

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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At a session of the Public Service
Commission held in the City of
Albany on April 3, 1985.

COMMISSIONERS PRESENT:

Paul L. Gioia, Chairman
Edward P. Larkin
Carmel Carrington Marr
Harold A. Jerry, Jr.
Anne F. Mead
Rosemary S. Pooler

CASE 28316 - ROCHESTER GAS AND ELECTRIC CORPORATION -
Steam Rates - Expanded Proceeding

CASE 28612 - ROCHESTER GAS AND ELECTRIC CORPORATION -
Steam Rates

ORDER AFFIRMING ABANDONMENT DATE

(Issued April 4, 1985)

BY THE COMMISSION:

INTRODUCTION

By our Opinion No. 84-19,^{1/} we required, among other things, that Rochester Gas and Electric Corporation (RG&E or the company) file, by August 10, 1984, a plan for abandoning its steam system on October 1, 1985. (The company's steam service had been steadily losing customers and we determined that such service could no longer be provided at reasonable rates and that the termination of regulated steam service was therefore appropriate.^{2/}) RG&E

1/Cases 28316, et al., Rochester Gas and Electric Corporation - Steam Rates, Opinion No. 84-19 (issued July 11, 1984).

2/The history of the company's steam business and the prospects for future steam service are discussed at pages 3-6 of Opinion No. 84-19.

filed the plan on August 9, 1984, and twenty parties commented on it by October 15, 1984, the deadline for comments.^{1/} At our session of January 30, 1985, we considered a plan that provided for financial assistance to the company's steam customers if they chose to convert to gas service. We also, at that time, affirmed that RG&E would be authorized to abandon the system in October, 1985. Interested parties were notified of our decision by letter dated February 12, 1985; the letter also provided that comments on the financial assistance plan would be accepted through March 11, 1985.

Several letters concerning various aspects of the financial assistance plan have been received and are being reviewed by our Power Division; they are not considered here. Letters commenting on the abandonment date have also been received from various parties; these entities seek an extension of the authorized October 1 abandonment date.^{2/} Their comments are discussed below, after consideration of a legal issue posed by Multiple Intervenors.

THE AUTHORITY FOR THE COMMISSION'S ACTION

Multiple Intervenors (MI) claims we must conduct an abandonment proceeding before allowing a public utility to abandon service. It says that requirement may be inferred from our duty to assure adequate service (Public Service Law §§79 and 80) and Spring Brook Water Co. v. Village of Hudson Falls^{3/} and that our action here was improper, for the

^{1/}The comment period was originally to expire on August 24, 1984 but two extensions of that deadline were granted at the request of various commentators.

^{2/}The Appendix contains a list of parties submitting recent comments on RG&E's steam system. Only comments on the abandonment date are discussed below.

^{3/}269 AD 515 (3d Dept. 1945).

subject of abandonment of the system was not considered in the hearings. MI says even RG&E contested our authority to require an abandonment and that our action here denied MI due process.

Staff replies that we had expanded the scope of Case 28316 "to encompass a full consideration of the company's plans for its steam department" and that the claim that MI has been denied due process is "preposterous" for, as a party to Case 28316, it was well aware of the purpose and schedule of that proceeding.

While MI has shown that we have a duty to insure adequate service at just and reasonable charges, it has not shown that we must conduct an "abandonment proceeding" in circumstances such as this. Indeed, RG&E's steam customers have made their arguments through written filings, and the Public Service Law does not require a formal hearing in this instance. Additionally, MI's citation of Spring Brook is inapposite, for that case held that a company may not cease rendering service without our consent and that we are "entitled" to inquire into the issue of whether sufficient grounds exist to justify abandonment of service. Here, we considered various alternatives for the steam system and concluded that the company should be permitted to abandon the system because it is currently uneconomic. That is all that is required; this aspect of MI's petition is denied.

THE TIMING OF THE ABANDONMENT

MI claims our selection of October 1, 1985 as the date on or after which the company may abandon the system is without record support and is therefore arbitrary and capricious. It notes it had suggested, in comments on the

proposed plan, an April 1, 1986 abandonment date and that we have not explained our implicit rejection of that proposal. The abandonment on October 1, 1985, it goes on, was never discussed on the record.

As for the merits, MI contends most customers would need significantly more time to convert to an alternative system. In a similar vein, the other comments generally urge that the abandonment date be extended. (Most comments advocate that the extension be for one year, to October 1, 1986.) The commentators also suggest that extension of the abandonment date would allow alternative steam service options--which they support--time to become viable, and they argue that they lack the time and resources to convert to alternative energy sources by October 1, 1985.

Staff replies, and claims the selection of the October 1, 1985 date "carