substantive issue raised in the complaint; its only interest was to insure that no party unfairly impugned the integrity of its audits.

The Commission has taken the position (Decision No. R82-256, p. 6, last paragraph) that 24-4-105(14) of the Administrative Procedure Act (APA), which prohibits receipt or consideration by an agency of ex parte material received without notice, is not applicable to the Commission in light of the provisions of C.R.S. 1973, 40-6-113(6). The latter provision specifically recognizes that the Commission may secure information on its own initiative.

Public Service Company submits the Commission's actions in this proceeding were within its authority regardless of

which statute is applicable. The Commission has stated its position regarding the applicability of the Public Utilities Law and presumably will do so in its brief. Therefore, Public Service Company will discuss the APA.

Under the APA, it is ex parte communications which are prohibited, and it is generally recognized that the term does not apply to communications within the agency. See Davis, Administrative Law Treatise, 2nd Edition, Vol. 3, Sections 17, 8-17.10. If the term is interpreted to mean communications between the Commission and its Staff when it is not a party, the end result would nullify the principal reason why courts defer to the expertise of the Commission. Further, it would thwart the very purpose for which the Commission is allowed to hire specialists.

Even if one concludes that an ex parte communication occurred between the Staff and the Commission, the APA prohibition applies only if there has been no notice of the receipt or consideration of the information. In the proceeding herein, the Commission specifically referred to the information, reopened the record for presentation of any relevant evidence, received detailed evidence from Complainants as well as Public Service Company (in addition to the testimony of Mr. Carlson, who was called as a witness by the Company) and concluded that the refund ordered by Examiner Trumbull was not cost effective. At that point, the evidence presented was far in excess of the data collected by Mr. Carlson and

which is claimed as being ex parte.

Public Service Company submits that the Commission's actions were within its authority, the Commission did not abuse its discretion, Complainants have failed to show bad faith, illegality or bias, there is no evidence to support an assertion of prejudice and there is substantial evidence to support the conclusion that Examiner Trumbull's proposal was not cost effective.

III

PUBLIC SERVICE COMPANY'S GCA TARIFF DOES NOT CONSTITUTE RETROACTIVE RATEMAKING PROHIBITED BY THE CONSTITUTION AND THE COMMISSION'S APPROVAL OF SAME WAS WITHIN THE COMMISSION'S BROAD AUTHORITY.

Since the 1950's, purchased gas costs have constituted a significant portion of the Company's operating expenses and gas cost increases by suppliers have been frequent. As a result, the Company has had an adjustment clause since that time to pass-on to its customers the increased costs without the necessity of continually filing requests for general rate increases.

The manner in which the Company's GCA tariff operated prior to June 19, 1979 and subsequent thereto is specifically described in the Statement of the Facts section of this Answer Brief ("Application No. 31896"). The type of clause in effect prior to June 19, 1979 is commonly referred to as a "fixed rate" tariff; the type of clause that went into

effect on June 19, 1979 is generally referred to as a "cost of service" tariff.

Whether a fixed rate tariff or a cost of service tariff has been involved, approval of the Commission has been a prerequisite in Colorado to implementation of a change in the GCA amount. This is not necessarily true in all GCA clauses used in jurisdictions other than Colorado.

A number of courts have dealt with the issue of adjustment clauses (gas and electric) and a leading case in this area is Public Service Company of New Hampshire v. Federal Energy Regulatory Commission, 600 F.2d 944 (DC Cir. 1979). While the case deals with fuel (electric) adjustment clauses, the discussion is equally applicable here.

In that case, a number of utilities had in place certain tariffs which used an historic period as a proxy for fuel costs to be incurred (and recovered) in the future (i.e., fixed rate tariffs). In late 1975, the utilities revised their tariffs to cost of service tariffs. When the transition was made, the utilities attempted to carry over into the new tariffs, by means of a surcharge, amounts they calculated as still being owed under the old tariffs. The Federal Energy Regulatory Commission (FERC) refused to approve the surcharges.

The case deals with the specific question of whether any mismatch in costs under the superceded fixed rate tariff can be carried over by means of a surcharge in the newly

approved cost of service tariff. In the case at hand, Public Service Company made no attempt subsequent to June 19, 1979 to carry over into the new tariff any mismatch which had occurred previously.

The case is relevant because it clearly holds that; absent such an attempt, cost of service tariffs do not constitute retroactive ratemaking. Three other Circuits, which issued decisions with respect to the transition issue, reached varying results regarding the transition issue. However, all agreed that cost of service tariffs absent such an attempt, do not constitute retroactive ratemaking. Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission, 589 F.2d 142 (3d Cir. 1978); Virginia Electric and Power Co. v. Federal Energy Regulatory Commission, 580 F.2d 710 (4th Cir. 1978); Maine Public Service Co. v. Federal Power Commission, 579 F.2d 659 (1st Cir. 1978).

As the tariffs approved June 19, 1979 indicate, Public Service Company was seeking authority to implement a cost of service tariff so as to correct the problems associated with the fixed rate tariff then in effect. In its approval (Decision No. C79-941) of the request, the Commission clearly understood that the tariff was in the nature of a cost of service tariff.

This Court has addressed the obligation of the Commission to set rates which protect both the ratepayer and the investor and this Court has specifically recognized the authority of

the Commission to allow GCA tariffs. Public Service Company v. Public Utilities Commission, 644 P.2d 933, 935, 939 (1982). Public Service Company further submits that the specific GCA tariff approved also was within the Commission's authority. Mountain States Telephone and Telegraph Co. v. Public Utilities Commission, supra; Miller Bros., Inc. v. Public Utilities Commission, supra. The Commission had the authority to disallow any adjustment clause, allow continuance of the fixed rate tariff approach or authorize implementation of the cost of service tariff. When the Commission has a number of reasonable alternatives available to it, its judgment will not be disturbed on appeal. Public Service Company v. Public Utilities Commission, 653 P.2d 1117, 1120 (Colo., 1982).

Specific support to rebut the allegation of retroactive ratemaking is found in Peoples Natural Gas v. Public Utilities Commission, 590 P.2d 960 (Colo. 1979). In that case, the utility (Peoples) filed two tariffs to increase rates in two different service areas to recover increased costs of gas imposed on it by its suppliers. Peoples also requested that it be allowed to impose a surcharge to cover losses it would incur between the time of filing and the time of the Commission's decision. The Commission approved both increases; however, the Commission denied the surcharge in one proceeding and granted it in the other proceeding. The District Court hearing the appeal of the denial of the surcharge reversed

the Commission; the District Court hearing the other appeal affirmed the granting of the surcharge. The two cases were then consolidated on appeal and this Court affirmed both District Court decisions.

As the Court indicated, the concept of retroactive ratemaking within the context of the Constitution is not to be blindly applied. 590 P.2d at 962; also, see Narragansett Electric Co. v. Burke, 415 A.2d 177 (1980). The Court held that the surcharge was valid, finding that the surcharge addressed expenses occurring after the filing of the tariff, the expenses were not connected with the utility's performance and the surcharge applied only to the period during which the Commission was considering the increase.

In the instant case, Public Service Company's situation is even more favorable than Peoples. The entire GCA mechanism was specifically approved; the Commission specifically endorsed the concept of cost of service tariffs for gas costs; any change in the GCA amount must first be approved by the Commission; it is only gas costs which are involved; it is only the mismatch which is carried over; and all changes are prospective.

In In Re Central Vermont Public Service Corporation (attached to the Opening Brief of Complainant herein), the Vermont Supreme Court reversed a Commission order allowing a "true-up" mechanism. The basis for doing so was that the statute must authorize such an approach (p. 10) and the

Commission decision is lacking any statement of justification for treating fuel costs differently than other costs (p. 12).

In Vermont, the Commission's authority flows from the statute and retroactive ratemaking under any circumstances is prohibited unless specifically authorized by statute. Thus, Vermont has even refused to recognize any recovery for the economic catastophe resulting from flood damage. Petition of Central Vermont Public Service Corporation, 116 VT 206, 71 A.2d 576 (1950).

With that background, the Vermont Supreme Court held that the Vermont Commission needs statutory authorization to authorize a "true-up" mechanism. The breadth of the authority vested in the Colorado Commission, however, is not so limited. Mountain States Telephone and Telegraph Co. v. Public Utilities Commission, supra; Miller Bros., Inc. v. Public Utilities Commission, supra.

With respect to the Vermont Supreme Court's holding regarding lack of justification, the Colorado Commission has discussed the reasons for allowing GCA clauses on a number of occasions and has determined a need exists. Decision Nos. C78-414; C79-941; R81-731, pp. 2-4; C81-1429, pp. 6-11.

Finally, the case of State Ex Rel. Utilities Commission v. Edmisten, 232 SE.2d 184 (N Caro. 1977), does not offer the support claimed by Complainants. The North Carolina legislature passed legislation fully terminating fuel adjustment

clauses effective September 1, 1975 and the issue before the Court was the utility's attempt to circumvent the statute. In its decision, the Court held that the newly enacted statute precluded the utility's attempt. However, the Court stated that the adjustment clause did not constitute retroactive ratemaking. 232 SE.2d at 194. Further, the Court's discussion recognizes that the clause in question was a fixed rate tariff and would not allow it to be converted into a cost of service tariff. 232 SE.2d at 194, 196-197.

IV

THE PROVISION ALLOWING "ANY APPROPRIATE ADJUSTMENTS" TO BE INCLUDED IN THE CALCULATION OF PURCHASED GAS COSTS IS SUFFICIENTLY DEFINITIVE, IN LIGHT OF ALL THE ATTENDANT CIRCUMSTANCES AND THE APPROVAL OF SUCH LANGUAGE BY THE COMMISSION WAS JUST AND REASONABLE.

IN LIGHT OF THE FACT THAT SPECIFIC COMMISSION APPROVAL MUST BE OBTAINED BEFORE ANY CHANGE IN THE GCA RATE MAY BE IMPLEMENTED, THERE IS NO UNLAWFUL DELEGATION OF POWER AS ALLEGED BY COMPLAINANTS.

The GCA tariff under review provides that the GCA is to reflect changes in the cost of gas purchased from suppliers. Because the "quoted" cost of gas may not be appropriate for regulatory purposes (it may be too high or too low), the "any appropriate adjustments" provision allows flexibility in adjusting said quoted price. Thus, if gas is purchased during the summer for storage purposes to be drawn down the following winter, the "quoted" cost of gas is reduced accordingly so that ratepayers do not pay for such gas until it is used.

Regardless of what adjustments are taken into account by the Company in calculating the cost for inclusion in its calculations, an application containing information deemed relevant by the Commission must be filed and a decision specifically approving same must be issued before any change in the rate may be made. With that prerequisite, Complainant's allegation is without merit. City of Evansville v. Southern Indiana Gas and Electric Co., 339 NE. 2d 562, 592 and cases cited therein (Indiana 1975).

This Court previously has recognized the validity of rates which had been filed by a utility and became effective by operation of law because the Commission did not institute an investigation thereby suspending same during the statutory 30 day waiting period. Public Utilities Commission v. District Court, supra, 186 Colo. 278, 527 P.2d 233 (1974). Even though rates becoming effective in this manner are lawful, Complainants ask this Court to find that rates specifically authorized by a decision are unlawful.

The case of Baca Grande Corporation v. Public Utilities Commission, 190 Colo. 201, 544 P.2d 977 (1976), cited by Complainants, is wholly inapposite. In Baca Grande, the utility was given the absolute discretion to decide whether a developer would receive a refund and which rate customers having underground facilities would be charged. That is not the situation in the instant case. In the case at hand, Public Service Company does not have the ability to make the

choice. Specific Commission approval of any proposal is a prerequisite to implementation.

Complainants' Opening Brief is replete with comments about the inadequacy of the information provided the Commission and the review made by the Staff. However, Complainants presented no evidence on this issue even though a member of the Staff could have been subpoenaed (just as Mssrs. Galligan and Ranniger were called). Instead, we have Complainants asking this Court to assume that the sufficiency of the information provided should be judged by Complainant without any evidence that it is not sufficient for the Commission and its Staff. These mere allegations and postulations, without more, cannot sustain a reversal of the Commission. Colorado Municipal League v. Public Utilities Commission, supra; Public Utilities Commission v. District Court, supra, 163 Colo. 462, 431 P.2d 776 (1967).

CONCLUSION

Public Service Company of Colorado respectfully requests that the Court enter its decision affirming the decisions of the Public Utilities Commission and ruling against Complainants

with respect to all issues raised.

DATE: April 23, 1984

Respectfully submitted,

KELLY, STANSFIELD & O'DONNELL

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Attorneys for Public Service
Company of Colorado

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been deposited in the United States Mail, postage prepaid, on the 23rd day of April, 1984 addressed to the following:

D. Bruce Coles, Esq.
100 Filmore St., #390
Denver, Colorado 80206

John E. Archibold, Esq.
1525 Sherman Street, Suite 500
Denver, Colorado 80203

SUPREME COURT OF THE STATE OF COLORADO

CASE NO. 83 SA 476

ANSWER BRIEF OF DEFENDANT-APPELLEE PUBLIC SERVICE COMPANY OF COLORADO

APPENDIX 1

Ex 4A

(Decision No. C78-414)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION OF (1) GAS COST ADJUSTMENT TARIFF OF PEOPLES NATURAL GAS DIVISION OF NORTHERN NATURAL GAS COMPANY, (2) GAS COST ADJUSTMENT TARIFF OF PUBLIC SERVICE COMPANY OF COLORADO, AND (3) PURCHASED GAS ADJUSTMENT TARIFF OF ROCKY MOUNTAIN NATURAL GAS COMPANY, INC.	CASE NO. 5721 DECISION OF COMMISSION

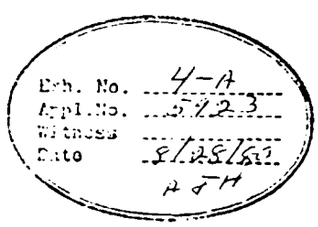
April 6, 1978

STATEMENT

BY THE COMMISSION:

On January 4, 1977, by Decision No. 89952, the Commission instituted Case No. 5721 for the purpose of investigating various issues relating to the operation in effect of so-called "Gas Cost Adjustment" (GCA) or "Purchased Gas Adjustment" (PGA) tariffs of Peoples Natural Gas Division of Northern Natural Gas Company (hereinafter referred to as "Peoples"), Public Service Company of Colorado (hereinafter referred to as "Public Service"), and Rocky Mountain Natural Gas Company, Inc. (hereinafter referred to as "Rocky Mountain"). The scope of the investigation included all facets of the GCA and PGA, including, and not necessarily limited to, such factors as the (1) impact of the GCA or the PGA on the various customers, (2) administrative costs of using GCA or PGA, (3) effect of a GCA or a PGA, if any, upon the ability of the utilities involved to raise capital, (4) present and projected state of supplies of natural gas of the three utilities, and (5) effect, if any, that GCA or PGA had on the utilities' purchases of natural gas. An initial hearing was held on April 6, 1977, as the date to establish procedures to be used during the course of the proceedings and to set further hearing dates. All persons, firms, or corporations desiring to intervene as parties in the proceedings were ordered to file appropriate pleadings on or before March 4, 1977.

On February 18, 1977, Ann Caldwell by her attorney, Kenneth R. Fish, petitioned for leave to intervene in the above case, which petition was granted on February 24, 1977, by Commission Decision No. 90208. On February 2, 1977, Kansas-Nebraska Natural Gas Company by its Vice President-Regulatory Affairs, Larry D. Hall, petitioned for leave to intervene in the above case, which petition was granted by Commission Decision No. 90117, dated February 9, 1977.. On March 4, 1977, Mountain Plains Congress of Senior Organizations, by its attorney, D. Bruce Coles, petitioned for leave to intervene in the above matter, which petition was granted by Commission Decision No. 90306, dated March 15, 1977.



Pursuant to the above-mentioned decisions, pre-hearing conference was held on April 6, 1977. After that conference, by Decision No. 90499, dated April 13, 1977, the Commission established the following schedule for hearings:

May 23, 24, 25, 26, 27, 1977	--	Public testimony in Pueblo, Durango, Lamar, Grand Junction, and Glenwood Springs.
June 17, 1977	--	Filing of direct testimony by Respondents (Peoples, Public Service and Rocky Mountain).
July 12, 13, 1977	--	Public testimony in Denver, including evening hearing.
July 14, 15, 20, 21, 22, 1977	--	Cross-examination of Respondents' witnesses.
September 30, 1977	--	Filing of direct testimony by Intervenors and Staff of the Commission.
October 26, 27, 28, 1977	--	Cross-examination of Intervenors' and Staff's witnesses, who have filed direct testimony.
November 2, 3, 4, 1977	--	Oral Rebuttal, to be followed immediately by cross-examination of rebuttal witnesses.

On April 22, 1977, Rocky Mountain, by its attorney, filed a motion with the Commission for an order vacating and rescheduling the hearing dates of October 25, 27, and 28, 1977, and November 2, 3, and 4, 1977. Pursuant to Decision No. 90645, dated May 10, 1977, the Commission granted that motion by vacating the above hearing dates and establishing the following dates in their place: The dates of November 2, 3, and 4, 1977, were set for cross-examination of Intervenors' and Staff's witnesses who previously had filed written direct testimony and November 8, 9, and 10, 1977, were set for presentation by Respondents of their rebuttal case, if any, to be followed immediately thereafter by cross-examination thereof.

On May 25, 1977, the District Attorneys for the First, Second, Seventeenth and Twentieth Judicial Districts, State of Colorado, filed with the Commission petition for leave to intervene, which petition was granted by the Commission on June 1, 1977, by Decision No. 90722.

Pursuant to the above schedule, Respondents filed written direct testimony by the following witnesses:

Peoples	--	Barrie A. Wigmore, Stephen M. Roverud, Donald C. Heppermann, Robert L. Lienemann, W. R. Chaney;

Public Service	--	J. H. Ranniger, J. N. Sumpus, R. E. Kelly, R. D. Stinson, I. M. Stelzer;
Rocky Mountain	--	Orville M. Shockley, D. L. Parsons.

Pursuant to the above schedule, public testimony was taken on the dates set therefor and cross-examination of the above-mentioned witnesses took place on July 14, 15 and 20, 1977.

By Decision No. 91449, dated October 12, 1977, the Commission officially accepted certain late-filed exhibits of Public Service, Peoples, and Rocky Mountain, thereby admitting those exhibits. Further, the Commission indicated that since no testimony had been filed by any of the Intervenors or the Staff of the Commission on or before September 30, 1977, the dates previously established for cross-examination of Intervenors' and Staff's testimony and rebuttal testimony should be vacated. Finally, the above decision provided that the parties, at their option, could file statements of position with respect to the within matter on or before October 31, 1977, after which time the Commission would take the matter under advisement and render its decision in due course.

Statements of position were filed by Peoples, Public Service, Rocky Mountain, as well as Intervenor Kansas-Nebraska Natural Gas Company.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS ON FINDINGS OF FACT

History of GCA or PGA Clauses

The GCA concept as utilized by Peoples, Public Service, and Rocky Mountain is of relatively recent vintage. The purpose of such GCA or PGA tariff is to allow the gas utility to pass-on increases of the price of natural gas, incurred by the utility from its suppliers, to its retail customers on a periodic basis without the necessity of a general rate proceeding. A major justification for allowing such an adjustment clause for purchased gas costs, as opposed to all other operating expenses, of a gas utility is the fact that those expenses make up a significant portion of the gas utility's operating expenses and have been increasing at an ever accelerating rate in recent years.

For example, purchased gas costs represent the following percentages of total gas revenues: Peoples, 60%; Public Service, 70%; and, Rocky Mountain, 54%. This dominant position of purchased gas costs is attributable to the relatively large increases in those costs in recent years compared to the increases in the utility's other operating expenses. For example, over the last five years the average unit cost of natural gas purchased from suppliers has increased 231% for Peoples, 216% for Public Service, and 245% for Rocky Mountain.

Under these GCA or PGA tariffs, the three gas utilities are allowed to increase or to decrease rate schedules for natural gas at such times as the increase or decrease in the cost of purchased gas equals at least one mill ($.001) per thousand cubic feet (Mcf). The foregoing tariffs do not result in automatic increases, since each filing of a proposed GCA or PGA tariff must be accomplished by filing an application with the Commission at least five days in advance of the proposed effective date of the tariff. The Commission is not legally required to act on the application within the five days and no GCA or PGA tariff can go into effect without a specific Commission order.

In practice, the five days allows the Staff of the Commission an opportunity to verify the utility's cost figures, which are submitted with the application. The Commission also receives, usually on an annual basis, responses from the utilities to the Commission's pass-on questionnaires, which extensively deal with the companys' efficiency. It should also be understood that the Staff of the Commission audits these utilities on a periodic basis for the purpose of verifying costs and other data that is submitted to the Commission. All of these measures minimize the possibility of abuse, which conceivably could exist when a GCA or a PGA tariff mechanism is automatic.

Effect of the GCA or the PGA on Company's Efficiency

One of the prime reasons for instituting this proceeding was to give the Commission an opportunity to reassess and re-evaluate the effects of GCA or a PGA on the gas utilities' efficiency. Opponents of the concept of a GCA or a PGA clause argue that both the utilities and the regulatory authority incur administrative costs that do not justify their use, and, moreover, the operation of the GCA or the PGA narrows, if not eliminates, any incentive on the part of the utilities to obtain the best possible prices for their purchased gas. In order to address this issue, an explanation of the gas supply situation in Colorado is necessary.

Gas utilities in Colorado receive their natural gas from two types of suppliers: Interstate and intrastate pipelines and intrastate wellhead producers. For example, Peoples receives about 72% from interstate and intrastate pipelines and 28% from intrastate wellhead producers; Public Service, 94% from an interstate pipeline, and 6% from independent wellhead producers through its purchases from an intrastate pipeline; and, Rocky Mountain 33% from interstate and intrastate pipelines, and 67% from intrastate wellhead producers. That portion of gas obtained from interstate pipelines is, of course, subject to regulation by the Federal Energy Regulatory Commission (hereinafter referred to as "FERC"), formerly Federal Power Commission (hereinafter referred to as "FPC") and that portion of gas obtained from intrastate pipelines is subject to the jurisdiction of the Commission. Moreover, even that portion of the gas received from intrastate wellhead producers, which is unregulated, is, to a large extent, influenced by the pricing policies at the federal level.

Those federal pricing policies have had a significant effect upon the price of gas sold in Colorado at the retail level as the result of the decision by the then FPC in 1976. On July 27, 1976, the FPC, in Opinion No. 770, Docket No. RM75-14, increased the base national rate of 1973-1974 vintage gas from $.52 per Mcf to $1.01 per Mcf and post-1974 vintage ("new") gas from $.52 per Mcf to $1.42 per Mcf each with $.01 quarterly escalations. On November 5, 1976, the FPC, in Opinion No. 770-A, reduced the base national rate of 1973-1974 vintage gas to $.93. Pre-1973 vintage gas was not affected by Opinion Nos. 770 and 770-A and remains at $.295 per Mcf. These increases, authorized at the federal level, immediately began to be reflected in the GCA and the PGA clauses of the various utilities as their pipeline suppliers raised their prices in accordance therewith.

Moreover, the intrastate market for natural gas was also immediately affected. In Colorado, wellhead producers of natural gas in the intrastate market are not regulated either by the Commission or the FERC. All sales of natural gas in intrastate commerce are made under contracts between wellhead producers on the one hand and pipeline companies, cities or distributors on the other hand. These contracts contain what is commonly referred to as either "most favored nation clauses," "area rate clauses," or "just and reasonable FPC rate clauses," which permit escalation of the price of natural gas during the term of the contract if any gas sold in the area, purchased by the buyer, or prescribed by the FPC, is higher than the rate in the contract. After FPC Opinion Nos. 770 and 770-A were decided, wellhead producers of natural gas being sold in intrastate commerce began demanding, pursuant to these clauses, the highest price authorized under those opinions (1.42 per Mcf plus 5.01 quarterly escalation), without regard to the vintage of the well covered in the contract. Some of the gas utilities in the State felt compelled to accept those demands for fear of drying-up the future sources of natural gas with which to supply their customers.

The Commission in two recent proceedings involving Peoples (Investigation and Suspension Docket Nos. 1070 and 1072) has made it clear that it looks with disfavor upon utilities negotiating with wellhead producers such escalation clauses, which do not take into account the vintage of gas. While the Commission is aware that Colorado gas utilities must compete with other buyers, who are not constrained by such regulatory oversight, for the dwindling supplies of Colorado natural gas, it was felt that such restrictions would not unduly limit the utilities' flexibility in negotiating and would prevent the possibility of Colorado consumers paying for windfall profits to such wellhead producers. After all, if such wellhead producers dedicated their gas to interstate commerce, they would still only be entitled to the vintage price established by the FPC in Opinion Nos. 770 and 770-A. Thus, making a similar restriction upon Colorado utilities in negotiating for such intrastate gas should not put those utilities at a competitive disadvantage. However, it is quite clear from the record in this proceeding that the price negotiated in new contracts, without regard to escalation clauses, is tied very closely to the federal national rate for interstate gas. Moreover, the evidence also has shown that suppliers are demanding, as an alternative to the escalation clause, inclusion of renegotiation clauses which open up such contracts at one-, two-, or three-year periods again to assure that such suppliers are priced at least at the going interstate rate.

Thus, whether the utilities receive their gas from interstate or intrastate sources, the price they are required to pay is largely beyond their control. There is no doubt that Colorado utilities find themselves in a "seller's market," a situation which, unfortunately, will exist for some time into the future. Thus, the Commission believes that the existence of a GCA or a PGA clause has little, if any, effect upon those utilities' efficiency and incentive to obtain the lowest price possible in today's gas market.

That is not to say, however, that the utilities no longer need be concerned about doing everything within their power to obtain natural gas at the lowest price possible or that this Commission need not continue to monitor the situation. Instead, the above conclusion is a simple recognition of the state of the natural gas market resulting from increasing shortages of natural gas. Gas utilities are still expected

to participate in rate proceedings of their pipeline supplies before the FERC to assure that the rates established are the minimum possible commensurate with the provisions of adequate service and development of additional supplies. Also, gas utilities receiving natural gas from intrastate wellhead producers will be expected vigorously to negotiate with those producers for the lowest possible price that will allow the suppliers to continue development of new sources of natural gas needed by the utilities and their customers. And, finally, the Commission will continue to monitor the gas utilities' efforts in both the interstate and intrastate market within the context of the reporting and hearing procedures hereinafter discussed.

Public Interest Dictates the Maintenance of GCA and PGA Clauses

The Commission believes that the GCA or the PGA clauses should be maintained for Peoples, Public Service and Rocky Mountain at this time for the following reasons: (1) Purchase gas costs make up a significant portion of those companies' total expenses; (2) the rate of increase of those purchased gas costs has been greater than the general inflation felt by those companies in their other expense levels; (3) complete elimination of the GCA or the PGA clauses, in light of the above two circumstances, may have substantial adverse effects on those companies' ability to raise capital; (4) the level of those purchased gas costs is largely beyond the control of those companies; and, (5) any potential abuses or inefficiencies can be adequately prevented through regulatory scrutiny as hereinafter ordered. If any of these circumstances change in the future, the Commission, will, of course, re-evaluate the procedure.

Procedural Modifications

As previously mentioned, the Commission has established certain procedural safeguards to assure that the figures submitted by the utilities are reviewed by the Staff and given regulatory approval prior to their effective date. The Commission believes that those procedures should be continued with some modifications as hereinafter explained.

The utilities shall continue to file the underlying data supporting any GCA or PGA application as they have done in the past. The Commission shall continue, through its Staff, to check that data prior to entering its order putting the GCA or the PGA into effect. Moreover, the Commission shall continue to audit those companies having GCA or PGA clauses on a periodic basis as required. However, the Commission believes that an additional safeguard should be added. That is, the Commission shall hereinafter establish an annual GCA or PGA report to be filed by the utilities followed by an investigative hearing. Such reporting and investigative hearing procedure should encompass the present and projected market requirements for gas service, present and projected supplies of gas available to meet those requirements, any current or projected curtailment of service as the result of inadequate supplies, the gas purchase practices of the utilities as they affect the success of the utilities in obtaining adequate supplies of gas at reasonable prices, and any other subject that the Commission may wish to investigate. This additional regulatory requirement should not unduly burden the Respondents and will provide the Commission and the public an opportunity to monitor whether the companies are doing everything within their power to keep their purchased gas costs at a minimum. In the event facts developed at the annual hearing disclose that a utility has "over collected" monies from its customers, as a result of the operation of its GCA or PGA clause, the Commission will take appropriate action to effect necessary refunds including interest.

Hopefully, this procedure will go a long way toward enhancing the effectiveness of the Commission's regulation of the GCA or the PGA and the public's confidence in that regulation.

In addition, as was demonstrated in the Commission's investigation of the Public Service Company's fuel cost adjustment clause (Case No. 5700), not only is there a lack of confidence in the regulatory procedures involved in GCA or PGA, but many customers, understandably, do not understand its purpose or its operation. The Commission believes that the mere appearance on the bill of the phrase "gas cost adjustment" or "purchased gas cost adjustment" with a decimal figure and the dollar amount is insufficient to enlighten the customer as to what the GCA or the PGA is and how it operates. The Commission believes that there should be some explanation of the GCA or the PGA, perhaps on the back of the bill, so that the customers will be better informed as to the concept. Accordingly, the Commission hereinafter will order the utilities to submit a proposal to the Commission providing an explanation of the PGA or the GCA within their billing procedures.

Calculation of the GCA or the PGA

As an initial matter, it should be pointed out that the cost included in the GCA or the PGA computation should reflect the delivered price of pipeline and wellhead gas, including charges for gathering, compression and transportation. It is true that the Commission in Case No. 5700, involving the investigation of the Public Service fuel cost adjustment clause, authorized inclusion of only the pure cost of fuel and specifically excluded such costs as transportation. The situation with the delivery of gas is somewhat different. The utility, as a practical matter, has no way adequately to segregate charges for gathering, compression, and transportation from the charges for the actual commodity. The Commission is aware that allowing such charges for gathering, compression, and transportation may give the utility incentive to not build and use its own facilities for gathering, compression, and transportation and instead to rely upon those of the supplier, thereby allowing it to pass-on such charges directly through the GCA or the PGA. However, the Commission will monitor this situation closely in the annual review procedures described above.

In general, the Commission will adhere to the methods currently used by gas utilities for calculation of their PGAs and GCAs. The calculations are computed differently depending upon whether the gas is received from a pipeline supplier or from a wellhead producer. Respondents should generally pattern their GCA or PGA tariff for pipeline purchases after the sample set forth in Appendix A and for wellhead purchases after the sample set forth in Appendix B.

O R D E R

THE COMMISSION ORDERS THAT:

1. Peoples Natural Gas Division of Northern Natural Gas Company, Public Service Company of Colorado, and Rocky Mountain Natural Gas Company be, and hereby are, ordered to file within fifteen (15) days of the effective date of this Order revised tariff sheets consistent with the sample tariffs in Appendices A and B and in the future to calculate their respective Gas Cost Adjustment or Purchased Gas Adjustment clauses in accordance with the sample tariff sheets attached hereto as Appendix A (for pipeline purchases) and Appendix B (for wellhead purchases).

2. Peoples Natural Gas Division of Northern Natural Gas Company, Public Service Company of Colorado, and Rocky Mountain Natural Gas Company be, and hereby are, ordered to follow the following procedures to implement their Gas Cost Adjustment or Purchased Gas Adjustment clauses:

a. The utility shall file its application setting forth its Gas Cost Adjustment or Purchased Gas Adjustment clause and all other supporting data specified in Appendices A or B, at least five (5) working days prior to the Open Meeting before its effective date.

b. Said application shall be accompanied by responses to the Commission's "pass-on questionnaire" if more than one year has elapsed since the end of the test year used in responding to a previous "pass-on questionnaire". In the interim, questions number 3, 4, 14 and 15 of the "pass-on questionnaire" should be updated with each application filed for a GCA or PGA to match the test year being used in such application.

c. Within 15 days of the close of each calendar year, Peoples Natural Gas Division of Northern Natural Gas Company, Public Service Company of Colorado, and Rocky Mountain Natural Gas Company shall file a detailed report with the Commission (a format for which will be detailed at future date) setting forth present and projected market requirements for gas service, present and projected supplies of gas available to meet those requirements, any current or projected curtailment of service as the result of inadequate supplies, gas purchase practices of the utilities as they affect the success of the utilities in obtaining adequate supplies of gas at reasonable prices, as well as such additional data as the Commission may require from time to time.

d. The Staff of the Commission shall perform such audits of the Gas Cost Adjustment or Purchased Gas Adjustment clause of Peoples Natural Gas Division of Northern Natural Gas Company, Public Service Company of Colorado, and Rocky Mountain Natural Gas Company as necessary.

e. Subsequent to the receipt of the report specified in paragraph 2c above, the Commission will hold an investigatory hearing for the purpose of having gas utility officials appear and answer questions from the Commission or other interested parties relevant to issues affecting the Gas Cost Adjustment or the Purchased Gas Adjustment clauses.

f. By May 1, 1978, Peoples Natural Gas Division of Northern Natural Gas Company, Public Service Company of Colorado, and Rocky Mountain Natural Gas Company shall submit a proposal to the Commission for explanation of their Gas Cost Adjustment or Purchased Gas Adjustment clause within their respective billing procedures.

3. Any motions presently pending and not disposed of otherwise be, and hereby are, denied.

4. Case No. 5721 be, and hereby is, closed.

This Order shall be effective 21 days from the date of this decision.

DONE IN OPEN MEETING the 5th day of April, 1978.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

EDWIN R. LUNDBORG

EDYTHE S. MILLER

SANDERS G. ARNOLD

Commissioners

jm
jp

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

APPENDIX A
Decision No. C78-414
Case No. 5721

PURCHASED GAS ADJUSTMENT OR
GAS COST ADJUSTMENT
(GAS PURCHASED FROM PIPELINE SUPPLIERS)

DESCRIPTION

Rate schedules for natural gas service are subject to a Gas Cost Adjustment or Purchased Gas Adjustment to reflect changes in the cost of gas purchased from the Company's pipeline suppliers as herein provided. The Gas Cost Adjustment or Purchased Gas Adjustment amount for all applicable rates is as set forth on Sheet

FREQUENCY OF CHANGE

The Gas Cost Adjustment or Purchased Gas Adjustment amounts shall be subject to revision, although not necessarily revised, monthly to adjust for changes in the average cost of gas to the Company in accordance with the following:

(a) Increases in the Gas Cost Adjustment or Purchased Gas Adjustment amounts shall be applied at such times the increase in the adjustment equates to at least one mill ($0.001) per thousand cubic feet.

(b) Decreases in the Gas Cost Adjustment or Purchased Gas Adjustment amounts shall be applied at such times the decrease in the adjustment equates to at least one mill ($0.001) per thousand cubic feet.

(c) Increased or decreased adjustment amounts as set forth in (a) and (b) above, shall be effective upon beginning of Company's billing cycle next subsequent to the effective date of Company's pipeline suppliers' increase or decrease.

DETERMINATION OF GAS COST ADJUSTMENT AMOUNTS

The Gas Cost Adjustment or Purchased Gas Adjustment amounts will be determined by:

1. Calculating the increased or decreased cost of gas purchased from Company's pipeline suppliers based upon the volumes of natural gas purchased (adjusted for weather deviations from normal) during the twelve months ending two calendar months prior to the effective date of a change in the adjustment amounts. Such increased or decreased cost of gas purchased will be the difference between the cost of test year normalized purchases under currently effective rates and the cost under the proposed changed rates. Gas Cost Adjustment or Purchased Gas Adjustment amounts initially effective will be for the amounts of suppliers' increases over and above that amount included in the rate schedules effective immediately prior to the initial effective date of this Gas Cost Adjustment or Purchased Gas Adjustment provision.

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Each respondent shall file with the Commission, within 30 days of the effective date of this order, an Advice Letter setting forth the unit cost of pipeline gas built into the base rates and citing the authorization therefor.

2. Using volumes of gas sold (adjusted for weather deviations from normal) during the twelve months ending two calendar months prior to the effective date of a change in the adjustment amounts.

3. Calculating to the nearest mill ($.001) per thousand cubic feet.

4. Using the following formula:

   Gas Cost or Purchased Gas Adjustment = $\frac{A}{B}$

   A = Incremental cost of test year purchases from all suppliers, as computed in (1) above.

   B = MCF sales in 12 month period specified in (2) above.

5. The value determined in (4) shall be added to or subtracted from the GCA or PGA value currently effective.

CONSOLIDATION WITH BASE NATURAL GAS RATE SCHEDULES

On October 1 each year, or at such other times deemed appropriate, those portions of the Gas Cost Adjustment or Purchased Gas Adjustment amounts which are finalized and not subject to further regulatory review will be combined into appropriate gas rate schedules.

TREATMENT OF REFUND

Application shall be made to the Commission for approval of a refund plan for the disposition of each refund received from Company's suppliers, including interest received thereon.

INFORMATION TO BE FILED WITH THE PUBLIC UTILITIES COMMISSION

Each filing of a Gas Cost Adjustment or Purchased Gas Adjustment tariff will be accomplished by filing an application, on not less than 5 working days' notice, and will be accompanied by such supporting data and information as the Commission may require.

the Commission, within 30 days of the effective date of this order, an Advice Letter setting forth the unit cost of wellhead gas built into the base rates and citing the authorization therefor.

2. Using volumes of gas sold (adjusted for weather deviations from normal) during the twelve months ending two calendar months prior to the effective date of a change in the adjustment amounts.

3. Calculating to the nearest mill ($.001) per thousand cubic feet.

4. Using the following formula:

   Gas Cost or Purchased Gas Adjustment = $\frac{A + C}{B}$

   A = Incremental cost of test year purchases from all suppliers, as computed in (1) above.

   B = MCF sales in 12 month period specified in (2) above.

   C = Over or under recovered Gas Cost plus interest in (1) above.

5. The value determined in (4) shall be added to or subtracted from the GCA or PGA value currently effective.

CONSOLIDATION WITH BASE NATURAL GAS RATE SCHEDULES

On October 1 each year, or at such other times deemed appropriate, those portions of the Gas Cost Adjustment or Purchased Gas Adjustment amounts which are finalized and not subject to further regulatory review will be combined into appropriate gas rate schedules.

TREATMENT OF REFUND

Refunds received from Company's suppliers, including interest received thereon, will reduce the balance of unrecovered gas costs, if any, or will be considered as a decrease in the Gas Cost Adjustment or Purchased Gas Adjustment amount, whichever is appropriate.

INFORMATION TO BE FILED WITH THE PUBLIC UTILITIES COMMISSION

Each filing of a Gas Cost Adjustment or Purchased Gas Adjustment tariff will be accomplished by filing an application, on not less than 5 working days' notice, and will be accompanied by such supporting data and information as the Commission may require.

SUPREME COURT OF THE STATE OF COLORADO

CASE NO. 83 SA 476

ANSWER BRIEF OF DEFENDANT-APPELLEE
PUBLIC SERVICE COMPANY OF COLORADO

APPENDIX 2

(Decision No. C79-941)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Ex. 3A

***

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO TO PLACE INTO EFFECT CERTAIN REVISED TARIFF SHEETS RESPECTING THE CALCULATION AND RECOVERY OF PURCHASED GAS COSTS.	)	APPLICATION NO. 31896 ORDER OF THE COMMISSION GRANTING APPLICATION

June 19, 1979

STATEMENT

BY THE COMMISSION:

On May 24, 1979, Public Service Company of Colorado (hereinafter Public Service, Applicant, or Company), applicant herein, filed the within verified application. Said application seeks an order of the Commission authorizing the Applicant, without a formal hearing and on less than statutory notice, to place into effect tariffs which revises Applicant's calculation and recovery of purchased gas costs.

The proposed tariffs, which were attached to the application herein, affect all of Applicant's customers.

FINDINGS OF FACT

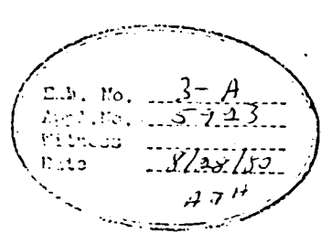
THE COMMISSION FINDS THAT:

In support of its application Public Service stated as follows:

"1. Public Service Company is a corporation organized and existing under the laws of the State of Colorado, having its principal place of business at 550 Fifteenth Street, Denver, Colorado 80202. Public Service is an operating public utility subject to the jurisdiction of this Commission, engaged in, among other things, the purchase, distribution and sale of natural gas in various parts of the State of Colorado.

"2. Public Service's purchased gas costs constitute an increasingly large percentage of its operating expenses. Beginning in the 1950's, when freguent gas cost increases from its suppliers began affecting Public Service, the Company has sought to recover the cost of purchased gas through a combination of base rates and gas cost adjustment riders. The riders represent increased cost of gas amounts that have been subject to refund and the base rate portion includes those gas cost amounts which have been finalized. The rider or GCA method of passing on changes in the cost of gas is one long recognized by this Commission.

"3. The calculation of the GCA (as well as of the cost of gas included in base rates) has always been based on an historical test year. This method inherently assumes that test year conditions will coincide with actual conditions during the period of time when rates based on the test year are in effect, and it is only when such coincidence in



fact occurs that the GCA will recover precisely through retail rates the Company's purchased gas costs. In fact, of course, such coincidence never occurs, with the result that the GCA revenues collected by the Company, when combined with the cost of gas included in base rates, will almost always be to some extent greater or lesser than the Company's actual purchased gas costs. Exhibit Nos. 2 and 3, attached hereto, demonstrate the effect of the foregoing observations on the Gas Department earnings.

"4. Exhibit No. 2 shows that with an assumed 2% decrease in GCA revenues and 2% increase in gas costs during the actual year relative to the test year, the Company would experience a 16% decrease in operating income, which translates into a 16% decrease in rate of return on rate base and a 30.7% decrease in rate of return on equity. Similarly, Exhibit No. 3 indicates that with only a 2% increase in GCA revenues and a 2% decrease in cost of gas during the actual year as compared with the test year, the Company's operating income would increase by 16%, resulting in a 16% increase in rate of return on rate base and a 30.7% increase in rate of return on equity.

"5. As the simplified examples depicted in Exhibit Nos. 2 and 3 demonstrate, a small change in GCA revenues or cost of gas between test year conditions and actual experience may have a substantial impact on a gas utility's earnings. This impact becomes much more pronounced as purchased gas costs become an even larger component of the utility's total operating expense. That this is the case with Public Service is clearly demonstrated by the fact that during 1958, total gas costs amounted to approximately 60% of the Company's total gas revenues, whereas during 1978 this proportion had increased to 75%.

"6. In order to remedy the failure to track precisely the purchased gas costs inherent in the current GCA mechanism, Public Service Company proposes to alter that mechanism by establishing a procedure which would adjust, on an ongoing basis, for the mismatch between test year and actual year experience. Reduced to its essentials, the proposal would involve the monthly calculation of the difference between pruchased gas costs and recovered gas costs for the previous month and the recovery of that amount over sales made during the succeeding revenue month. For instance, Public Service would attempt to recover the unrecovered gas costs for February (positive or negative) via an increment to estimated sales during the April revenue month. Any shortfall or over-recovery because of a difference, which there is bound to be, between estimated sales and actual sales during the recovery month would be added to or subtracted from the unrecovered gas costs applicable in subsequent months. The monthly GCA amount would be placed into effect only after a Commission Order following application by the Company.

"7. Through this mechanism, gas cost revenues would track purchased gas costs, with the exception of the two month lag for recovering unrecovered gas costs. Public Service submits, however, that the imperfections resulting from this lag pale by comparison with the potential swings inherent in the present methodology which is based on the demonstrably false assumption that actual year experience will mirror the experience during the test year on the basis of which the GCA is determined.

"8. In the event that there is pending before the Commission at the time it acts on this Application a general rate case relating to Public Service Company, it is necessary that there be some coordination between the two in order to protect against a significant gain or loss of revenue by the company. Specifically, the Company would propose that, despite the provision for redetermination of the base cost of gas each

October 1, the presently effective base cost of gas as set forth in Exhibit No. 1 be carried forward in the implementation of the attached Tariff Sheets until the effective date of the Commission's order in the general rate proceeding, at which time the base cost of gas as used in the attached Tariff Sheets would be increased to equal the base cost of gas found to be appropriate in the general rate case. From that point on, the base cost of gas would be determined independently of general rate cases, which rate cases would involve only costs, including capital costs, other than purchased gas costs.

"9. If in the time interval between the filing of this application and the Commission's approval of it, Public Service's GCA amounts are revised, Exhibit No. 1 to this application will be revised accordingly to reflect the then current Gas Cost Adjustment amounts.

"10. Attached as Exhibit No. 4 is the form of notice which the Company will cause to be published contemporaneously with the filing of this Application in The Rocky Mountain News and The Denver Post. Given the nature of the filing, it is not possible to say whether it will result in an increase or decrease in rates to Public Service's customers."

The Commission states and finds that the facts set forth above by Public Service are reflective of the situation in which it finds itself regarding the calculation and recovery of purchased gas costs and that its proposals reflect a more accurate calculation and recovery of the same.

CONCLUSIONS ON FINDINGS OF FACT

1. The Commission concludes that the instant application for authority to effect certain revised tariff sheets respecting the calculation and recovery of purchased gas costs should be granted in accordance with the order herein.

2. Good cause exists for the Commission to allow the proposed tariffs to become effective upon less than thirty (30) days notice.

3. The proposed tariffs are lawful, and in the public interest, and should be authorized.

4. It is in the public interest for Public Service to provide monthly reports to the Commission pertaining to its purchased gas costs, for staff audits of the same, and quarterly hearings, open to the public, with respect thereto.

5. We further conclude that in the interest of economy of time and resources that the quarterly hearings with respect to the purchased gas costs should be held simultaneously with quarterly hearings pertaining to the fuel cost adjustment (FCA) and purchased power adjustment (PPA).

6. The Commission concludes that the following order should be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Public Service Company of Colorado be, and hereby is, authorized to file on not less than one (1) day's notice the tariffs attached hereto as Appendix A and made a part hereof.

2. The Staff of the Commission shall perform audits of Public Service Company of Colorado's purchased gas adjustments on a quarterly basis.

3. The Commission will hold a public hearing for the purpose of having Public Service Company of Colorado officials appear and answer questions from the Commission, or other interested parties, relevant to the issues affecting the purchased gas adjustments made by Public Service Company of Colorado during the preceding three months.

Such quarterly hearings shall also be open to further testimony, exhibits, and arguments as to any matter involving Public Service Company's implementation of its purchased gas adjustment. In other words, the quarterly purchased gas adjustment hearings are intended to be broad enough in scope to encompass any evidence with respect to the manner in which Public Service's purchased gas adjustment is to be calculated and implemented. Such evidence, of course, may be presented by Public Service Company itself, any intervenor, or by witnesses from the Staff of the Commission.

4. Said hearings will be held within twenty (20) days of the close of each calendar quarter, unless the Commission finds that said hearings should be held at some other time.

5. Any purchased gas adjustments approved in the previous three months will be conditioned subject to refund if any inaccuracies or improprieties are discovered in the quarterly hearing procedures as discussed in the order herein.

6. The first quarterly hearings on firm purchased gas adjustments will be held pursuant to later notice by the Commission.

7. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 19th day of June, 1979.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

EDYTHE S. MILLER

SANDERS G. ARNOLD

Commissioners

COMMISSIONER DANIEL E. MUSE
NOT PARTICIPATING.

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

WESTERN SLOPE GAS COMPANY

COLO. P.U.C. No. 1

Sheet No. 94

Cancels Sheet No. 94

NATURAL GAS RATES
PURCHASED GAS ADJUSTMENT

APPLICABILITY

All rate schedules for natural gas service are subject to a Purchased Gas Adjustment to reflect changes in the cost of gas purchased from Company's suppliers. The Purchased Gas Adjustment amount will be subject to monthly changes to be effective on a non-prorated basis with meter readings beginning with the Company's billing cycle each month. The Purchased Gas Adjustment for all applicable rate schedules is as set forth on Sheet Nos. 94C through 94E.

DEFINITIONS

Purchased Gas Adjustment - The Purchased Gas Adjustment will be the difference between Base Gas Cost and Purchased Gas Cost, plus Unrecovered Gas Cost.

Base Rate - Base Rate is the rate which incorporates a portion of Purchased Gas Costs, and all other operating expenses including taxes and earnings on rate base.

Total Rate - Total Rate is the Base Rate and the Purchased Gas Adjustment.

Base Gas Cost - Base Gas Cost is the portion of Purchased Gas Cost included in the Base Rate.

Purchased Gas Cost - Purchased Gas Cost is the actual cost the Company pays its suppliers for natural gas service.

Unrecovered Gas Cost - Unrecovered Gas Cost is the difference between Purchased Gas Cost and Recovered Gas Cost.

Recovered Gas Cost - Recovered Gas Cost is the gas cost recovered by the Company's currently effective Total Rates.

BASE GAS COST

(1) The Base Gas Cost will be calculated based on purchases in the twelve months ended the most recent quarter for which information is available, and the supplier rates to be effective on or about October 1 of each year, and dividing the resulting amount by that period's sales.

Advice Letter Number

Decision Number C79-941

VICE PRESIDENT
Issuing Officer

Issue Date

Effective Date

COLO. P.U.C. No. 2

WESTERN SLOPE GAS COMPANY

Sheet No. 94A

Cancels Sheet No. 94A

NATURAL GAS RATES
PURCHASED GAS ADJUSTMENT

BASE GAS COST - cont.

(2) A revised Base Gas Cost will be effective on a non-prorated basis with meter readings beginning with the Company's monthly billing cycle after October 1, each year, except that should a general rate case of the Company be pending before the Commission at the time, the effective date of the Base Gas Cost change will be delayed up to sixty days after the effective date of the Commission's order in the rate case. The Base Gas Cost will replace the previous Base Gas Cost in the Company's Base Rates.

(3) The Base Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

PURCHASED GAS COST

(1) The Purchased Gas Cost will be calculated by summing the supplier's invoices, plus any appropriate adjustments, and dividing the amount by sales volumes for that month.

(2) The Purchased Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

RECOVERED GAS COST

The Recovered Gas Cost will be calculated monthly by applying the appropriate Base Gas Cost and Purchased Gas Adjustment to the actual sales volumes for that revenue month.

UNRECOVERED GAS COST

(1) The Unrecovered Gas Cost will be calculated monthly by subtracting the Recovered Gas Cost from the Purchased Gas Cost. The resulting amount will be divided by the estimated sales volumes for the month in which a revised Purchased Gas Adjustment amount is to be effective.

(2) The Unrecovered Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

Advice Letter Number

Decision Number

VICE PRESIDENT
Issuing Officer

Issue Date

Effective Date

00743

COLO. P.U.C. No. 2

WESTERN SLOPE GAS COMPANY

Sheet No. 94B

Cancels Sheet No. 94B

NATURAL GAS RATES
PURCHASED GAS ADJUSTMENT

PURCHASED GAS ADJUSTMENT

The following formula is used to determine the Purchased Gas Adjustment amount.

Purchased Gas Adjustment amount = B - A ± C

A = Base Gas Cost
B = Purchased Gas Cost
C = Unrecovered Gas Cost

TREATMENT OF REFUND

Application shall be made to The Public Utilities Commission of the State of Colorado for approval of a refund plan for the disposition of each refund received from a Company supplier including the interest received thereon.

INFORMATION TO BE FILED WITH THE PUBLIC UTILITIES COMMISSION

Each filing of a Purchased Gas Adjustment revision will be accomplished by filing an application and will be accompanied by such supporting data and information as the Commission may require from time to time.

Advice Letter Number

Decision Number

VICE PRESIDENT
Issuing Officer

Issue Date

Effective Date

00744

WESTERN SLOPE GAS COMPANY

COLO. P.U.C. No. 2

Sheet No. 94C

Cancels Sheet No. 94C

NATURAL GAS RATES

PURCHASED GAS ADJUSTMENT

Rate Schedule	Sheet No.	Billing Units	Type of Charge	Purchased Gas Cost	Base Gas Cost	Unrecovered Gas Cost	Purchased Gas Adjustment
Central System - Eastern Division							
CG-1	11	MCF	Demand	$ 1.26174	$ 0.61639	0	$ 0.64535
			Commodity	1.72761	0.36311	0	1.36450
			Excess Gas Used	1.76909	0.38337	0	1.38572
CPS-1	12	MCF	Demand	$ 1.04345	$ 0.38445	0	$ 0.15900
			Capacity	0.01154	0.01063	0	0.00091
			Commodity	1.72761	0.36311	0	1.36450
			Excess Gas Used	1.94902	0.56096	0	1.38806
CSG-1	13	MCF	Commodity	$ 1.80306	$ 0.46290	0	$ 1.44016
			Excess Gas Used	1.80306	0.46290	0	1.44016
CI-1	14	MCF	Commodity	$ 1.72761	$ 0.36311	0	$ 1.36450
CDF-1	16	MCF	Commodity	$ 1.78395	$ 0.39243	0	$ 1.39152
CDI-1	17	MCF	Commodity	$ 1.72761	$ 0.36311	0	$ 1.36450
CS-1A	18	MCF	Demand	$30.61115	$ 6.78926	0	$23.84189
			Commodity	1.72761	0.36311	0	1.36450
			Excess Gas Used	1.76909	0.38337	0	1.38572
CS-1B	19	MCF	Commodity	$ 1.72761	$ 0.36311	0	$ 1.36450
Central System - Southern Division							
CG-2	41	MCF	Demand	$ 0.41202	$ 0.21624	0	$ 0.19578
			Commodity	0.99913	0.23025	0	0.76887
			Excess Gas Used	1.01268	0.23737	0	0.77531
CPS-2	42	MCF	Demand	$ 0.84139	$ 0.68686	0	$ 0.15453
			Capacity	0.00847	0.00756	0	0.00091
			Commodity	0.99937	0.23026	0	0.76911
			Excess Gas Used	1.16787	0.37556	0	0.79231

Advice Letter Number

John M. Hassoldt
VICE PRESIDENT
Issuing Officer

Issue Date

Decision Number

Effective Date

007495

WESTERN SLOPE GAS COMPANY

COLO. P.U.C. No. 2

Sheet No. 94D

Cancels Sheet No. 94D

NATURAL GAS RATES

PURCHASED GAS ADJUSTMENT

Rate Schedule	Sheet No.	Billing Units	Type of Charge	Purchased Gas Cost	Base Gas Cost	Unrecovered Gas Cost	Purchased Gas Adjustment
Central System - Southern Division - Continued							
CSC-2	43	MCF	Commodity	$ 1.07687	$ 0.26251	0	$ 0.81436
			Excess Gas Used	1.07687	0.26251	0	0.81436
CI-2A	44	MMBTU	Commodity	$ 1.30314	$ 0.30341	0	$ 0.99973
CI-2B	45	MMBTU	Commodity Charge	$ 1.30780	$ 0.30409	0	$ 1.00371
CDC-2	46	MCF	Commodity	$ 0.98636	$ 0.25792	0	$ 0.72844
CDF-2A	47	MMBTU	Commodity	$ 1.30580	$ 0.31067	0	$ 0.99513
CDF-2B	48	MMBTU	Commodity	$ 1.40483	$ 0.31437	0	$ 1.09046
CDI-2A	49	MMBTU	Commodity	$ 1.29711	$ 0.30435	0	$ 0.99276
CDI-2B	50	MMBTU	Commodity	$ 1.32702	$ 0.30373	0	$ 1.02329
CS-2A	51	MMBTU	Firm Commodity	$ 1.32370	$ 0.31579	0	$ 1.00791
			Inter. Commodity	1.29489	$ 0.30385	0	0.99104
CS-2B	52	MMBTU	Demand	$25.35941	$ 6.33010	0	$19.52931
			Commodity	1.32231	0.30429	0	1.01902
			Excess Gas Used	1.30336	0.31232	0	0.99104
Western System - Grand Junction Area							
WG-1	71	MCF	Commodity	$ 1.28199	$ 0.31091	0	$-0.97108
			Excess Gas Used	1.28199	0.31091	0	0.97108
WDC-1	75	MCF	Commodity	$ 1.33725	$ 0.31091	0	$ 1.02634
WDI-1	77	MMBTU	Commodity	$ 1.36173	$ 0.33818	0	$ 1.02355

Advice Letter Number

Decision Number

John M. Harrolit
VICE PRESIDENT
Issuing Officer

Issue Date

Effective Date

WESTERN SLOPE GAS COMPANY

COLO. P.U.C. No. 1

Sheet No. 94E

Cancels Sheet No. 94E

NATURAL GAS RATES

PURCHASED GAS ADJUSTMENT

Rate Schedule	Sheet No.	Billing Units	Type of Charge	Purchased Gas Cost	Base Gas Cost	Undercovered Gas Cost	Purchased Gas Adjustment
Western System - Grand Junction Area - Continued							
WS-1A	78	MMBTU	Firm Commodity	$ 1.43554	$ 0.35923	0	$ 1.09631
			Inter. Commodity	1.43554	0.35923	0	1.09631
WS-1B	79	MMBTU	Commodity	$ 1.37601	$ 0.33774	0	$ 1.03827
WS-1C	80	MMBTU	Demand	$18.18026	$ 3.94854	0	$14.23172
			Commodity	1.33390	0.32813	0	1.00577
			Excess Gas Used	0.96681	0.22061	0	0.74620
Western System - Rifle-Steamboat Springs Area							
WG-2A	86	MCF	Commodity	$ 1.16846	$ 0.40849	0	$ 0.75997
			Excess Gas Used	1.16846	0.40849	0	0.75997
WG-2B	87	MCF	Commodity	$ 0.96589	$ 0.39955	0	$ 0.56634
			Excess Gas Used	0.96589	0.39955	0	0.56634
WG-2C	88	MCF	Commodity	$ 0.95398	$ 0.39470	0	$ 0.55928
			Excess Gas Used	0.95398	0.39470	0	0.55928
WI-2	90	MMBTU	Commodity	$ 1.27351	$ 0.44650	0	$ 0.82701
WDF-2	92	MMBTU	Commodity	$ 1.30848	$ 0.45152	0	$ 0.85696
WDI-2	93	MMBTU	Commodity	$ 1.40203	$ 0.45152	0	$ 0.95051

Advice Letter Number

Decision Number

John M. Hassolde
VICE PRESIDENT
Issuing Officer

Issue Date

Effective Date

SUPREME COURT OF THE STATE OF COLORADO

CASE NO. 83 SA 476

ANSWER BRIEF OF DEFENDANT-APPELLEE
PUBLIC SERVICE COMPANY OF COLORADO

APPENDIX 3

(Decision No. R81-731)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

COLORADO ENERGY ADVOCACY OFFICE AND ANN CALDWELL, Complainants, vs. PUBLIC SERVICE COMPANY OF COLORADO, Respondent.	CASE NO. 5923 RECOMMENDED DECISION OF EXAMINER LOYAL W. TRUMBULL ORDERING REVISION OF GAS COST ADJUSTMENT TARIFF

April 23, 1981

Appearances: D. Bruce Coles and Kathleen Mullen, Esqs., Denver, Colorado, for Complainants Colorado Energy Advocacy Office and Ann Caldwell;

Kelly, Stansfield & O'Donnell, by James K. Tarpey, Esq., Denver, Colorado, for Respondent Public Service Company of Colorado.

Steven H. Denman, Assistant Attorney General, Denver, Colorado, for the Staff of the Commission.

PROCEDURE AND RECORD

On April 16, 1980, the above-captioned complaint was filed with this Commission. On April 18, 1980, an Order to Satisfy or Answer was served upon Respondent Public Service Company of Colorado by the Executive Secretary of the Commission. On May 8, 1980, an Answer was filed on behalf of Respondent. On June 30, 1980, a Notice of Hearing was issued setting the matter for hearing on Thursday, August 28, 1980, at 10 a.m., in the Fifth Floor Hearing Room, 1525 Sherman Street, Denver, Colorado.

The matter was heard as scheduled before the undersigned Examiner, with testimony being heard from four witnesses and twenty-three exhibits being offered and admitted into evidence.

Upon commencement of the hearing, counsel for Respondent moved to dismiss the complaint for failure to comply with the requirements of 40-6-108(b), CRS 1973, that a complaint as to "reasonableness" of rates, which is not instituted by the Commission, be signed by certain persons. Such motion was denied on the grounds that the subject complaints were premised upon the GCA tariff being void in the inception or voidable due to alleged procedural or substantive shortcomings, rather than upon the GCA being "unreasonable" as a term of art relating to allowing a utility the opportunity to earn an unreasonably high rate of return on rate base due to abuse of discretion with regard to issues pertaining to expenses and earnings.

The matter was taken under advisement upon conclusion of the hearing. Counsel were given leave to file statements of position, and the allowed statements of position have been filed and duly considered.

In their statements of position, counsel for Staff and Respondent have requested that official notice be taken of the testimony of the witness Carlson in the February 2, 1981, quarterly hearing in Application Nos. 31895, 31896 and 32603. There has been no objection and such requests have been granted.

Pursuant to the provisions of 40-6-109, CRS 1973, Examiner Loyal W. Trumbull now submits the record and exhibits of this proceeding to the Commission together with this recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

The Examiner has found the following facts to exist, based upon all the evidence of record, and has arrived at the following conclusions based upon such facts:

1. Although this matter specifically involves complaints against actions by this Commission in approving revisions to Respondent's GCA tariff by Decision No. C79-941, issued June 19, 1979, it is necessary to review relevant previous Commission actions. Such review will not be exhaustive, inasmuch as all procedural and substantive details are as stated in the various decisions which have been the subject of administrative notice, but will only be for the purpose of setting the present proceeding in context and making certain findings based upon previous proceedings.

On January 4, 1977, the Commission issued its Decision No. 89952, in which it noted that the operation of the GCA and PGA clauses of three jurisdictional public utilities, including Respondent, providing natural gas service was resulting in significant increases in consumers' bills due to the rapid increase in the wholesale price of natural gas in the previous two years. The Commission noted the basic arguments for and against such tariff provisions, decided that it was an appropriate time for a general review of same, and instituted Case No. 5721 for the purpose of inquiring into all facets of such provisions, including but not limited to, impact on various customers, administrative costs, effect on ability of utilities to raise capital, present and projected gas supply situations, and effect of such clauses, presumably relative to efficiency, in purchase of natural gas. The Commission welcomed the full participation of all organizations, groups and individual citizens in the proceeding.

Complainant Caldwell requested and was granted leave to intervene in such proceeding. Counsel for CEAO in this proceeding represented another group which requested and was granted leave to intervene in Case No. 5721. CEAO was not in existence at such time.

After an exhaustive schedule, including public testimony in six different cities and a night hearing in Denver, and submission of statements of position by the various utilities but not by any of the consumer intervenors, the Commission, almost a year and a half after institution of the proceeding, issued Decision No. C78-414 on April 5, 1978. Counsel for CEAO has remarked that the Commission had made no "direct review" of such clauses prior to Case 5721, which is hardly remarkable inasmuch as they were basically a non-issue prior to the price increases which were a major factor in the institution of Case 5721.

In Decision No. C78-414, at page 6, having satisfied itself that the existence of PGA or GCA clauses did not serve as a disincentive (terrible word, but useful) to utilities obtaining gas at the lowest possible price, the Commission allowed the continuation of such clauses with some modifications because, even then, their discontinuance could have "substantial adverse effects on those companies' ability to raise capital." These findings concluded with the statement "If any of these circumstances change in the future, the Commission will, of course, re-evaluate the procedure."

The decision, as later amended, concluded by ordering the utilities involved to:

1) File and comply with tariff sheets consistent with sample tariff sheets appended to the decision,

2) follow a specified procedure for filing and documentation of individual GCA or PGA amount changes to allow time for audit by Commission Staff prior to the Open Meeting date when the applications would be considered,

3) file an annual report as to present and projected gas requirements, gas supplies and curtailments, and gas purchase practices,

4) attend an annual investigatory hearing after filing the annual report and answer questions from the Commission or other interested parties relevant to issues affecting the GCA or PGA clauses,

5) submit proposals for explaining the clauses to the public on bills.

The order also directed Commission Staff to perform audits of the clauses "as necessary." The order concluded by closing Case No. 5721 subject to the usual rights of parties to take exceptions thereto, which occurred and resulted in certain technical changes being ordered in subsequent decisions and errata notices.

2. On May 24, 1979, Respondent filed its Application No. 31896 with this Commission. Such application basically requested that Respondent be allowed to place into effect, without formal hearing and on one day's notice, revised tariff sheets containing provisions which would allow it to recover or credit under or over-recovered purchased gas costs based upon estimated sales volumes for the second month after the month of service rather than upon a "historical test year" basis [i.e., ". . . volumes of natural gas purchased (adjusted for weather deviations from normal) during the 12 months ending two calendar months prior to the effective date of a change in the adjustment amounts."] The only notice given of the application was by publication of written notices in the legal notices section of the classified ads of the Denver Post and the Rocky Mountain News on May 24, 1979. Personal written notice of the application was given to no one.

On June 19, 1979, after the matter had been "tabled" in the two previous weekly open meetings, the Commission issued its Decision No. C79-941, granting the application in its entirety. A copy of such decision was served by the Commission only on Respondent and one of its attorneys. Respondent filed the revised GCA tariff with the Commission on June 22, 1979, and has commenced billing according to its terms, as subsequently amended to require implementation on a daily average prorated basis.

3. Prior to issuance of Decision No. C79-941, Respondent's GCA tariff did not provide any mechanism for recovery of purchased gas costs which had not been recovered in prior billings. Also such GCA tariff riders were to be calculated on the basis of normalized purchase volumes for a test year ending two months prior to the time the new GCA rider was proposed to become effective. Because the riders were calculated on a year-old test period and actual sales were usually less than the test-period on a yearly basis, the old GCA tariff would not result in complete recovery of purchased gas costs. For the last known 12-month period that the former GCA was in effect, which was calendar year 1978, there was a per-books under-recovery of about $13 million in purchased gas costs.

Under the new GCA tariff, Respondent can more accurately include in the new GCA amount known changes in the cost of natural gas which will be in effect during the next service month. However, the major change is the addition of an increment to the GCA amount referred to in the tariff formula as "C," representing "Unrecovered Gas Cost," which has been referred to throughout this proceeding as the "under-over" provision. Implementation of the "C" factor in the GCA tariff formula allows Respondent to bill (or credit) customers each month for purchased gas costs incurred in service rendered two months previous and not recovered (or over-recovered) in payments received in the month previous to such month. To paraphrase paragraph 6 of Application No. 31896, Respondent would recover unrecovered or credit over-recovered gas costs for the February service month by means of an increment applied to the April bill and based upon estimated (not historical) sales for the month of April. Any under or over-recovery which results will be charged or credited by being carried forward.

4. Complainants allege that the foregoing actions of the Commission in granting Application No. 31896 were improper and erroneous in the following particulars:

1) Caldwell, by virtue of her participation in Case No. 5721 and other proceedings before this Commission and her status as a ratepayer, and CEAO and its "constituency of low-income persons," by virtue of CEAO's participation in various proceedings involving Respondent, were "interested in" and "affected by" the subject application and were therefore entitled to personal written notice pursuant to 40-6-108(2), CRS 1973, and Rule 8 of this Commission's Rules of Practice and Procedure.

2) Notice by publication was not legally sufficient notice of the application to Complainants due to the status of "interested" and "affected" persons.

3) Granting of the application pursuant only to notice by publication was done in the absence of jurisdiction over the proceeding because:

   a. "Good cause" for action without personal written notice was not shown by Respondent.

   b. The application did not contain a complete and accurate statement of all the circumstances relied upon to justify granting of the application on less than 30 days notice.

   c. The application did not contain a reference to prior Commission action in any proceeding relative to the existing and proposed rates, rules or regulations.

4) The new GCA tariff unlawfully permits Respondent to make retroactive charges for past losses.

5) The provision in the new GCA tariff allowing Respondent to make "appropriate adjustments" to purchased gas costs constitutes an unlawful re-delegation of legislative power by the Commission.

The relief requested by CEAO is:

1) Invalidating the tariff revisions approved in Application No. 31896,

2) elimination of the over/under recovery provision from Respondent's GCA tariffs,

3) elimination of the "any appropriate adjustment" language or establishment of standards and prior disclosure of such adjustments,

4) refund of the difference between the amounts collectable under the former GCA and the amounts collected under the new GCA, all since June 1979, or a refund based on annual rate benefit which accrued to the company between November 26, 1979, and the approval of a new base rate authorization.

Caldwell requests basically the same relief, plus interest and attorney and witness fees.

5. Complainants allege that they were damaged by the alleged lack of notice because they were unable to properly prepare to address issues of risk in relation to rate of return on rate base in Respondent's last general rate case because they were not aware of the subject revision of the GCA tariff. A brief review of the filing in I&S Docket No. 1330 is necessary to understand this allegation. The day after Commission approval of Application No. 31896, Respondent filed advice letters requesting a $10,990,000 increase in base rates, based on a test period of calendar year 1978, which represented an increase of 6.6% in gas base rate revenues and an increase of 3.1% in total base rate revenues and GCA revenues at GCA levels in effect on June 20, 1979. Although Respondent's officers were well aware of the granting of the application, which would allow total recovery of purchased gas costs, they turned the Commission's strict policy against allowing out-of-period adjustments which are not known and measurable during the test period to their advantage. This was done by proceeding on the premise that, inasmuch as only base rates were in issue, GCA revenues of $102,210,960 and purchased gas costs of $115,241,440 would be eliminated from their operating statement, showing that stockholders had "eaten" about $13 million in unrecovered gas costs during 1978, and allowing the uninformed to proceed on the erroneous assumption that this situation would continue under any new base rates that would result from I&S Docket 1330. Obviously, the new GCA tariff would tend to improve actual return on rate base and equity.

6. Turning to the Complainants' claim of right to personal written notice under 40-6-108(2), CRS 1973, and Rule 8, it must be realized that such statute and rule apply to all of matters regulated by this Commission, both quasi-judicial and quasi-legislative. Furthermore, it must be borne in mind that this Commission regulates both "fixed utilities," generally referring to public utilities providing gas, electric, water and steam service, except for that provided by a municipality within the municipal limits, and transportation by common and contract carriers. This situation can cause a certain amount of confusion, as illustrated by Complainants' citation of the case of P.U.C. v. De Lue, 175 C. 317, 486 P.2d 1050 (1971), where the Supreme Court basically ruled that an existing contract carrier was not entitled as a matter of right to receive notice of hearing on an application for issuance of a new and similar contract carrier permit. The case does, however, provide a reference point from which to demonstrate the application of the statutes and rules:

(1) Pursuant to 40-6-108(2) and 40-11-103(2), CRS 1973, the Commission was required to give written notice of such application to all persons who would be interested in or affected by the granting of the new or extended permit, being common carriers who had similar authority in terms of commodity and geographic area.

(2) Turning to Rule 7, we see that a common carrier who filed a protest in response to notice can participate as a "protestant" without any necessity or permission from the Commission because it is a quasi-judicial proceeding which may affect his property rights in his certificate.

(3) A contract carrier who already had the authority requested by the applicant, if he had been fortunate enough to learn of it even though he received no notice, might be allowed to participate as an "intervenor" if he could convince the Commission that he had a substantial personal interest in the matter and intervention would not unduly broaden the issues.

Turning to the context of the fixed utility application for rate change, the participating parties will be the applicant, intervenors and Staff.

It must be recognized that proceedings such as Case No. 5721 and Application No. 31896, were essentially quasi-legislative proceedings. Thus, ratepayers had no constitutional right to written personal notice of such proceedings, and their rights to such notice are indeed those established by state law and the rules of this Commission, with which the Commission must indeed comply. Complainants claim that they were entitled to personal written notice of Application No. 31896 because they were persons ". . . interested in or who would be affected by the granting . . ." of the application, as contemplated by 40-6-108(2), CRS 1973, and were ". . . persons who in the opinion of the Commission have a legally protected interest or right which would be affected thereby," as contemplated by Rule 8A. However, these are terms of art and do not necessarily carry their common and ordinary meaning.

7. Complainant Ann Caldwell is a thirty-year customer of Public Service Company residing at 3425 Dahlia Street, Denver, Colorado. There are two members of her family, her monthly income is $238 per month, and she was allowed to intervene in Case No. 5721. She received no written personal notice of Application No. 31896 either from this Commission or Public Service. Although she is a subscriber to the Denver Post, she chooses not to read its legal notice section. She did not learn of the filing of Application No. 31896 until she was advised of the fact by her attorney in February of 1980. Had she received such written personal notice by mail, she would have petitioned to intervene on the bases that she was on a fixed income and the rates really affected her. She then petitioned for leave to intervene in Application No. 31896, which petition was denied by Decision No. C80-385, issued March 4, 1980, on the ground that the petition was "untimely filed."

Counsel for Caldwell contends that she was also entitled to written notice by mail of the filing of this action because she had been allowed to intervene in Case No. 5721. CEAO refers to such order of intervention in its statement of position, even though it is not in evidence, so the Examiner will take administrative notice of it on his own motion. Such decision, being Decision No. 90208, issued February 24, 1977, states as follows:

> "The Commission states and finds that the above petitioner for intervention is a person who may or might be interested in or affected by any order which may be entered in this proceeding and that the intervention should be authorized."

Such order is phrased in the language of 40-6-108(2), CRS 1973, which deals with the matter of who shall receive some kind of notice of various matters. Such order does not grant intervention as a matter of right, as is required when one has a statutorily granted right to intervention or has a "legally protected interest or right in the subject matter of the proceeding which may be affected . . ." It is clear that Caldwell was allowed to intervene in Case No. 5721 under the

discretionary provisions of subsection A-2 of Rule 7, under which numerous people are allowed by the Commission to intervene in various matters even though they are not entitled to intervention as a matter of right. There is no statute or rule pertaining to this Commission which requires that a party to a proceeding such as Case No. 5721 be given personal written notice of a later application proceeding which deals with the same subject matter of the former proceeding. Caldwell clearly had no personal legal "interest" in the subject matter of Application No. 31896 and the only "affect" upon her of the application being granted would be that experienced by the general consumer population.

It is therefore found and concluded that Caldwell was not entitled to personal written notice by mail of the filing of Application No. 31896.

8. Complainant Colorado Energy Advocacy Office (CEAO) is a statewide group that purports to represent the energy interests of low income Colorado citizens, and which has participated as an intervenor in a number of proceedings before this Commission involving Public Service. CEAO was not a party to Case No. 5721, it did not receive any written personal notice by mail of the filing of Application No. 31896 in May or June of 1980, and only learned of the proposed revision of the GCA during the revenue phase of Investigation and Suspension Docket No. 1330, which was Public Service's 1979 general rate case before this Commission. CEAO asserts in its statement of position that it ". . . fulfills the statutory standard of a firm interested in the granting or denial of (sic) a PSCO application." The Examiner agrees with this specific contention. However, the type of notice to which it is entitled is another matter. As with Caldwell, it is found and concluded that CEAO was not entitled to personal notice of the application under the provisions of 40-6-108(2), CRS 1973, or Rule 8A. Neither were Caldwell or CEAO entitled to personal notice of the filing of Application No. 31896 by virtue of the provisions of 40-6-112, CRS 1973; to the contrary, such section would have authorized the Commission to have undertaken revision of the GCA tariff on its own motion with notice only to Respondent and none to intervenors in Case No. 5721. The notice required and given pursuant to the requirements of Rule 18-A-1 was entirely adequate and reasonable to give notice to the general ratepaying public and the Complainants of the filing of Application No. 31896, and it is more than adequate to give constructive and actual notice to an organization such as CEAO which is engaged in full-time consumer advocacy and is aware of the statutes and rules of practice and procedure pertaining to matters within its area of concern.

9. Complainants were only entitled to the notice of rate changes required by Rule 18. Pursuant to Rule 18-I-A of the Commission's Rules of Practice and Procedure, a public utility proposing to increase any rate or charge or alter a rule or regulation must generally mail personal written or printed notice of such change to each of its active consumers or users at least 30 days prior to the proposed effective date of such change. However, under Rule 18-I-A(5), a public utility proposing to change rates or tariffs without formal hearing or the requirement of thirty days' notice is only required, insofar as notice is concerned, to publish a notice in the legal notice section of a newspaper having general circulation in the service area, and it is this procedure that Respondent utilized in filing Application No. 31896.

10. The Intervenors next argue that, assuming arguendo that they were not entitled to personal written notice of Application No. 31896, the granting of the application by the Commission was improper due to alleged fatal deficiencies in the publication of the notice and the contents of the application. The following findings and conclusions are made with regard thereto:

a. The application does not, as CEAO alleges, present "these changes as a housekeeping sort of refinement" simply because the application stated

"Given the nature of the filing, it is not possible to say whether it will result in an increase or decrease in rates to Public Service's customers." While this statement does seem to be somewhat lacking in candor unless one assumes a reasonable chance of declining gas costs, and may refer to the fact that GCA amounts would probably fluctuate up and down over time due to mismatches of estimated and actual sales volumes, it certainly does not tend to mask the fact that the proposed changes would probably assure total recovery of purchased gas costs. The implications of the proposed change from computing the GCA on the basis of historical test year volumes to computing it on the basis of estimated volumes are obvious. Gas rates which have been calculated on the basis of a historical test year, when lower rates were in effect, will not generate the required revenue if there is significant conservation and/or winter temperatures are significantly higher than the test period. The application and exhibits clearly stated and showed that differences of only 2% in GCA revenues and/or gas costs between actual figures and test year figures resulted in remarkable changes in operating income and rates of return on rate base and equity, which changes would be readily apparent to a layman, much less anyone with any exposure at all to rate base regulation of public utilities. Furthermore, paragraph 8 of the application specifically pointed out the fact that there would have to be some coordination between the application and any pending general rate case ". . . in order to protect against a significant gain or loss of revenue by the Company."

b. CEAO alleges that Public Services' application failed to comply with the requirement of Rule 18-I-A 5.a.(4) that the application or exhibits show certain data, specifically "Reference to prior action, if any, of the Commission in any proceeding relative to the existing and proposed rates, rules or regulations." Counsel for CEAO seems to put some weight on the fact (see footnote 8, p. 16, CEAO opening statement of position) that Respondent put "Case 5721" on the bottom of the tariff sheets it filed in response to Decision No. C78-414, but no such reference to prior action was put on the subject application. It must be realized that such a reference is put by many utilities on a tariff filing which has been formerly approved by the Commission so that the authority for such filing can be readily checked by Commission Staff and not run the risk of unnecessary suspension. Many decisions specifically state such requirement in words such as the following from Decision No. R81-21, issued January 9, 1981:

2. Respondent shall file, within five (5) days after the effective date of this Order, a new Tariff Rider No. 1, accompanied by a new advice letter and referring to the authority of this decision. Such filing may be made without further notice and is intended to be for record-keeping and administrative purposes only, this decision being fully self-executing in all respects. (Emphasis added)

c. The application contained sufficiently complete and accurate statement of the circumstances and justifications relied upon to justify the proposed changes, even

though Respondent did not incorporate a recent study on the GCA in the application, which study is identified as Attachment No. 11 to Exhibit 8B in this proceeding.

d. The application stated good cause for the granting of the application on less than thirty days' notice.

In summary, it is concluded that Respondent substantially complied with the requirements of the Public Utilities Law and the rules of this Commission in the filing and publication of notice of Application No. 31896.

11. The most important substantive question is that of whether or not the new GCA tariff violates the constitutional prohibition against retrospective ratemaking stated in Article II, Section 11 of the State Constitution. Counsel for Complainants allege that the new GCA tariff is unconstitutional because it allows Respondent to recoup operating expenses incurred prior to filing for new GCA charges as allowed by the new tariff. Respondent naturally takes the position that the new GCA tariff is prospective because it applies only to service rendered after the approval of Application No. 31896.

In order to resolve this issue it is necessary to review the authority and restrictions under which this Commission must operate. As counsel for Respondent has pointed out, this Commission derives its authority from Article XXV of the State Constitution, and such authority is essentially plenary, being subject only to express restriction by the legislature, and subject to such delegated power being exercised in a manner otherwise consistent with other pertinent provisions of the State Constitution.

Article II, Section 11 of the State Constitution provides that

> "No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the general assembly."

Although not mentioned by counsel, it should also be noted that Section 12 of Article XV of the State Constitution provides that:

> "The general assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past."

Statutory law not being the source of Commission authority, it is only necessary to consult statutory law for any prohibition against a tariff allowing deferred billing of unrecovered gas costs, and the Examiner finds no such prohibition. Counsel for Complainant Caldwell argues that the language concerning ". . . rates . . . to be thereafter observed. . ." in 40-3-111(1), CRS 1973, constitutes a specific statutory prohibition against retroactive ratemaking. However, the Colorado Supreme Court specifically held in Peoples Natural Gas v. Public Utilities Commission, 590 P.2d 960 (1979), that such language applied only to a complaint proceeding wherein existing rates had been found to be unjust, unreasonable, discriminatory or preferential, rather than to a proceeding involving the establishment of a new rate after existing rates have been found to be insufficient to meet a utility's legitimate revenue requirements. The absence of such language from other pertinent statutory sections, notably 40-6-111, CRS 1973, is not without significance inasmuch as some

jurisdictions have indeed held such "thereafter" language to be a prohibition against retroactive ratemaking when so used. See Public Service Company of New Hampshire v. Federal Energy Regulatory Commission, 600 F.2d 944 at (D.C. Circuit 1979).

Both sides point with pride to the aforementioned Peoples Natural Gas case as being dispositive of this issue in their favor by virtue of the following dicta which appears at page 962:

> [3] If Peoples were seeking an increased rate in order to recoup operating expenses incurred prior to any filing for new tariffs, its activities arguably might fall within the constitutional prohibition. However, that is not the case here. As the district court noted, the surcharge requested here is not connected with the past performance of the utility. It relates only to a period of suspension during which the Commission was considering whether to grant the pass-on rate increase. The fact that there was some lag between the request for a rate increase and the Commission's action retrospective within the meaning of Colo. Const. Art. II, § 11.

Respondent's officers have attempted to a certain extent to portray the amount which is over or under-recovered in each revenue month as merely a "factor" which is "considered" in establishing the GCA amount which shall be applicable two months later on the bill received for service the month after such revenue month. As Mr. Ranniger stated, the operation of the GCA is indeed best explained by the tariff itself. The tariff itself explains that the GCA amount is determined by the following two-step formula:

$$(1)\ \frac{\text{Purchased Gas Cost} - \text{Base Gas Cost}}{\text{Amount to be added to base rate to achieve known current cost}}$$

$$(2)\ + \frac{\text{Unrecovered Gas Cost}}{\text{GCA Amount}}$$

It is clear that the only aspect of predicting future gas costs per unit is accomplished upon completing Step 1 of the equation because the result will be an amount necessary to add on to Base Gas Cost in order to arrive at per unit purchased gas costs that will actually be incurred during the revenue period, including the effects of known changes in the price of gas. This will not prove entirely accurate because of later changes and different mix in source of supply used during the next revenue month. Step 2 then adds a factor to recover or credit for under or over-recovery which has occurred in the previous revenue month due to inadequacy of the Step 1 factor and the fact that consumption was more or less than consumption in the normalized historical month used to calculate Step 2.

It is clear, as demonstrated by Exhibits 19 and 20, that Step 2 is intended only to collect or credit the amount that was under or over-recovered by the GCA in the billing cycle two months previous to the month being billed; it is not intended to predict gas prices in the future.

Respondent also argues that the GCA tariff is merely predictive of future costs, rather than inclusive of an increment for over or under-recovery, because there was no "unrecovered component" for the first two months that the procedure was in effect. However, it appears to the Examiner, and the following is based on very sparse evidence and a certain amount of conjecture as to intent, that this gap occurs because

Respondent's officials were concerned that calculation and billing during this period would involve billing for a period when the basic tariff itself was not in effect, inasmuch as it did not become effective until July 23, 1980, which would have involved the application of a rate or charge in the prohibited retroactive manner. Therefore, August of 1979 was the first month there could have been an under or over-recovery of the new GCA tariff without applying it in the prohibited retroactive manner, i.e., for a period of service when the basic tariff was not in effect.

Even though intervening Commission approval of the actual new GCA amount is required, the resulting GCA charge which appears on the customer's bill is a charge for energy used after the new GCA tariff was allowed by Decision No. C79-941. Therefore, it is found and ultimately concluded that the new GCA tariff does not constitute retroactive ratemaking or a law of retrospective operation as contemplated by Article II, Section 11 of the State Constitution, and that it is not violative of the so-called "filed rate doctrine" incorporated in 40-3-105(2), CRS 1973, inasmuch as the increase in GCA amount is merely an administrative implementation by the Commission of a rate formula which had been prospectively approved upon granting of Application No. 31896. Any customer who has received service since the approval of such application and the filing of the new GCA tariff has done so with full constructive notice that such utility service was received subject to an implied contract to pay the base rate for such service and to also pay, in effect, on a deferred billing basis for unrecovered gas costs.

12. Although the deferred billing aspect of the new GCA is not unconstitutional as retroactive ratemaking, it is found and concluded that the manner in which the Unrecovered Gas Cost increment is structured is not lawful because, although it meets Respondent's gas cost recovery goals on a system-wide basis, and there is a balancing of the total-system account over time, this is accomplished at the expense of either individual overcharges or windfalls to various customers depending on the timing of consumption; i.e., it bears no reliable relationship to the individual customer's cost of service in the service month. This results because the "over-under" increment of the GCA amount is figured on the basis of a certain amount per unit of consumption in the month for which the initial billing is made, but such amount is applied to all units of consumption in the second month thereafter. The hypothetical customer who was away on vacation and had consumption of only 100 ccf in the month where initial billing resulted in an under-recovery will get hit for six times the over-under increment of the GCA when he is at home two months later and has consumption of 600 ccf. The over-recovery will show in a total system balance but his personal recovery of that amount will only result from happenstance of a reverse nature. Likewise, the person who had 600 ccf consumption in the billed month and 100 ccf two months later will enjoy a windfall. Also, customers commencing to receive gas utility service from Respondent are charged for or receive a windfall in the first two months for under or over-recovery to which they did not contribute. Respondent's GCA tariff should be revised to state that the over-under increment of the GCA amount will only be billed for consumption which was actually experienced by an account in the second month prior to the month in which it is imposed. Furthermore, the tariff should be revised to require that GCA amounts shall be brought current upon the closing of an account.

Although any net overcharges to customers which will have accrued between the inception of the new GCA billing system and the effective date of the revision proposed in this decision will generally be of an insignificant amount, there will be customers who will have been overcharged a more significant amount due to unique circumstances. Respondent should be required and authorized to make refunds of overcharges to those who request such refunds and can demonstrate the merit of their claim. Respondent should not be authorized or required to charge any accounts for under-charges during such period of time.

Respondent purchases a large part of its natural gas from Western Slope Natural Gas Company, a wholly-owned subsidiary of Respondent, which has a GCA tariff provision which is virtually identical to the one under attack by Complainants. In the event the Commission agrees to the proposed revision of Respondent's GCA tariff, the Commission should direct Western Slope to show cause why its GCA tariff should not be revised in a similar manner.

13. Complainant CEAO contends that the inclusion of the language ". . ., plus any appropriate adjustments, . . ." in the tariff directions for calculation of Purchased Gas Cost constitutes an unlawful delegation or redelegation of this Commission's responsibility to set rates inasmuch as there are no specific standards controlling such adjustments and the details of monthly adjustments are not made known to the Commission prior to a new GCA amount being allowed to go into effect.

Reading the tariff as a whole, it is seen that the subject language does not endow Respondent with unfettered discretion in making such adjustments. As stated in the subsection of the tariff entitled APPLICABILITY it is stated that the GCA is to ". . . reflect changes in the cost of gas purchased from Company's suppliers." The definition of Purchased Gas Cost under the tariff is "the actual cost the Company pays its suppliers for natural gas service."

Respondent has, under the authority of the appropriate adjustment in the filing of GCA applications:

a) reduced gas costs to eliminate costs associated with the purchase of gas for underground storage which was not withdrawn and sold.

b) increased gas costs to reflect known increases in prices by suppliers.

c) adjusts costs associated with gas received from Colorado Interstate Gas Company (CIG) to reflect the difference between the original bookings of gas costs on the basis of preliminary meter readings and later invoices based on full and final analyses of meter reading charts.

d) to allocate monthly demand charges to high use months.

e) normalization and annualization adjustments for lost and unaccounted for (L&U) gas.

f) to remove GRI (Gas Research Institute) charges from cost.

g) incremental pricing effects.

h) company used gas.

In view of the review, audit, quarterly hearing and refund provisions which attend implementation of the new GCA tariff, it is concluded that the ". . . any appropriate adjustment . . ." language of the tariff does not effect any delegation or redelegation of Commission duties. However, in view of the fact that there has now been sufficient experience under the new procedure to identify those factors which can reasonably be expected to affect calculation of purchased gas costs, it is further concluded that the tariff should be amended to specify the allowable adjustments.

14. 40-6-119, CRS 1973, authorizes this Commission to require a public utility to make "due reparation" to a complainant when a rate

or charge has been found to be excessive or discriminatory, provided no discrimination will result from such reparation, even though the rate or charge was not in excess of the utility's filed tariff. Complainant Caldwell has not been charged an amount in excess of Respondent's filed rates, and there is no evidence tending to demonstrate that Complainant Caldwell has paid any GCA amounts which were excessive due to the fact that she had higher consumption in a billing month in which the GCA was to recover previously unrecovered gas costs. It is therefore found and concluded that no reparations are due to Complainant Caldwell.

15. Pursuant to the provisions of 40-6-109, CRS 1973, it is recommended that the Commission enter the following Order.

O R E R

THE COMMISSION ORDERS THAT:

1. Fifth Revised Sheet No. 133, Third Revised Sheet No. 133A and Forty-Fifth Revised Sheet No. 133B of Tariff Colorado PUC No. 4-Gas of Respondent Public Service Company of Colorado are hereby cancelled. The tariff sheets attached hereto as Appendix A are hereby substituted therefor. Respondent shall file, on one (1) day's notice, the tariffs contained in Appendix A.

2. Respondent is hereby authorized and directed to make reparation, upon request, in the form of cash payment or billing credit, to customers and accounts who have paid net unrecovered gas costs in excess of the amount attributable to actual consumption for the periods of service for which unrecovered gas costs were billed and paid as part of the Gas Cost Adjustment (GCA) charge.

3. 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.

4. 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.

5. The Commission shall retain jurisdiction over this proceeding to enter such further orders as may be necessary to effectuate this decision.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

LOYAL W. TRUMBULL

Examiner
vc

FORM R-2

APPENDIX A (Decision No. R81-731)

name of utility

Colo. PUC No._____

Sheet No._____

Cancels_____ Sheet No._____

NATURAL GAS RATES
GAS COST ADJUSTMENT
AND
UNRECOVERED GAS COST BILLING

APPLICABILITY

All rate schedules for natural gas service are subject to a Gas Cost Adjustment to reflect changes in the cost of gas purchased from Company's suppliers. The Gas Cost Adjustment amount will be subject to monthly changes to be effective on an average daily prorated basis with meter readings beginning with the Company's billing cycle each month. The Gas Cost Adjustment for all applicable rate schedules is as set forth on Sheet Nos. 133C and 133D. Each monthly bill shall also include an Unrecovered Gas Cost Billing.

DEFINITIONS

Gas Cost Adjustment - The Gas Cost Adjustment will be the difference between Base Gas Cost and Purchased Gas Cost, plus Unrecovered Gas Cost.

Base Rate - Base Rate is the rate which incorporates a portion of Purchased Gas Costs, and all other operating expenses including taxes and earnings on rate base.

Total Rate - Total Rate is the Base Rate and the Gas Cost Adjustment.

Base Gas Cost - Base Gas Cost is the portion of Purchased Gas Cost included in the Base Rate.

Purchased Gas Cost - Purchased Gas Cost is the actual cost the Company pays its suppliers for natural gas service.

Unrecovered Gas Cost - Unrecovered Gas Cost is the difference between Purchased Gas Cost and Recovered Gas Cost.

Recovered Gas Cost - Recovered Gas Cost is the gas cost recovered by the Company's currently effective Total Rates.

DO NOT WRITE IN THIS SPACE

BASE GAS COST

(1) The Base Gas Cost will be calculated based on purchases in the twelve months ended the most recent quarter for which information is available, and the supplier rates to be effective on or about October 1 of each year, and dividing the resulting amount by that period's sales.

Advice Letter No._____ _____ Issue Date_____
Signature of Issuing Officer

Decision or
Authority No._____ _____ Effective Date_____
Title

001460

FORM R-1

APPENDIX A

name of utility

Colo. PUC No._____
Sheet No._____
Cancels_____ Sheet No._____

NATURAL GAS RATES
GAS COST ADJUSTMENT
AND
UNRECOVERED GAS COST BILLING

BASE GAS COST - Cont.

(2) A revised Base Gas Cost will be effective on an average daily prorated basis with meter readings beginning with the Company's monthly billing cycle after October 1, each year, except that should a general rate case of the Company be pending before the Commission at the time, the effective date of the Base Gas Cost change will be delayed up to sixty days after the effective date of the Commission's order in the rate case. The Base Gas Cost will replace the previous Base Gas Cost in the Company's Base Rates.

(3) The Base Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

PURCHASED GAS COST

(1) The Purchased Gas Cost will be calculated by summing the supplier's invoices, applying adjustments for the following factors, and dividing the amount by sales volumes for that month. In the process of summing suppliers' invoices, adjustments shall be made for the following factors in order to accurately state Purchased Gas Cost at the time that the resulting Gas Cost Adjustment amount becomes effective:

a. Costs of gas purchased for underground storage which will not be withdrawn during the time the resulting Gas Cost Adjustment amount becomes effective.

b. Known increases in prices of natural gas suppliers.

c. Difference between bookings of gas costs based upon preliminary meter reading and final invoices based upon final analyses of meter reading charts.

d. Allocation of monthly demand charges on basis of estimated demand for the billing period.

e. Lost and unaccounted for gas.

f. To eliminate Gas Research Institute (GRI) charges.

g. Incremental pricing effects.

h. Gas used for interdepartmental purposes.

DO NOT WRITE IN THIS SPACE

Advice Letter No._____ _____ Issue Date_____
Signature of Issuing Officer

Decision or
Authority No._____ _____ Effective Date_____
Title

FORM R-3

APPENDIX A

name of utility

Colo. PUC No._____
_____ Sheet No._____
Cancels _____ Sheet No._____

NATURAL GAS RATES
GAS COST ADJUSTMENT
AND
UNRECOVERED GAS COST BILLING

PURCHASED GAS COST - Cont.

(2) The Purchased Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

RECOVERED GAS COST

The Recovered Gas Cost will be calculated monthly by applying the appropriate Base Gas Cost and Gas Cost Adjustment to the actual sales volumes for that revenue month.

UNRECOVERED GAS COST

(1) The Unrecovered Gas Cost will be calculated monthly by subtracting the Recovered Gas Cost from the Purchased Gas Cost. The resulting amount will be divided by the actual sales volumes for the month for which Unrecovered Gas Cost is being calculated.

(2) The Unrecovered Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

(3) Each monthly bill for service shall contain a charge or credit calculated by multiplying the customer's actual gas consumption for the billing cycle two months previous to the current billing cycle by the Unrecovered Gas Cost calculated for the billing cycle two months previous to the current billing cycle.

GAS COST ADJUSTMENT

The following formula is used to determine the Gas Cost Adjustment amount:

Gas Cost Adjustment amount = B - A

A = Base Gas Cost
B = Purchased Gas Cost

DO NOT WRITE IN THIS SPACE

TERMINATION OF ACCOUNTS

Accounts for gas utility service shall not be closed until at least two months after termination of service to such account. Each account shall continue to be billed for Unrecovered Gas Cost in order to receive full and final deferred payment or refund for Unrecovered Gas Costs incurred in the last month in which service was received.

Advice Letter No._____ _____ Issue Date_____
Signature of Issuing Officer

Decision or
Authority No._____ _____ Effective Date_____
Title

FORM R-2

name of utility

APPENDIX A

Colo. PUC No._____
Sheet No._____
Cancels_____ Sheet No._____

NATURAL GAS RATES
GAS COST ADJUSTMENT
AND
UNRECOVERED GAS COST BILLING

TREATMENT OF REFUND

Application shall be made to The Public Utilities Commission of the State of Colorado for approval of a refund plan for the disposition of each refund received from a Company supplier including the interest received thereon.

INFORMATION TO BE FILED WITH THE PUBLIC UTILITIES COMMISSION

Each filing of a Gas Cost Adjustment revision will be accomplished by filing an application and will be accompanied by such supporting data and information as the Commission may require from time to time.

DO NOT WRITE IN THIS SPACE

Advice Letter No._____ _____ Issue Date_____
Signature of Issuing Officer

Decision or Authority No._____ _____ Effective Date_____
Title

(Decision No. C81-1429)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

***

COLORADO ENERGY ADVOCACY OFFICE AND ANN CALDWELL,	)	CASE NO. 5923
Complainants	)	COMMISSION DECISION GRANTING EXCEPTIONS IN PART AND DENYING EXCEPTIONS IN PART
vs.	)	
PUBLIC SERVICE COMPANY OF COLORADO,	)	
Respondent.	)	

August 18, 1981

STATEMENT AND FINDINGS

BY THE COMMISSION:

On April 16, 1980, the above-captioned Complaint was filed with this Commission, and on April 18, 1980, an Order to Satisfy or Answer was served upon Respondent, Public Service Company of Colorado (hereinafter "Public Service") by the Executive Secretary of the Commission. On May 8, 1980, an Answer was filed on behalf of Public Service. On June 30, 1980, Notice of Hearing was issued setting the matter for hearing on Thursday, August 28, 1980, at 10:00 a.m. in the 5th Floor Hearing Room, 1525 Sherman Street, Denver, Colorado. The matter was heard as scheduled before Examiner Loyal W. Trumbull, with testimony being heard from four witnesses and twenty-three Exhibits being offered and admitted into evidence.

Upon commencement of hearing counsel for Public Service moved to dismiss the Complaint for failure to comply with the requirements of 40-6-108(b), C.R.S. 1973. Such motion was denied by the Examiner.

Upon conclusion of the hearing, the subject matter was taken under advisement by the Examiner. Counsel were given leave to file Statements of Position, and such were timely filed. In the Statements of Position, counsel for Staff and Public Service requested that official notice be taken of the testimony of witness Carlson in February 2, 1981, quarterly hearing in Application Nos. 31895, 31896 and 32603. No objection being raised thereto, the above requests were approved by the Examiner.

On April 23, 1981, the Examiner issued Recommended Decision No. R81-731 (hereinafter "Decision R81-731") whereby the Examiner found and concluded that Complainants Caldwell and CEAO had no right to personal written notice of Application No. 31896, and that notice as given was proper. The Examiner further found that Application No. 31896 and attached Exhibits, provided sufficient evidence to establish good cause for less than thirty days notice, and that no retroactive rate making was occasioned by the GCA rider as extablished by Decision R81-731. The Examiner also found that the GCA rider did not accurately reflect each customer's usage. Thus, the Examiner recommended that Public Service be ordered to refund overcharges to those customers who could establish a meritorious claim therefor. Also, the "any appropriate adjustment" language contained in the GCA rider was found by the Examiner not to be an unlawful delegation of Commission authority. However, the Examiner found that such adjustment should be limited to a specified list of adjustments.

The issues addressed by the Examiner in Decision R81-731 were:

1. Were Caldwell and CEAO entitled to personal written notice of Application No. 31896.

2. Was Notice by Publication legally sufficient notice of Application No. 31896 to Caldwell and CEAO.

3. Was the granting or Application No. 31896 accomplished without jurisdiction over the proceeding in that Notice by Publication was deficient in the following alleged particulars:

a) "Good cause" for action without personal written notice was not shown by Public Service.

b) Application No. 31896 failed to contain a complete statement of circumstances relied upon to justify granting of such applicatoin on less than thirty days notice.

c) Application No. 31896 failed to contain a reference to prior Commission action in any proceeding relative to the existing and proposed rates, rules or regulations.

4. Does the GCA tariff, authorized by Decision No. C79-941, unlawfully permit Public Service to make retroactive charges for past losses.

5. Does the provision of the GCA tariff, allowed by Decision No. C79-941, which authorizes Public Service to make "appropriate adjustments" to purchased gas costs, constitute an unlawful delegation of legislative power by the Commission to Public Service.

The Examiner ruled against CEAO and Caldwell on all of the above issues, other than the determination that the GCA rider did not accurately reflect each customer's usage. Accordingly, the Examiner recommended that Public Service be ordered to refund overages to those customers who could establish a meritorious claim. Also, the "any appropriate adjustments" language contained in the GCA rider was found by the Examiner not to be an unlawful delegation of Commission authority. However, the Examiner found that such adjustment should be limited to a specified list of adjustments.

On May 26, 1981 Public Service and CEAO filed exceptions to Recommended Decision R81-731. On June, 26, 1981, both CEAO and Public Service filed responses to the exceptions of the other party. CEAO by its exceptions raises the following issues:

a) The notice of filing and of PUC consideration of Application No. 31896 was legally deficient in that CEAO and Caldwell were entitled to personal notice.

b) Application No. 31896 was legally inadequate in that no statement of good cause for less than thirty days approval, and no disclosure of circumstances and conditions justifying expedited filing were set forth therein. Such application also failed to reference prior action in Case No. 5721 which Application No. 31896 would rescind.

c) The GCA mechanism approved by Decision No. C79-941 authorizes retroactive charges to be made for past losses. The determination of the Examiner that the revised GCA is unlawful when applied to individual

consumer circumstances, should be expanded to apply to all customers of Public Service.

d) The "any appropriate adjustment" provision contained in the revised GCA constitutes an unlawful delegation of legislative power by the Commission to Public Service.

It should be noted that the above issues raised and determined at hearing of this matter are largely duplicative of the issues now raised by CEAO on exceptions. By the exceptions of Public Service, Public Service contends:

a) A revised GCA mechanism is legal and is the most reasonable method available. The alternative recommended by the Examiner will result in an impractical, confusing and unworkable situation for Public Service and its customers.

b) The finding of the Examiner that the GCA operates illegally is not supported by the evidence, and the Examiner's recommended requirement that customers' bills be recomputed from a period of time starting with the issuance of Decision No. C79-941, is unjust, unreasonable and arbitrary.

c) The revised GCA tariff allows Public Service to make adjustments of a number of reasons which may be unforseen. The Examiner's specified list of adjustments is unjust, unreasonable, arbitrary and inflexible.

d) The Examiner's gratuitous comments regarding Public Service Company's presentation in I&S Docket No. 1330 is incorrect, without evidenciary support, and inaccurately reflects the facts and circumstances arising in I&S Docket No. 1330.

Public Service concludes its exceptions by requesting that Recommended Decision R81-731 be modified to reflect that the present GCA tariff is just and reasonable and should be continued in present form, that the current adjustment factor also should be continued in present form, and that no reparations be authorized by the Commission.

Although the Commission is not in complete disagreement with Recommended Decision R81-731, 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 R81-731.

FINDINGS OF FACT AND CONCLUSIONS THEREON

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

1. The complaint in this matter focuses upon actions of this Commission in approving revision to Public Service's GCA tariff by Decision No. C79-941, issued June 19, 1979. In order to understand the issues raised in the complaint proceeding, it is necessary to review relevant previous Commission actions. Such review will not be exhaustive, in that all procedural and substantive details are as stated in such decisions, which have been the subject of administrative notice. However, such review will be for the purpose of setting the present proceeding in context and making certain findings based on

such previous proceedings.

2. On January 4, 1977, the Commission issued Decision No. 89952. In Decision No. 89952 the Commission noted that the operation of the GCA nad PGA clauses of three jurisdictional public utilities, including Public Service, was resulting in significant increases in consumers' bills due to the rapid increase in the wholesale price of natural gas in the previous two years. The Commission noted the basic arguments for and against such tariff provisions, decided that it was an appropriate time for a general review of same, and instituted Case No. 5721 for the purpose of enquiring into all facets of such provisions, including but not limited to, impact on various customers, administrative costs, effect on ability of utilities to raise capital, present and projected gas supply situations, and effect of such clauses, presumably relative to efficiency, in purchase of natural gas. The Commission welcomed the full participation of all organizations, groups and individual citizens in the proceeding.

3. Complainant, Caldwell, requested and was granted leave to intervene in Case No. 5721. Counsel for CEAO in this complaint proceeding represented another group which requested and was granted leave to intervene in Case No. 5721. CEAO was not in existence at such time.

4. After an exhaustive schedule, including public testimony in six different cities with a night hearing in Denver, and submission of statements of position by the various utilities but not by any of the consumer intervenors, the Commission, approximately a year and a half after the institution of proceedings in Case No. 5721, issued Decision No. C78-414 on April 5, 1978.

5. The Commission, in Decision No. C78-414, at Page 6, after having satisfied itself that the existence of PGC or GCA clauses did not serve as a disincentive to utilities obtaining gas at the lowest possible price, allowed the continuance of such clauses with modifications. As rationale for such determination the Commission indicated that the discontinuance of such clauses could have "substantial adverse effect on the ability of the subject utilities to raise capital". The findings of the Commission in Decision No. C78-414 concluded with the statement: "if any of the circumstances change in the future, the Commission will, of course, re-evaluate the procedure".

6. Decision No. C78-414 as later amended, concluded by ordering the involved utilities to:

a) File and comply with tariff sheets consistent with sample tariff sheets appended to the decision.

b) Follow a specified procedure for filing and documentation of individual GCA or PGA amount changes to allow time for audit by Commission Staff prior to the Open Meeting date when the applications would be considered.

c) File an annual report regarding present and projected gas requirements, gas supplies and curtailments, and gas purchase practices.

d) Attend an annual investigatory hearing after filing the annual report and answer questions from the Commission or other interested parties relevant to issues affecting the GCA or PGA clauses.

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e) Submit proposals for explaining the clauses to the public on bills.

7. The ordering portion of Decision No. C71-414 also directed Commission Staff to perform audits of the clauses "as necessary". The Order concluded by closing Case No. 5721, subject to the usual rights of parties to take exceptions thereto, which occurred. As the result of such exceptions, certain technical changes were made to Decision No. C71-414. Also, other changes were subsequently made to said decision by virtue of certain errata notices.

8. On May 24, 1979, Public Service filed Application No. 31896 with this Commission. This Application requested that Public Service be allowed to place into effect, without formal hearing and on one day's notice, revised tariff sheets pertaining to the GCA. The specific revisions requested in Application No. 31896 would allow Public Service to recover or credit under or over-recovered gas cost, based upon estimated sales volumes for the second month after the month of service, rather than upon an "historical test year" basis, [i.e., ". . . volumes of natural gas (adjusted for weather deviations from normal) during the twelve months ending two calendar months to the effective date of change in the adjustment amount."]. The notice given of this Application was by publication of written notices in the legal notices sections of the classified ads of The Denver Post and the Rocky Mountain News on May 24, 1979. No personal written notice of the Application was given.

9. On June 19, 1979, after Application No. 31896 had been tabled in the two previous weekly Open Meetings, the Commission issued Decision No. C79-941, granting Application No. 31896 in its entirety. A copy of Decision No. C79-941 was served by the Commission on Public

Service Company and one of its attorneys. Public Service Company filed a revised GCA tariff with the Commission on June 22, 1979. Public Service has commenced billing according to the terms of the revised GCA, as subsequently amended to require implementation on a daily average pro rated basis.

10. Prior to issuance of Decision No. C79-941, the GCA tariff did not provide any mechanism for recovery of purchased gas costs which had not been recovered in prior billings. Also, prior to issuance of Decision No. C79-941, GCA tariff riders were calculated on the basis of normalized purchased volumes for a test year ending two months prior to the time a new GCA rider was proposed to become effective. Because the old riders were calculated on a year old test-period and, because actual sales were usually less than the test-period on a yearly basis, the old GCA tariff would not normally result in complete recovery of purchased gas costs. For the last known twelve-month period that the former GCA was in effect, which was calendar year 1978, there was a per-books under-recovery of approximately $13,000,000 in purchased gas costs.

11. By means of the new GCA tariff, as approved by Decision No. C79-941, Public Service can more accurately include in the new GCA amount know changes in the cost of natural gas which will be in effect during the next service month. However, the major change is in the addition of an increment to the GCA amount referred to in the tariff formula as "C", representing "unrecovered gas cost", which was referred to throughout hearings of this matter as the "under-over" provision. Implementation of the "C", factor, in the new GCA formula allows Public Service to bill or credit customers each month for purchased gas costs incurred in service rendered two months previous and either not recovered, or over-recovered, in payments received in the

months previous to such month. To paraphrase Paragraph 6 of Application No. 31896, Public Service would recover unrecovered or credit over-recovered gas costs for the February service month by means of an increment applied to the April bill and based on estimated (rather than historical) sales for the month of April. Any under or over-recovery would be charged or credited by being carried forward.

12. As specifically set forth above, Complainants Caldwell and CEAO allege in their formal complaint that certain actions of the Commission in granting Application No. 31896 were improper and erroneous. CEAO has again raised all such contentions by way of exceptions to Recommended Decision R81-731. By way of summary, CEAO's allegations of Commission error, as raised both by complaint and exceptions are:

a) Caldwell, by virtue of her participation in Case No. 5721 and other proceedings before this Commission and her status as a ratepayer; and CEAO and its "constituency of low-income persons", by virtue of CEAO's participation in various proceedings involving Public Service, were "interested in" and "affected by" the subject application. Accordingly, both CEAO and Caldwell were entitled to personal written notice of Application No. 31896, pursuant to 40-6-108(2), CRS 1973, and Rule 8 of this Commission's Rules of Practice and Procedure.

b) Notice by Publication was not legally sufficient notice of Application No. 31896 to CEAO and Caldwell by virtue of their status as "interested" and "affected" persons.

c) Granting of Application No. 31896 on less than thirty days notice, and by publication only, was accomplished in the absence of jurisdiction over the proceeding because Rule 18.I.A.5 requires the following:

i) "Good Cause" for such action should have been shown by Public Service.

ii) The application should have contained a complete and accurate statement of all the circumstances relied upon to justify granting of the application on less than thirty days notice.

iii) The application should have contained a reference to prior Commission action in any proceeding relative to the existing and proposed rates, rules or regulations.

CEAO and Caldwell contend that the instant application and Commission Decision No. C79-941 fail to comply with the above requirements. The remaining alleged errors on exceptions are:

4) The new GCA tariff unlawfully permits Public Service to make retroactive charges for past losses.

5) The provision in the new GCA tariff allowing Public Service to make "appropriate adjustments" to purchased gas costs constitutes an unlawful re-delegation of legislative power by the Commission.

In the Complaint case, CEAO requests the following relief:

1) Invalidating the tariff revisions approved in Application No. 31896,

2) Elimination of the over/under recovery provision from Public Service's GCA tariffs,

3) Elimination of the "any appropriate adjustment" language, or establishment of standards and prior disclosure of such adjustments.

In the complaint proceeding, Caldwell requested basically the same relief as CEAO, plus interest and attorneys and witness fees.

13. CEAO and Caldwell in the formal complaint and CEAO, by its exceptions now filed, contend that they were damaged by the alleged lack of notice of Application No. 31896 and by Decision No. C79-941 approving such application. CEAO and Caldwell contend that such damage was that they were unable to prepare properly to address issues of risk in relation to rate of return on rate base in Public Service Company's last general rate case (I&S Docket No. 1330). CEAO and Caldwell urge that they were placed in a position of disadvantage in I&S Docket No. 1330 because in that proceeding, they were not aware of the prior revision of the GCA tariff as requested in Application No. 31896 and approved by Decision No. C79-941.

14. A brief review of the filing in I&S Docket No. 1330 is necessary to understand the above allegation. The day after Commission approval of Application No. 31896 by Decision No. C79-941, Public Service filed advice letters requesting a $10,990,000 increase in base rates. Such request was based on a test-period of calendar year 1978,

which represented an increase of 6.6% in gas base rate revenues and an increase of 3.1% in total base rate revenues, and GCA revenues at GCA levels in effect June 20, 1979. The essence of Caldwell and CEAO's allegation is that I&S Docket No. 1330 proceeded on the premise that only base rates were at issue, and that GCA revenues of $102,210,960 and purchased gas costs of $115,241,440 would be eliminated from the operating statement of Public Service, showing that stockholders had "eaten" $13 million in unrecovered gas costs in 1978. Caldwell and CEAO contend that this premise cause I&S Docket No. 1330 to proceed on the erroneous assumption that the above situation would continue under any new base rates that would result from I&S Docket No. 1330. Public Service, by exceptions, contends that all parties to I&S Docket No. 1330 were apprised that the new GCA tariff would more accurately recover gas purchased costs.

Thus, Public Service asserts that the GCA revenues were knowingly removed from rate considerations in I&S Docket No. 1330. The position of Public Service in this regard reflects the correction posture of the proceedings in I&S Docket No. 1330. Accordingly, the contention of Caldwell and CEAO, that I&S Docket No. 1330 proceeded without knowledge of the effect and implementation of the new GCA tariff is rejected.

15. Turning to the claim of right to personal written notice pursuant to CRS 1973, 40-6-108(2), and Rule 8, Rules of Practice and Procedure before this Commission, as raised by Caldwell and CEAO in the complaint and by exceptions to Decision R81-731 it must initially be recognized that CRS 1973, 40-6-108(2) and Rule 8 apply to all matters regulated by this Commission, both quasi-judicial and quasi-legislative. Morever, it must be remembered that this Commission regulates "fixed utilities" (generally referring to public utilities providing telephone, gas, electric, water and steam service, except for

that provided by a municipality within the municipal limits), and transportation by common and contract carriers. This situation can cause confusion, as illustrated by CEAO's and Caldwell's citation of P.U.C. v. DeLue, 175 C. 317, 486 P.2d. 1050 (1979). In the DeLue case, the Supreme Court of Colorado indicated that an existing contract carrier was not entitled as a matter of right, to receive notice of hearing of an application for issuance of a new and similar contract carrier permit. However, the DeLue case does provide a reference point from which to demonstrate the appropriate statutes and rules:

a) First Considering the sitution of transportation applications:

1) Pursuant to CRS 1973, 40-6-108(2) and 40-11-103(2) this Commission is required to give written notice of an application for transportation authority to all persons who would be interested in or affected by the granting of a new or extended permit, being common carriers who had similar authority to terms of commodity and geographic area.

2) Rule 7, Rules of Practice and Procedure before this Commission, allow a transportation common carrier, filing a protest in response to notice to participate as a "protestant" without Commission permission. Such procedure is provided because any Commission quasi-judicial proceeding may affect the property rights of such carrier in his certificate.

3) A contract carrier holding the authority requested by an applicant, should he learn of such application, although receiving no notice, may be allowed to participate in such proceeding as an "intervenor" if such contract carrier can establish to the satisfaction of the Commission, pursuant to Rule 10 of the Commission's Rules of Practice and Procedure, that such carrier has a substantial personal interest in the matter and such intervention will not unduly broaden the issues.

b) Turning to the context of fixed utility applications for rate change, the participating parties will be the applicant, intervenors and Staff.

1) It must be recognized that proceedings such as Case No. 5721 and Application No. 31896, are essentially quasi-legislative proceedings. Accordingly, rate payers have no constitutional right to written personal notice of such proceedings. The rights of such individuals to notice are those established by State Law and the Rules of this Commission with which the Commission must comply. In this complaint proceeding, Caldwell and CEAO claim that they were entitled to personal written notice of Application No. 31896 because they were persons ". . . interested in or who would be affected by the granting . . ." of the application, as contemplated by 40-6-108(2), CRS 1973. Futher, Caldwell and CEAO contend that they were ". . . persons who in the opinion of the Commision have a legally protected interest or right which would be

affected thereby", as comtemplated by Rule 8A, Rules of this Commision.

2) Regarding the complaint proceeding, Caldwell is found to be a 30-year customer of Public Service Company residing at 3425 Dahlia Street, Denver, Colorado. There are two members of her family, and her monthly income is $238 per month. Caldwell has allowed to intervene in Case No. 5721 and she received no written personal notice of Application No. 31896 either from this Commission or Public Service. Caldwell is a subscriber to the Denver Post, but chooses not to read its legal notice section. Caldwell did not learn of the filing of Application No. 31896 until she was advised of the filing by her attorney in February of 1980. Had Caldwell received personal written notice by mail of such application, she would have petitioned to intervene on the bases that she was on a fixed income and that the proposed GCA methodology would drastically affect her. Caldwell filed a late petition for leave to intervene in Application No. 31896, which petition was denied by Decision No. C80-385, issued March 4, 1980, on the ground that the petition was "untimely filed."

3) Caldwell additionally contends tnat sne was entitled to written notice by mailing of tne filing of Application No. 31896 because she had been allowed to intervene in Case No. 5721. CEAO refers to such order of intervention in its statement of

position, even though such statement was not placed into evidence at hearing of the merits of this matter. However, administrative notice of such order was taken at hearing of this matter. Such decision, being Decision No. 90208, issued February 24, 1977, states in part as follows:

> "The Commission states and finds that the above petitioner for intervention is a person who may or might be interested in or affected by any order which may be entered in this proceeding and that the intervention should be authorized".

4) Decision No. 90208 is phrased in the language of CRS 1973, 40-6-108(2), which indicates who shall receive some kind of notice of various matters. Such order does not grant intervention as a matter of right, as is required when one has a statutorily granted right of intervention or has a "legally protected interest or right in the subject matter of the proceeding which may be affected . . .". It is clear that Caldwell was allowed to intervene in Case No. 5721 pursuant to the discretionary provisions of Rule 7.A.2, Rules of Practice and Procedure before this Commission, whereby numerous people are allowed to intervene in various matters even though they are not entitled to intervetion as a matter of right. There is no statute or rule pertaining to this Commission which requires that

a party to a prior proceeding, such as Case No. 5721, be given personal written notice of a later application which deals with the same subject matter of the former proceeding. Caldwell clearly had no personal "legal interest" in the subject matter of Application No. 31896, and the only "effect" upon her of the application being granted would be that experienced by the general consumer population. Accordingly, it is found and concluded that Caldwell was not entitled to personal notice by mail of the filing of Application No. 31896 by virtue of her intervention in Case No. 5721.

5) By formal complaint herein, and by exceptions to Decision R81-731, CEAO contends that it also was entitled to personal written notice by mailing of the filing of Application No. 31896, and that the notice given to CEAO failed to comply with CRS 1973, 40-6-108(2), and Rule 9A of the Rules of Practice and Procedure before the Commission. CEAO contends that the notice given was not reasonably calculated to apprise CEAO of the pendency of Application No. 31896. Additionally, CEAO contends that it fulfills the criteria set forth in CRS 1973, 40-6-108(2) as a firm interested in the granting or denial of a PSCo application. Also, that in order to comply with due process requirements, personal notice by mailing should have been accorded CEAO. Finally, CEAO asserts that it was entitled to personal notice by mailing by virtue of CRS 1973, 40-6-112.

6) Regarding CEAO's contention that CRS 1973, 40-6-112 requires personal written notice to CEAO, it is found that such statute would have authorized the Commission to undertake revision of the GCA tariff on its own motion, with notice only to Public Service and none to intervonors in Case No. 5721. CEAO is a statewide group which purports to represent the energy interests of low-income Colorado citizens. CEAO has participated as an intervenor in a number of proceedings before this Commission involving Public Service. CEAO was not a party to Case No. 5721, and it did not receive any written personal notice by mail of the filing of Application No. 31896 in May or June of 1978.

CEAO learned of the proposed revision of the GCA tariff during the revenue phase of Investigation and Suspension Docket No. 1330, which was Public Service's 1979 general rate case before this Commission. CRS 1973, 40-6-108(2) does not require the Commission to give personal written notice of an application proceeding which in no way affects a group in a manner different from the way that the general consumer population of Public Service is affected. CEAO was not in existence at the time of Case No. 5721 and thus fails to have any personal "legal interest" in the subject matter of Application 31896. As with Caldwell, it is found and concluded that CEAO was not entitled to personal

written notice of the filing of Application No.31896 by virtue of CRS 1973, 40-6-108(2) or Rule 8A, Rules of Practice and Procedure before this Commission.

16. It is clear that CEAO and Caldwell were entitled to notice of the filing of Application No. 31896, purusant to Rule 18, Rules of Practice and Procedure of this Commission. Rule 18.I.A.5 provides that a public utility proposing to increase any rate or charge or alter a rule or regulation must generally mail personal written or printed notices of such change to each of its active customers or users at least thirty (30) days prior to proposed effective date of such change. However, such Rule also provides that a proposed change of rates or tariffs without formal hearing and on less than thirty (30) days notice may be accomplished in the following fashion:

1) Such utility must make formal application therefor.

2) Submitted with such application must be a statement showing in full the rates, fares, tolls, rentals, charges, rules and regulations which it is desired to put into effect.

3) A statement referring to tariff sheets on file with the Commission which it is proposed to change must be included.

4) Complete and accurate statements of the circumstances relied upon in justification for permitting such rates, rules or regualtions to become effective without requiring thirty (30) days notice must be included.

5) Reference to prior action of the Commission in any proceedings relative to the existing and proposed rate, rules or regulations must be made.

6) Publication of notice of such action must be accomplished in a newspaper having general circulation in the service area affected by said application.

The filing of Application No. 31896, and the notice required and given pursuant to Rule 18.I.A.5a was adequate and reasonable to give notice to the general rate paying public, of which Caldwell and CEAO are found to be part, and to Caldwell and CEAO. In particular it is found that:

a) The Commission by Decision No. C79-941 traced the history of the prior GCA clause, as did Public Service in Application No. 31896. Both such documents reflect that the previous GCA clause inaccurately recovered purchased gas costs. Accordingly, Public Service and the Commission thereby showed the good cause for granting permission for such tariffs to become effective without formal hearing and on less than thirty (30) days notice.

b) Application No. 31896, and attachments thereto specifically points to the GCA Rules and Regulations which it thereby desired to put into effect.

c) The attachments to the application of Public Service specifically refer to the tariff sheets on file with the Commission which said application proposes to change.

d) As above recited, Application No. 31896, along with all attachments thereto sets forth a complete and accurate statement of the circumstances relied upon in justification for permitting the GCA Rules and Regulations to become effective on less than thirty (30) days notice.

e) Application No. 31896 traces the previous history of the GCA, and thereby makes reference to prior action of the Commission regarding the existent GCA. It should be specifically noted that Rule 18.I.A.5a (4) does not require the Commission to reference prior Decisions of the Commission.

Both Public Service by filing of Application No. 31896, with attachments thereto, and this Commission by issuing Decision No. C79-941 fully complied with the expedited procedure outlined in Rule 18.I.A.5.

17. In summary, it is consluded that Public Service complied with the requirements of the Public Utilities law and with Rule 18.I.A.5, in the filing of and publication of notice of Application No. 31896. Application No. 31896 clearly contains sufficient, complete and accurate information regarding the circumstances relied upon by Public Service to justify the proposed changes, even though Public Service did not incorporate a recent study on the GCA in such application, which study is identified as Attachment No. 11 to Exhibit 88 herein. Viewing Application No. 31896 in its totality, along with Attachments 1, 2, 3 and 4 thereto, such stated good cause for the granting of the application on less than thirty (30) days' notice. Further, the Commission by tracing the history of the previous GCA in Decision No.

C79-941 also complied with Rule 18.I.A.5 and applicable Public Utilities law. All contentions of CEAO and Caldwell regarding improper notice of both Application No. 31896, and Decision No. C79-941 are accordingly rejected.

18. By the formal complaint and the exceptions of CEAO, the question is raised as to whether the GCA tariff violates the constitutional prohibition against retrospective rate making as stated in Article II, Section 11 of the Constitution of the State of Colorado.. CEAO and Caldwell contend that the new GCA tariff is unconstitutional because it allows Public Service to recoup operating expenses incurred prior to filing for new GCA charges, as allowed by the new tariff. Public Service asserts that the new GCA tariff is prospective in operation because it applies only to service rendered after the approval of Application No. 31896.

19. In order to resolve this issue it is necessary to review the authority and restrictions under which this Commission must operate. As counsel for Public Service points out, this Commission derives its authority from Article XXV of the State Constitution, and such authority is essentially plenary, being subject only to express restriction by the legislature, and subject to such delegative power being exercised in a manner otherwise consistent with other pertinent provisions of the state constitution.

Article II, Section 11 of the State Cosntitution, provides that:

> "No ex post facto law, nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the general assembly".

20. Although not mentioned herein, it should be notied that Section 12 of Article XV of the State Cosntitution provides that:

> "The general assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal sub-division of the state, a new liability in respect to transactions or considerations already past".

21. Statutory law not being the source of Commission authority, it is only necessary to consult statutory law for any prohibition against a tariff allowing deferred billing of unrecovered gas costs, and the Commission finds no such prohibition. Caldwell argues that the language: ". . . to be thereafter observed . . ." contained in CRS 1973, 40-3-111(1), constitutes a specific statutory prohibition against retroactive ratemaking. the Colorado Supreme Court specifically held in Peoples Natural Gas v. Public Utilities Commission, 590 P.2d 960 (1979), that such language applied only to a complaint proceeding wherein existing rates had been found to be unjust, unreasonable, discriminatory or preferential, rather than to a proceeding involving the establishment of a new rate after existing rates have been found to be insufficient to meet a utility's legitimate revenue requirements. The absence of such language from other pertinent statutory sections, notably, CRS 1973, 4-6-111, is not without significance in that other jurisdictions have held such "thereafter" language to be a prohibition against retroactive ratemaking when so used. See Public Service Company of New Hampshire vs. Federal Energy Regulatory Commission. 600 F.2d 944 (D.C. Circuit, 1979).

22. Both Public Service and Caldwell cite the aforementioned Peoples Natural Gas, Supra, as being dispostive, of the issue of retroactive ratemaking in their favor by virtue of the following dicta which appears at page 962:

> "[3] If Peoples were seeking an increased rate in order to recoup operating expenses incurred prior to any filing for new tariffs, its activities arguably might fall within the constitutional prohibition. However, that is not the case here. As the district court noted, the surcharge requested hereis not connected with the past performance of the utility. It relates only to a period of suspension during which the Commission was considering whether to grant the pass-on rate increase. The fact that there was some lag between the request for a rate increase and the Commission's decision does not render the Commission's action retorspective within the meaning of Colo. Const. Art. II, Sect. 11".

23. The Officers of Public Service have protrayed the amount which is over or under-recovered in each revenue month as merely a "factor" which is "considered" in establishing the GCA amount which shall be applicable two months later on the bill received for the service month after such revenue month. As Witness Ranniger stated, the operation of the GCA is indeed best explained by the tariff itself. The tariff explains that the GCA amount is determined by the following two-step formula:

(1) Purchased Gas Cost

-Base Gas Cost

Amount to be added or deleted to base rate to achieve known current cost

(2) + Unrecovered Gas Cost

GCA Amount

It is clear that the only aspect or predicting future gas costs per unit by the above formula, is accomplished by completing Step 1 of the equation. Such is correct because the result of the above two-step formula will be an amount necessary to add to base gas cost to arrive at per unit purchased gas costs that will actually be incurred during the revenue period, including the effects of known changes in the price of gas. This will not prove entirely accurate because of later changes and different mix of source of supply used during the next revenue month. Step 2 adds a factor to recover or credit for under or over-recovery which has occurred in the previous revenue month, due to inadequacy of the Step 1 factor and the fact that consumption was more or less than consumption in the normalized historical month used to calculate Step 2.

24. It is clear, as demonstrated by Exhibits 19 and 20, submitted at hearing, that Step 2 of the above formula is only intended to collect or credit the amount that was under or over-recovered by the GCA in the billing cycle two months previous to the month being billed; it is not intended to predict gas prices in the future.

25. Public Service argues that for the first two months of its implementation the GCA tariff was merely predictive of furure costs, rather than inclusive of an increment for over or under-recovery, because there was not "unrecovered component" for the first two months that the new procedure was in effect. From the evidence adduced it is found that the aforementioned gap occurs because the officials of Public Service were concerned that calculation and billing during such period would involve billing for a period when the basic tariff itself

was not in effect (such tariff not becoming effective until July 23, 1980), which would have involved the application of a rate or charge in a prohibited retoroactive manner. Accordingly, August of 1979 was the first month there could have been an under or over-recovery of the new GCA tariff without applying it in the prohibited retoractive manner, i.e., for a period of service when the basic tariff was not in effect.

26. Even though intervening Commission approval of the actural new GCA amount is required, the resulting GCA charge which appears on the customer's bill is a charge for energy used after the new GCA tariff was allowed by Decision No. C79-941. Accordingly, it is found and concluded that the new GCA tariff does not constitute retroactive ratemaking and is not a law of retrospective operation as contemplated by Article II, Sect. 11 of the Constitution of Colorado. The new GCA mechanism is not violative of the so-called "filed rate doctrine" contained in CRS 1973, 40-3-105(2), in that the increase in GCA amount is merely an administrative implementation by the Commission of a rate formula which had been prospectively approved upon granting of Application No. 31896. Any customer who has received service since the approval of such application and the filing of the new GCA tariff has done so with full constructive notice that such utility service was received subject to an implied contract to pay the base rate for such service and also to pay, in effect, on a deferred billing basis for unrecovered gas costs.

27. In paragraph 12 of Decision R81-713, the Examiner found and concluded that the manner in which the GCA unrecovered gas cost increment is structured is not lawful because, although it meets Public Service's gas recovery goals on system-wide basis, and although there is a balancing of the total-system account over time, such is accomplished at the expense of either individual overcharges or windfalls

to various customers depending upon the timing of consumption; i.e., the Examiner found that the GCA bears no reliable relationship to the individual customer's cost of service in the service month. The Examiner futher found that the above procedure results because the "over/under" increment of the GCA amount is calculated on the basis of a certain amount per unit of consumption in the month for which the initial billing is made, and that such amount is applied to all units of consumption in the second month thereafter. The Examiner futher specifically described how the GCA clause either over-recovers or undercharges various customers, depending upon the timing of consumption. The Examiner then concluded that the GCA tariff should be revised so that the over/under increment of the GCA amount will only be billed for consumption which was actually experienced in the second month prior to the month in which it is imposed. The Examiner also found that the GCA tariff should be revised to require GCA amounts to be brought current upon the closing of an account.

28. In the last paragraph appearing on Page 11 of Recommended Decision R81-731, the Examiner also found and concluded that Public Service should be required to make refund of GCA overcharges to individual customers who request such and can demonstrate the merit of their claim. Also, that Public Service should not be authorized to charge any account for GCA undercharges for any such period of time. It is found that the GCA as approved by Commission Decision No. C79-941, tracks gas costs with a degree of accuracy that for surpasses the previous GCA procedure. By the improved GCA methodology, the customers of Public Service have been benefited both by more accurate and timely GCA billings, and by the recovery of any over-recovered gas costs which have been promptly credited to the accounts of customers. It is also clear that the new GCA method, while a vast improvement over the previous method, is not, and cannot be 100% accurate.

Futhermore,it is clear that the proposed account adjustment procedure will not be cost effective in that such procedure will impose a large financial burden on Public Service. For example, at the end of 21 months of the new GCA methodology, the average RG1 customer would have owed Public Service $.82, or at the end of 22 months, would have been entitled to a refund of $.31, based on average system residential consumption. Either of the foregoing account reviews were estimated by Public Service to cost approximately $75.00. Thus, after reviewing the contentions herein, the Commission finds that the current GCA procedure is lawful, and has operated to the benefit of all parties. To require account review will present an unwarranted administrative burden to Public Service without meaningful monetary benefits to the customers of Public Service. In other words, the Commission finds that the proposed account review procedure will not be cost effective. Accordingly, the Commission will not require Public Service to make such account reviews made pursuant to the new GCA billing system.

29. CEAO contends that the inclusion of the language ". . . plus any appropriate adjustments, . . ." in the tariff directions for calculation of Purchased Gas Cost constitutes an unlawful delegation or redilegation of this Commission's responsibility to set rates in that there are no specific standards controlling such adjustments and the details of monthly adjustments are not made known to the Commission prior to a new GCA amount being allowed to go into effect.

30. Reading the GCA tariff as a whole, it is clear that the subject language does not endow Public Service with unfettered discretion in making such adjustment. As stated in the sub-section of the tariff entitled APPLICABILITY it is stated that the GCA is to ". . . reflect changes in the cost of gas purhcased from company's suppliers . . .". The definition of purchased gas cost under the tariff is: "the actual cost the Company pays its suppliers for natural gas service".

31. Public Service has, under the "appropriate adjustment" clause of the GCA tariff filing of GCA applications made the following adjustments:

a) Costs of gas purchased for underground storage which will not be withdrawn or injected, during the time the resulting Gas Cost Adjustment amount becomes effective.

b) Known increases in prices of natural gas suppliers.

c) Difference between bookings of gas costs based upon preliminary meter reading and final invoices based upon final analyses of meter reading charts.

d) Allocate monthly demand charges on basis of estimated demand for the billing period.

e) Lost and unaccounted for gas.

f) Eliminate Gas Research Institute (GRI) charges.

g) Incremental pricing effects.

H) Gas used for interdepartmental purposes.

i) Accounting or billing errors.

j. Billing cycle adjustments.

32. In veiw of the review audit, quarterly hearing and refund provisions which attend implementation of the new GCA tariff, it is concluded that the ". . . any appropriate adjustment . . ." language of the tariff, does not effect any delegation or redelegation of Commission duties. However, in that there has now been sufficient experience under the new procedure to identify those factors which can reasonably be expected to affect the calculation of purchased gas costs, it is concluded that the GCA tariff should be amended to specify those allowable factors to be included in the ". . . any appropriate adjustment . . .", to those as set forth above. Should Public Service Company find that adjustments other than those above specified are required in order to appropriately adjust the GCA, they may file a request with the Commission for approval of additional adjustments.

33. CRS 1973, 40-6-119, authorizes this Commission to require a public utility to make "due reparation" to a complainant when a rate or charge has been found excessive or discriminatory, provided that no discrimination will result from such reparation, even though the rate or charge was not in excess of the utility's filed tariff. Caldwell in this proceeding has failed to establish that she has been charged an amount in excess of Public Service's filed rates. Further, there is no evidence herein tending to demonstrate Caldwell has paid any GCA amounts which were excessive, due to the fact that she had higher consumption in a billing month in which the GCA was to recover previously under-recovered gas costs. It is accordingly found that no reparations are due to Caldwell.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The Exceptions of Colorado Energy Advocacy Office to Recommended Decision No. R81-731 of Examiner Loyal W. Trumbull, filed on May 25, 1981, be, and hereby are, overruled and denied.

2. The Exceptions of Public Service Company of Colorado to Recommended Decision No. R81-731 of Examiner Loyal W. Trumbull, filed on May 26, 1981, be, and hereby are, granted to the extent they are consistent with the Decision and Order herein, and in all other respects are denied.

3. Fifth Revised Sheet No. 133, Third Revised Sheet No. 133A and Forty-fifth Revised Sheet No. 133B of Tariff Colorado PUC No. 4-Gas of Respondent Public Service Company of Colorado are hereby cancelled. The tariff sheets attached hereto as Appendix A are hereby substituted therefor. Respondent shall file, on one (1) day's notice, the tariffs contained in Appendix A.

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

DONE IN OPEN MEETING the 18th day of August, 1981.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

EDYTHE S. MILLER

DANIEL E. MUSE

J. DUANE WOODARD

Commissioners

ATTEST: A TRUE COPY

Executive Secretary

FORM A-2

APPENDIX A -(Decision No. RSI-731)

Name of Utility

Colo. PUC No._____

Sheet No._____

Cancels_____ Sheet No._____

Rules, Regulations or Extension Policy

NA..RAL GAS RATES
GAS COST ADJUSTMENT

APPLICABILITY

All rate schedules for natural gas service are subject to a Gas Cost Adjustment to reflect changes in the cost of gas purchased from Company's suppliers. The Gas Cost Adjustment amount will be subject to monthly changes to be effective on an average daily prorated basis with meter readings beginning with the Company's billing cycle each month. The Gas Cost Adjustment for all applicable rate schedules is as set forth on Sheet Nos. 133C and 133D.

DEFINITIONS

Gas Cost Adjustment - The Gas Cost Adjustment will be the difference between Base Gas Cost and Purchased Gas Cost, plus Unrecovered Gas Cost.

Base Rate - Base Rate is the rate which incorporates a portion of Purchased Gas Costs, and all other operating expenses including taxes and earnings on rate base.

Total Rate - Total Rate is the Base Rate and Gas Cost Adjustment.

Base Gas Cost - Base Gas Cost is the portion of Purchased Gas Cost included in the Base Rate.

Purchased Gas Cost - Purchased Gas Cost is the actual cost the Company pays its suppliers for natural gas service.

Unrecovered Gas Cost - Unrecovered Gas Cost is the difference between Purchased Gas Cost and Recovered Gas Cost.

Recovered Gas Cost - Recovered Gas Cost is the gas cost recovered by the Company's currently effective Total Rates.

DO NOT WRITE IN THIS SPACE

Advice Letter No._____ Signature of Issuing Officer Issue Date_____

Decision or Authority No._____ Title Effective Date_____

003390

Form No.

Name of Utility

APPENDIX A

Colo. PUC No._____

Sheet No._____

Cancels_____ Sheet No._____

Rules, Regulations or Extension Policy

NATURAL GAS RATES
GAS COST ADJUSTMENT

BASE GAS COST

(1) The Base Gas Cost will be calculated based on purchases in the twelve month ended the most recent quarter for which information is available, and the supplier rates to be effective on or about October 1 of each year, and dividing the resulting amount by that period's sales.

(2) A revised Base Gas Cost will be effective on an average daily prorated basis with meter readings beginning with the Company's monthly billing cycle after October 1, each year, except that should a general rate case of the Company be pending before the Commission at the time, the effective date of the Base Gas Cost change will be delayed up to sixty days after the effective date of the Commission's order in the rate case. The Base Gas Cost will replace the previous Base Gas Cost in the Company's Base Rates.

(3) The Base Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

PURCHASED GAS COST

(1) The Purchased Gas Cost will be calculated by summing the supplier's invoices, applying adjustments for the following factors, and dividing the amount by sales volumes for that month. In the process of summing suppliers' invoices, adjustments shall be made for the following factors in order to accurately state Purchased Gas Cost at the time that the resulting Gas Cost Adjustment amount becomes effective:

a. Costs of gas purchased for underground storage which will not be withdrawn or injected, during the time the resulting Gas Cost Adjustment amount becomes effective.

b. Known increases in prices of natural gas suppliers.

DO NOT WRITE IN THIS SPACE

Advice Letter No._____ Issue Date_____

Signature of Issuing Officer

Decision or Authority No._____ Effective Date_____

Title

FORM 6-1

APPENDIX A

Name of Utility

Colo. PUC No._____

_____ Sheet No._____

Cancels _____ Sheet No._____

Rules, Regulations or Extension Policy

NATURAL GAS RATES
GAS COST ADJUSTMENT

BASE GAS COST - Cont'd.

c. Difference between bookings of gas costs based upon preliminary meter reading and final invoices based upon final analyses of meter reading charts.

d. Allocation of monthly demand charges on basis of estimated demand for the billing period.

e. Lost and unaccounted for gas.

f. To eliminate Gas Research Institute (GRI) charges.

g. Incremental pricing effects.

h. Gas used for interdepartmental purposes.

i. Accounting or billing errors.

j. Billing cycle adjustments.

(2) The Purchased Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

RECOVERED GAS COST

The Recovered Gas Cost will be calculated monthly by applying the appropriate Base Gas Cost and Gas Cost Adjustment to the actual sales volumes for that revenue month.

UNRECOVERED GAS COST

(1) The Unrecovered Gas Cost will be calculated monthly by subtracting the Recovered Gas Cost from the Purchased Gas Cost. The resulting amount will be divided by the estimated sales volumes for the month in which a revised Gas Cost Adjustment amount is to effective.

(2) The Unrecovered Gas Cost will be calculated to the nearest one hundredth of a mill ($0.00001) per thousand cubic feet.

DO NOT WRITE IN THIS SPACE

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Advice Letter No._____ _____ Issue Date_____
Signature of Issuing Officer

Decision or Authority No. C81-1429 _____ Effective Date_____
Title

003992

Form No.

APPENDIX A

Name of Utility

Colo. PUC No. _____
Sheet No. _____
Cancels _____ Sheet No. _____

Rules, Regulations or Extension Policy

NATURAL GAS RATES
GAS COST ADJUSTMENT

GAS COST ADJUSTMENT

The following formula is used to determine the Gas Cost Adjustment amount.

Gas Cost Adjustment amount = B - A = C

A = Base Gas Cost
B = Purchased Gas Cost
C = Unrecovered Gast Cost

TREATMENT OF REFUND

Application shall be made to The Public Utilities Commission of the State of Colorado for approval of a refund plan for the disposition of each refund received from a Company supplier including the interest received thereon.

INFORMATION TO BE FILED WITH THE PUBLIC UTILITIES COMMISSION

Each filing of a Gas Cost Adjustment revision will be accomplished by filing an application and will be accompanied by such supporting data and information as the Commission may require from time to time.

DO NOT WRITE IN THIS SPACE

Advice Letter No. _____ _____ Issue Date _____
Signature of Issuing Officer

Decision or Authority No. 5814-1403 _____ Effective Date _____
Title

(Decision No. C81-1644)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

***

COLORADO ENERGY ADVOCACY OFFICE AND ANN CALDWELL	)	CASE NO. 5923
Complainants,	)	COMMISSION DECISION GRANTING RECONSIDERATION AND REMANDING CASE
vs.	)	
PUBLIC SERVICE COMPANY OF COLORADO	)	
Respondent.	)	

September 22, 1981

STATEMENT AND FINDINGS

BY THE COMMISSION:

On August 18, 1981, the Commission issued Decision No. C81-1429 granting exceptions in part and denying exceptions in part regarding Case No. 5923.

On September 8, 1981, Public Service Company of Colorado (Public Service) and Ann Caldwell and the Colorado Energy Advocacy Office (CEAO) filed a petition and application for reconsideration of Decision No. C81-1429.

The petition for reconsideration, filed by Public service, requests reconsideration of two adjustments set forth under the "other appropriate adjustments" set forth on Page 2 of the tariff sheets attached to Decision No. C81-1429. The application for reconsideration of Caldwell and CEAO raise all contentions previously raised in opening statement of position, reply statement of position, exceptions to Examiner's recommended decision, and response to exceptions of Public Service Company of Colorado. Complainants Caldwell and CEAO also request reconsideration of certain matters appearing for the first time in Decision No. C81-1429.

CEAO by its application for reconsideration, inter alia, contends that certain figures of "$.82" per customer, "$.31" per customer, and Public Service estimate of "$75" appearing on Page 30, Paragraph 28, of Decision No. C81-1429 are not supported in, nor can they be derived from evidence adduced in the record of this proceeding.

The Commission states and finds that the above matters have been made a part of the record of this proceeding in accordance with the provisions of CRS 1973, 40-6-113(6). However, in order to ensure the right of all parties to fully cross-examine cost data, and explore the cost effectiveness of the refund procedure proposed by the Examiner in Recommended Decision No. R81-731, the Commission will grant rehearing, and will remand this matter to Hearings Examiner Loyal W. Trumbull for reopened hearings upon the issue of cost effectiveness of the refund as proposed by Recommended Decision No. R81-731.

All substantive issues raised by the petitions of Public Service Company and Ann Caldwell and CEAO for rehearing, will be stayed, pending reopened hearing on the issues remanded herein, and transmittal of supplemental recommended order to the Commission by the Examiner upon said issues.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The Application for Reconsideration of Ann Caldwell and Colorado Energy Advocacy Office, and Petition for Reconsideration of Decision No. C81-1429 of Public Service Company of Colorado, both filed September 8, 1981, are granted.

2. Case No. 5923 is remanded to Hearings Examiner Loyal W. Trumbull for reopening of record for evidence upon the issues of cost effective of refund procedures of GCA overcharges and non-allowance of undercharges, as discussed at Page 29 and 30, Paragraph 28, of Decision No. C81-1429. The Staff of the Commission, Complainants Ann Caldwell and Colorado Energy Advocacy Office, and Respondent Public Service Company of Colorado may present evidence at remanded hearing regarding such issues.

3. Upon determination of cost effectiveness of the matters above remanded, the Examiner shall transmit a supplemental recommended decision to the Commission regarding such issues. Upon reception of supplemental decision, the Commission will consider all issues upon pending Petitions for Rehearing, Reargument, and Reconsideration of Commission Decision No. C81-1429, along with all other appropriate issues. All issues now raised and pending on Applications for Rehearing, Reargument, Reconsideration of Decision No. C81-1429 be, and hereby are, stayed, pending receipt by the Commission of Supplemental Recommended Decision upon remanded issues.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 22nd day of September, 1981.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

EDYTHE S. MILLER

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

jkm:ao/4/E

(Decision No. C81-2036)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

COLORADO ENERGY ADVOCACY OFFICE and ANN CALDWELL,	)	CASE NO. 5923
Complainants,	)	ORDER OF THE COMMISSION DENYING MOTION FOR EXPEDITED COMMISSION CONSIDERATION
vs.	)	
PUBLIC SERVICE COMPANY OF COLORADO	)	
Respondent.	)	

December 8, 1981

STATEMENT AND FINDINGS

BY THE COMMISSION:

On December 3, 1981, the Colorado Energy Advocacy Office (hereinafter referred to as "CEAO") by its attorney, filed a motion pursuant to Rule 37 of the Colorado Rules of Civil Procedure and Rule 14 M of the Commission's Rules of Practice and Procedure to compel Mr. Richard A. Carlson of the Commission's Staff to answer certain questions purpounded by CEAO at a deposition taken of Mr. Carlson on October 5, 1981.

Simultaneously with the filing of its motion to compel, CEAO filed a motion for expedited Commission consideration requesting that the Commission consider CEAO's motion to compel at the Commission's December 8, 1981 Open Meeting. In its motion for expedited Commission consideration, CEAO has stated in paragraph 3 thereof, that counsel for the Staff, Mr. Steven Denman, had indicated that he would be able to submit a response to CEAO's motion to compel by Monday, December 7, 1981. The records of the Commission indicate that on a response on behalf of the Staff of the Commission and also a motion for protective order, was filed on December 7, 1981.

No where in CEAO's motion for expedited Commission consideration does CEAO indicate that it has contacted counsel for Public Service Company of Colorado and whether counsel for Public Service intends to file a response to the motion to compel filed by CEAO.

It is provided in Rule 11 A of the Commission's Rules of Practice and Procedure that one responsive pleading to a motion is permitted and that said pleading shall be filed with the Commission within ten days following the filing of the motion to which it responds unless the time for filing of same is shortened or enlarged by Commission order. In that there is no statement in CEAO's motion for expedited Commission consideration that Public Service Company has been contacted, the Commission will hereinafter deny CEAO's motion for a ruling on December 8, 1981 on CEAO's motion to compel. However, the Commission is of the opinion that it should shorten the ten day response time because said response time expires on December 14, 1981, the hearing date now

set for the remand hearing in this case. Accordingly, the Commission will hereinafter order that the response time to CEAO's motion to compel be shortened to and including December 10, 1981. The Commission, at a special open meeting to be held on December 11, 1981, will rule on CEAO's motion to compel.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The Motion for Expedited Commission Consideration filed herein on December 3, 1981 by the Colorado Energy Advocacy Office be, and hereby is, denied.

2. The time for filing a response pursuant to Rule 11 A of the Commission's Rules of Practice and Procedure to the Motion for Expedited Commission Consideration filed herein by the Colorado Energy Advocacy Office be, and hereby is, shortened to and including December 10, 1981.

3. The Motion to Compel filed by the Colorado Energy Advocacy Office on December 3, 1981, shall be ruled upon at a special open meeting of the Commission to be held on December 11, 1981.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 8th day of December, 1981.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

EDYTHE S. MILLER

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

jkm:ao/2/W

(Decision No. C81-2054)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

COLORADO ENERGY ADVOCACY OFFICE and ANN CALDWELL, Complainants,	)	CASE NO. 5923
vs.	)	ORDER OF THE COMMISSION
PUBLIC SERVICE COMPANY OF COLORADO, Respondent.	)	

December 11, 1981

STATEMENT AND FINDINGS OF FACT

On December 3, 1981, the Colorado Energy Advocacy Office (hereinafter CEAO) filed a "Motion to Compel" and a "Motion for Expedited Commission Consideration."

In its Motion to Compel, CEAO requests that the Commission enter an order compelling Mr. Richard A. Carlson of the Commission Staff to answer certain questions propounded by CEAO, objected to by legal counsel for the Staff, and refused answers by Mr. Carlson in a recent deposition of him by CEAO in the above-referenced case. More specifically, CEAO requests that the Commission enter an order compelling Mr. Carlson to answer discovery from CEAO regarding the substance of his "informal" discussion on July 13, 1981, with Chairwoman Miller of the Commission about the proposed refund of gas cost adjusdtment (GCA) overcharges in the within case.

In its "Motion for Expedited Commission Consideration", CEAO states that a remand hearing in this case has been set for December 14, 1981, and that expedited consideration of CEAO's Motion to Compel is necessary for it to act upon the Commission's ruling before the December 14, 1981 remand hearing.

On December 7, 1981, the Staff of the Commission (hereinafter the Staff) filed a "Response to Motion to Compel and Motion for Protective Order." In essence, the Staff states that the case of Public Utilities Commission vs. District Court, 163 Colo. 462, 421 P.2d 773 (1967) stands for the proposition that officials of an administrative agency cannot be compelled to testify concerning the procedure or manner in which they made their findings and rendered a decision in a given case. The Staff further contends that the administrative privilege that protects the Commissioners of the Public Utilities Commission under Public Utilities Commission vs. District Court, supra, from discovery also extends to Staff members when the Staff assists the Commission in its decision-making process, which is the situation in the present case with respect to the Decision of the Commission granting exceptions in part and which remanded the matter to the Examiner for further hearing in conformity therewith.

The Staff further contends that the case of Public Utilities Commission vs. District Court, supra, provides for an exception to the above-stated rule forbidding discovery only where there has been an allegation made and a clear showing of illegal action, misconduct, bias or bad faith on the part of the Commissioners of a specific violation of an applicable statute. The Staff contends that CEAO in this case has merely made an allegation, and has not made a "clear showing" of illegal action, misconduct, bias or bad faith. Accordingly, Staff contends, the Commission should deny CEAO's Motion to Compel and should issue a protective order precluding the discovery of the substance of any conversations had between any Staff member and any Commissioner regarding this case.

It is clear that CEAO has invoked the "illegal action, etc." exception to the anti-discovery rule enunciated in Public Utilities Commission vs. District Court, supra. The allegation has been made; the "clear showing" of illegal action, misconduct, bias or bad faith has not, to date, been shown. However, the Commission states and finds that CEAO should be afforded the opportunity, as a first order of business at the December 14, 1981 remand hearing, to make the "clear showing" of the illegal action, misconduct, bias or bad faith if such is to be shown. Accordingly, final ruling on CEAO's Motion to Compel should be deferred pending the initial determination by the Hearings Examiner at the hearing which is scheduled for December 14, 1981, whether or not CEAO has, or has not, made a clear showing of the illegal action, misconduct, bias or bad faith. In other words, CEAO will be afforded the opportunity to make the factual showing necessary to invoke the exception to the anti-discovery rule. The initial determination with regard to the same will be made by the Hearings Examiner to whom this case is assigned.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The "Motion for Expedited Commission Consideration" filed on December 3, 1981, by the Colorado Energy Advocacy Office be, and hereby is, granted in accordance with the decision and order herein, and in all other respects the same be, and hereby is, denied.

2. The "Motion to Compel" filed on December 3, 1981, by the Colorado Energy Advocacy Office be, and hereby is, referred to the Hearings Examiner to whom this case has been assigned for a remand hearing on December 14, 1981 for his consideration and determination with respect thereto in accordance with the decision and order herein.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 11th day of December, 1981.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

CHAIRWOMAN EDYTHE S. MILLER
NOT PARTICIPATING

ATTEST: A TRUE COPY

Harry A. Galligan Jr.

00444

(Decision No. R82-586)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

COLORADO ENERGY ADVOCACY OFFICE and ANN CALDWELL,	)	
Complainants,	)	CASE NO. 5923
vs.	)	RECOMMENDED DECISION OF EXAMINER ROBERT E. TEMMER
PUBLIC SERVICE COMPANY OF COLORADO,	)	
Respondent.	)	

April 19, 1982

Appearances: D. Bruce Coles, Esq., Denver, Colorado, for Colorado Energy Advocacy Office;

Kathleen Mullin, Esq., Denver, Colorado, for Ann Caldwell;

James K. Tarpey, Esq., Denver, Colorado, for Public Service Company of Colorado;

Steven H. Denman, Assistant Attorney General, Denver, Colorado, for the Staff of the Commission.

STATEMENT

The Commission issued Decision No. C81-1429 on August 18, 1981. In that decision, the following language is found on pages 29 and 30:

> 28. In the last paragraph appearing on page 11 of Recommended Decision R81-731, the Examiner also found and concluded that Public Service should be required to make refund of GCA overcharges to individual customers who request such and can demonstrate the merit of their claim. Also, that Public Service should not be authorized to charge any account for GCA undercharges for any such period of time. It is found that the GCA as approved by Commission Decision No. C79-941 tracks gas costs with a degree of accuracy that for [sic] surpasses the previous GCA procedure. By the improved GCA methodology, the customers of Public Service have been benefited both by more accurate and timely GCA billings, and by the recovery of any over-recovered gas costs which have been promptly credited to the accounts of customers. It is also clear that the new GCA method, while a vast improvement over the pre-

vious method, is not, and cannot be 100% accurate. Furthermore, it is clear that the proposed account adjustment procedure will not be cost effective in that such procedure will impose a large financial burden on Public Service. For example, at the end of 21 months of the new GCA methodology, the average RG1 customer would have owed Public Service $.82, or at the end of 22 months, would have been entitled to a refund of $.31, based on average system residential consumption. Either of the foregoing account reviews were estimated by Public Service to cost approximately $75.00. Thus, after reviewing the contentions herein, the Commission finds that the current GCA procedure is lawful, and has operated to the benefit of all parties. To require account review will present an unwarranted administrative burden to Public Service without meaningful monetary benefit to the customers of Public Service. In other words, the Commission finds that the proposed account review procedure will not be cost effective. Accordingly, the Commission will not require Public Service to make such account reviews made [sic] pursuant to the new GCA billing system.

The Commission entered Decision No. C81-1644, on September 22, 1981, which provides in part as follows:

> CEAO by its application for reconsideration, inter alia, contends that certain figures of "$.82" per customer, "$.31" per customer, and Public Service estimate of "$75" appearing on page 30, paragraph 28, of Decision No. C81-1429 are not supported in, nor can they be derived from evidence adduced in the record of this proceeding.
>
> The Commission states and finds that the above matters have been made a part of the record of this proceeding in accordance with the provisions of CRS 1973, 40-6-113(6). However, in order to ensure the right of all parties to fully cross-examine cost data, and explore the cost effectiveness of the refund procedure proposed by the Examiner in Recommended Decision No. R81-731, the Commission will grant rehearing, and will remand this matter to Hearings Examiner Loyal W. Trumbull for reopened hearings upon the issue of cost effectiveness of the refund as proposed by Recommended Decision No. R81-731.
>
> * * *
>
> 2. Case No. 5923 is remanded to Hearings Examiner Loyal W. Trumbull for reopening of record for evidence upon the issues of cost effective [sic] of refund procedures of GCA overcharges and non-allowance of undercharges, as discussed at page 29 and 30, paragraph 28, of Decision No. C81-1429. The Staff of the Commission, Complainants Ann Caldwell and Colorado Energy Advocacy Office, and Respondent Public Service Company of Colorado may present evidence at remanded hearing regarding such issues.

Hearings Examiner Loyal W. Trumbull left his position of Hearings Examiner prior to the time said remanded hearings could be held. The matter was reassigned to the undersigned Hearings Examiner for the purpose of conducting such hearing. The matter was set for a hearing to be held on November 9, 1981, but that date was vacated and the matter was reset for a hearing to be held on December 14, 1981, at 10 a.m. in a hearing room of the Commission, 500 State Services Building, 1525 Sherman Street, Denver, Colorado.

The Commission entered Decision No. C81-2054 on December 11, 1981. In that decision, the Commission stated as follows:

> It is clear that CEAO has invoked the "illegal action, etc." exception to the anti-discovery rule enunciated in Public Utilities Commission v. District Court, supra. The allegation has been made; the "clear showing" of illegal action, misconduct, bias or bad faith has not, to date, been shown. However, the Commission states and finds that CEAO should be afforded the opportunity, as a first order of business at the December 14, 1981 remand hearing, to make the "clear showing" of the illegal action, misconduct, bias or bad faith if such is to be shown. Accordingly, final ruling on CEAO's motion to compel should be deferred pending the initial determination by the Hearings Examiner at the hearing which is scheduled for December 14, 1981, whether or not CEAO has, or has not, made a clear showing of the illegal action, misconduct, bias or bad faith. In other words, CEAO will be afforded the opportunity to make the factual showing necessary to invoke the exception to the anti-discovery rule. The initial determination with regard to the same will be made by the Hearings Examiner to whom this case is assigned.

The hearing was held on December 14, 1981, but sufficient time was not available for the completion thereof, and the matter was continued to December 30, 1981. The hearing was concluded on December 30, 1981. During the course of the hearing, Exhibits 24 through 47 and 34A were marked for identification. Exhibits 24, 28, 29, 30, 31, 34A and 35 through 47 were admitted into evidence. Exhibit 25 was offered but not ruled upon. Exhibits 26, 27, 32 and 33 were not offered. Exhibit 34 was offered and not ruled upon. At the conclusion of the hearing, a request was made that the parties be allowed to file statements of position. It was ordered that the parties could file statements of position by January 28, 1982. Thereafter, the Examiner, on his own motion, extended the time for filing statements of position to February 15, 1982 by Decision No. R82-124-I. CEAO, on February 16, 1982, filed a motion for extension of time requesting until February 19, 1982 within which to file its statement of position. Such motion is hereby granted. Public Service Company of Colorado filed its statement of position on February 19, 1982, and CEAO and Ann Caldwell filed their joint statement of position on February 22, 1982. Said statement of position is accepted as being timely filed even though technically it may not be. CEAO filed a motion to strike on March 1, 1982, relating to certain portions of the statement of position of Public Service Company. Public Service filed a motion for extension of time within which to respond to CEAO's motion to strike on March 8, 1982, and CEAO filed an objection to the request for extension of time on March 11, 1982. The motion for extension of time is hereby granted. Public Service filed its response to the motion to strike on March 18, 1982. The motion to strike should be denied.

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

Pursuant to the provisions of 40-6-109, CRS 1973, and to the directions contained in Decision No. C81-1644 and C81-2054, the undersigned Examiner submits this written recommended decision to the Commission along with the record and exhibits of this proceeding.

FINDINGS OF FACT AND CONCLUSIONS THEREON

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

1. Recommended Decision No. R81-731 in this case was issued on April 25, 1981. Exceptions were eventually filed to that decision. On August 18, 1981, the Commission issued its Decision No. C81-1429 ruling on those exceptions. A portion of that decision is quoted in the Statement above.

2. Richard Carlson, a financial analyst in the Fixed Utilities Section of the Staff of the Commission was asked in July of 1981, by the Chief of the Fixed Utilities Staff, to develop certain information regarding the cost of a refund proposed in Recommended Decision No. R81-731 and to provide that information to the Chairwoman of the Commission. Mr. Carlson and another member of the financial staff of the Commission proceeded with this project and developed certain estimates in connection therewith. After he had developed the data, he telephoned Ronald Stinson of Public Service to ask what the cost to the company would be for doing the computations necessary for a refund. Mr. Stinson called him back later and informed him the cost would be $75 per customer. Mr. Carlson had estimated that it would cost between $2 and $5 per customer per month to do the calculation. At that time, approximately two years would have been involved, so Mr. Carlson's estimate was that the cost per customer would have been between $48 and $120. Mr. Carlson then had a meeting with the Chairwoman of the Commission. On July 14, at an Open Meeting of the Commission, he presented his information to all of the Commissioners. He had prepared certain financial and statistical data, copies of which have been marked as Exhibit No. 29 in this proceeding and admitted into the record. Mr. Carlson included the $75 per customer figure he had received from Public Service because that was within the range he had calculated. The figures contained in Decision No. C81-1429 came from that exhibit and his discussion with the Commissioners at the Open Meeting. Mr. Carlson did not participate as a witness in the hearing held prior to the issuance of Decision No. R81-731. A portion of his testimony from another proceeding was officially noticed by the Examiner.

3. The purpose of this remand hearing, as set forth in the appropriate Commission decision, was to allow the parties to present evidence concerning the cost effectiveness of the refund that would have been required by Recommended Decision No. R81-731. That decision would have required certain modifications in Public Service's gas cost adjustment procedure. If those modifications were implemented, and a customer's bill was recalculated based on those modifications from the inception of the procedure up to the time that the modifications were implemented, then there would be the possibility that a particular customer would have overpaid or underpaid. The Recommended Decision ordered that if a customer had overpaid, a refund was to be made. The issue here is whether any such refund would be cost effective.

4. Mr. Carlson's study covered the period from July of 1979 through May of 1981 and included 23 months. For that period of time, his "average" customer as of September of 1980 would have underpaid by $10.04 and by May of 1981 would have overpaid by $5.37. The Commission, in its decision, noted that pursuant to this study in the 21st month the customer would have underpaid by $.82 and on the 22nd month would have overpaid by $.31. The study shows there is a wide fluctuation from month to month.

5. Complainants presented Ronald Binz as an expert. He had performed certain studies. Exhibit 34A is his revised study. It relates to four specific examples, two of which represent actual customers of Public Serivce, and two of which represent variations of the two actual customers. Each of these examples shows variations. Each example shows a refund in some months pursuant to the recommended decision and not in others. Example 1 would be entitled to a maximum refund of $3.85 for the period ending August 6, 1981 whereas the same customer had underpaid by $1.67 for the period ended December 9, 1980. Example 2 would have been entitled to a maximum refund of $4.62 for the period ended June 8, 1981 and had underpaid by $.82 for the period ended December 7, 1979. Example 3 would have been entitled to a maximum refund of $5.24 as of the period ended October 8, 1980, and apparently was never underpaid for the period of the study. Example 4 likewise was not underpaid for any time during the period of the study and would have been entit' i to a maximum refund of $4.29 as of the period ended October 18, 1980.

6. Public Service presented Exhibits 38 and 40. Exhibit 40 is an example of an actual customer, being witness Binz presented by Complainant. Exhibit 40 shows a maximum overpayment of $4.25 and a maximum underpayment of $2.99. As of the end of 1981, this customer would have been entitled to a refund of $1.86. Exhibit 38, prepared for the "average" or composite RG1 customer shows a variation from $5.87 overpaid to $1.68 underpaid. At the end of November, 1981, this customer would have owed the company $.18 and would not have been entitled to refund.

7. If the recommended decision were implemented and all customers' bills were recalculated, some customers would be entitled to a refund and some would not. The refunds would vary in size. From the evidence presented in this proceeding, it is concluded that the refunds would probably be less than $6 per customer for those customers that would be entitled to a refund. The amounts involved, and whether or not any particular customer would be entitled to a refund, would entirely depend on the month chosen for the implementation of the procedure.

8. If the recommended decision were implemented, it is found that the total amount that Public Service would be required to refund would probably be between $1 million and $3 million. There are approximately 646,000 gas customers, only some of which might be entitled to a refund.

9. The $75 estimate of the cost per customer for doing the refund was really only an estimate of the cost to obtain some of the information necessary for calculating a refund if the recommended decision were to be implemented. It included the time necessary to manually go through records of Public Service kept on microfiche to obtain the usage and the meter reading date for each month from the beginning of the implementation of the GCA for a four year period. It was assumed that by the time the Recommended Decision could be implemented that much time would have passed. It was estimated that it would take four hours to obtain the information. If this could be calculated on straight time, it would cost $60. If overtime had to be paid it would cost $90. The midpoint of $75 was selected. Once this information was obtained, then the calculation could be made for each customer as to whether or not he would be entitled to refund. The calculation costs themselves were not included in the $75 figure nor were any other costs of making the refund, such as issuing and mailing checks. Mr. Carlson's estimate of $2 to $5 a month per customer did presumably incorporate all costs of making a refund, but did not anticipate any computer use. It was anticipated by Mr. Carlson that it would cost approximately $100,000 to set up a program to run for the refund, if the computer were to be used.

10. Public Service estimated that it would take 12 to 18 months to implement the Recommended Decision, including doing all the

necessary programming. Complainant's expert thought that nine months to do the necessary programming would be an extremely conservative figure. He did the necessary programming for his calculations in approximately 18 hours. The program done by this expert witness was for a small business computer. Public Service uses three large computers and has approximately 600 programs for use with those computers. Any program to implement the Recommended Decision would have to fit in with those other programs. In addition, Public Service cannot use the same language as used by Complainants' expert for the program. The program for Public Service would be more complex. The expert's experience in setting up his program is really not relevant in judging how long it would take Public Service to do the necessary programming. It is found that the estimate of Public Service is reasonable, and that it would take approximately that long to implement the Recommended Decision and do the necessary programming.

11. Complainants' expert has suggested that perhaps there might be a way to retrieve the necessary information electronically by use of the computer so that the four hours manual search would be eliminated. There is no system available to Public Service to do this. The only way to get all of the information all the way back to the implementation of the GCA would be by a microfiche search. Public Service is currently expanding its customer information system data so that at the time of hearing it might be able to obtain usage and meter reading data for 17 months electronically. This would allow a reduction of costs for manually retrieving this data and possibly would eliminate as much as 1½ hours time from the 4 hour estimate.

12. The Complainants' expert provided some data as to costs of having a computer do the calculation. The estimated provided was approximately $.88 per customer. Public Service's system would be more efficient and perhaps the cost would be less.

13. It has been suggested that if implemented, it might be practical just to go back to the point where data would be available on the computer. In order to calculate an accurate refund, it is necessary to go back to the beginning of the implementation of the GCA because a refund would be based on the cumulative difference between the two methods of calculation used. There would be no method to determine that an accurate or appropriate refund calculation could be done without going back to the beginning. Further, there is no guarantee that the computer information would be available for all customers for the entire 17 months. The information is kept on the basis of premises, and not customers. If a customer has moved, the information may or may not be available.

DISCUSSION

I. The Clear Showing of Illegal Action, Misconduct, Bias or Bad Faith.

Complainants have cited the Administrative Procedure Act, 24-4-105(14), CRS 1973, which provides in part "*** No ex parte material or representation of any kind offered without notice shall be received or considered by the agency or the hearing officer. . ." This provision is in the definition of what shall be included in the record of a hearing for administrative agencies. It is applicable to administrative agencies that do not have a specific statute specifying what the record is before that agency. This Commission has a specific statute defining what the record is for this Commission. The statute is 40-6-113(6), CRS 1973. That statute provides: "In case of an action to review an order or decision of the Commission, a transcript of such testimony or the affadavits or other evidence under the shortened or informal procedure, together with all exhibits or copies thereof introduced and all information secured by the Commission on its own initiative and considered by it in rendering its order or decision, and the pleadings, record, and

proceedings in the case, shall constitute the record of the Commission. . ." (Emphasis supplied.) Such statute does not prohibit the consideration of "ex parte" material but specifically provides that the Commission can consider information secured by it on its own initiative. The information considered was obtained by a member of the Staff of the Commission whose duty it was to provide technical assistance to the Commission. The Commission specifically set forth the information in its Decision and noted its source. The matter was reopened for the parties to cross-examine, present evidence or otherwise rebut that material. There was no clear showing of illegality, misconduct, bias or prejudice.

II. The Benefit Issue.

The total benefits to be received by the total body of gas customers of Public Service has been estimated to range between $1 million and $3 million. That is the magnitude of the benefits that possibly could be derived by implementing the Recommended Decision and ordering a refund. Individual customers would benefit to varying degrees. A large number would receive no benefit and some could receive benefits of several dollars. The evidence in this proceeding indicates that refunds obtained by individual customers would be less than $6. The Commission's use of specific figures in Decision No. C81-1429 would appear to be justified by the evidence presented in this proceeding.

III. The Costs To Be Incurred.

The evidence presented in this proceeding leads inescapably to the conclusion that it would be extremely costly to make a refund. The Public Service estimate that the Commission used is based simply on obtaining some information necessary for the calculation of the refund. It appears that a certain amount of that information may be available electronically and that the entire $75 cost might not be incurred for each customer. If half of the time could be saved by retrieving information electronically, which would result in a corresponding reduction in the cost, the cost for retrieving information manually would be reduced to $37.50. However, to the $37.50 would have to be added the cost of actually calculating the refund and doing the other things necessary. The cost of calculation could add $.88. In addition, there would be programming costs to program Public Service's computer to do the calculations. It appears that the Commission's use of the $75 figure per customer is justified by the evidence presented in this proceeding. It should also be noted that since there are approximately 646,000 gas customers, that the total possible cost for doing the refund if the cost per customer was $75 would be $48,450,000. Even if the cost of calculating a refund were reduced by one-half because of the information that is accessible by computer, the cost of the refund would be in excess of $24,000,000.

IV. Cost Effectiveness.

It is concluded that the cost of making a refund would greatly exceed the amount of the refund. The benefits which would be received by customers of Public Service Company would be small. Such a refund would not be cost effective.

Pursuant to the provisions of 40-6-109, CRS 1973, it is recommended that the following Order be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The evidence presented in the remand hearing establishes that ordering a refund pursuant to the procedure of Recommended Decision No. R81-731 would not be cost effective, and the Commission was justified

in setting forth the figures it did in paragraph 28 on page 30 of Decision No. C81-1429.

2. CEAO has failed to make a "clear showing" of illegal action, misconduct, bias or bad faith in regard to the method used by the Commission and its Staff to obtain the figures contained in paragraph 28 of Decision No. C81-1429. The evidence presented showed the Commission regularly pursued its authority. The motion to compel filed by CEAO on December 3, 1981, should be denied.

3. The motion for extension of time filed by CEAO on February 16, 1982, be, and hereby is, granted.

4. The motion for extension of time within which to respond to CEAO's motion to strike filed by Public Service on March 8, 1982, be, and hereby is, granted.

5. The motion to strike filed by CEAO on March 1, 1982, be, and hereby is, denied.

6. 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.

7. 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.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT E. TEMMER

Examiner

jm

005011

(Decision No. C82-939)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

***

COLORADO ENERGY ADVOCACY OFFICE and ANN CALDWELL, Complainants, vs. PUBLIC SERVICE COMPANY OF COLORADO Respondent.	)	CASE NO. 5923 ORDER OF THE COMMISSION DENYING EXCEPTIONS

June 22, 1982

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On April 19, 1982, Hearings Examiner Robert E. Temmer entered Recommended Decision No. R82-586 in the above-captioned matter pursuant to a prior remand order of the Commission, as contained in Decision No. C81-1429, dated August 18, 1981. In essence, Recommended Decision No. R82-586 finds that the evidence presented in the remanded hearing establishes that ordering a refund pursuant to the procedure of Recommended Decision No. R81-731, dated April 23, 1981, would not be cost effective, and that the Commission was justified in setting forth the figures which it did in Paragraph 28 on page 30 of Decision No. C81-1429, dated August 18, 1981. Decision No. R82-586 also finds and concludes that Colorado Energy Advocacy Office (CEAO) had filed to make a "clear showing" of the illegal action, misconduct, bias or bad faith in regard to the method used by the Commission and its Staff to obtain the figures contained in Paragraph 28 of Decision No. C81-1429.

On May 10, 1982, Complainants Ann Caldwell (Caldwell) and CEAO filed "Exceptions to Examiner's Remand Decision No. R82-586."

Pursuant to certain extensions of time which were granted by the Commission, the Staff of the Commission filed its "Response of the Staff to Exceptions to Examiner's Remand Decision" on June 14, 1982.

The Commission has considered the factual and legal grounds set forth in Caldwell and CEAO's exceptions to the Examiner's recommended decision, and the response thereto filed by the Staff of the Commission. Based upon the review, we find that the exceptions of CEAO do not set forth sufficient factual or legal grounds which would justify any modification of Recommended Decision No. R82-586. Accordingly, we shall hereinafter adopt the said recommended decision as the decision of the Commission in this case.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The "Exceptions to Examiner's Remand Decision No. R82-586" filed on May 10, 1982, by Complainants Ann Caldwell and Colorado Energy Advocacy Office, with respect to Recommended Decision No. R82-586 issued April 19, 1982, be, and hereby are, denied.

2. The findings of fact and conclusions of Hearings Examiner Robert E. Temmer in Recommended Decision No. R82-586 be, and hereby are, adopted by the Commission.

3. The Examiner's Recommended Order in said Decision No. R82-586 be, and hereby is, entered as the Order of the Commission herein without any change or modification; and the said Recommended Order be, and hereby is, incorporated herein by reference the same as if it had been set forth in full as the order of the Commission.

4. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 22nd day of June, 1982.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

CHAIRWOMAN EDYTHE S. MILLER
NOT PARTICIPATING

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

jkm:ao/4/CC

(Decision No. C82-1219)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

***

COLORADO ENERGY ADVOCACY OFFICE AND ANN CALDWELL, Complainants, vs. PUBLIC SERVICE COMPANY OF COLORADO, Respondent.	)	CASE NO. 5923 ORDER OF THE COMMISSION DENYING APPLICATION FOR RECONSIDERATION

August 4, 1982

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On August 18, 1981, the Commission entered Decision No. C81-1429 in the above-captioned matter. Thereafter, on September 8, 1981, both Public Service Company of Colorado (Public Service) and Colorado Energy Advocacy Office (CEAO) and Ann Caldwell, filed applications for rehearing, reargument and reconsideration directed to Decision No. C81-1429.

On September 2, 1981, the Commission entered Decision No. C81-1644 which remanded the instant matter herein for the purpose of addressing the issue of cost effectiveness of a refund as proposed by Recommended Decision No. R81-731. Decision No. C81-1644 also stayed all substantive issues raised by the applications of rehearing, reargument or reconsideration of Public Service and CEAO and Ann Caldwell of Decision No. C81-1429.

Subsequent to the said remand order of the Commission, Hearings Examiner Robert E. Temmer issued Recommended Decision No. R82-586 on April 19, 1982.

Exceptions to that decision were denied by Commission Decision No. C82-939 on June 22, 1982.

The applications for rehearing, reargument and reconsideration filed by Public Service and CEAO and Ann Caldwell directed to Decision No. C81-1429 are now pending decision.

The Commission states and finds that the "Application for Reconsideration" filed on September 8, 1981, and the "Renewal of Application for Reconsideration" filed on July 14, 1982, by CEAO and Ann Caldwell do not set forth sufficient grounds for the granting thereof and that the same should be denied.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The "Application for Reconsideration" filed on September 8, 1981, and the "Renewal of Application for Reconsideration" filed on July 14, 1982, by Colorado Energy Advocacy Office and Ann Caldwell be, and hereby are denied.

2. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 4th day of August, 1982.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

CHAIRWOMAN EDYTHE S. MILLER
NOT PARTICIPATING

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary

(Decision No. C82-1220)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

***

COLORADO ENERGY ADVOCACY OFFICE AND ANN CALDWELL,	)	CASE NO. 5923
Complainants,	)	ORDER OF THE COMMISSION DENYING APPLICATION FOR RECONSIDERATION
vs.	)	
PUBLIC SERVICE COMPANY OF COLORADO,	)	
Respondent.	)	

August 4, 1982

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On August 18, 1981, the Commission entered Decision No. C81-1429 in the above-captioned matter. Thereafter, on September 8, 1981, both Public Service Company of Colorado (Public Service) and Colorado Energy Advocacy Office (CEAO) and Ann Caldwell, filed applications for rehearing, reargument and reconsideration directed to Decision No. C81-1429.

On September 2, 1981, the Commission entered Decision No. C81-1644 which remanded the instant matter herein for the purpose of addressing the issue of cost effectiveness of a refund as proposed by Recommended Decision No. R81-731. Decision No. C81-1644 also stayed all substantive issues raised by the applications of rehearing, reargument or reconsideration of Public Service and CEAO and Ann Caldwell of Decision No. C81-1429.

Subsequent to the said remand order of the Commission, Hearings Examiner Robert E. Temmer issued Recommended Decision No. R82-586 on April 19, 1982.

Exceptions to that decision were denied by Commission Decision No. C82-939 on June 22, 1982.

The applications for rehearing, reargument and reconsideration filed by Public Service and CEAO and Ann Caldwell directed to Decision No. C81-1429 are now pending decision.

The Commission states and finds that the petition for reconsideration of Decision No. C81-1429, filed by Public Service does not set forth sufficient grounds for the granting thereof and that the same should be denied.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The Public Service Company of Colorado's Petition for Reconsideration of Decision No. C81-1429, filed with the Commission on September 8, 1981, be, and the same hereby is, denied.

2. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 4th day of August, 1982.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DANIEL E. MUSE

L. DUANE WOODARD

Commissioners

CHAIRWOMAN EDYTHE S. MILLER
NOT PARTICIPATING

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Executive Secretary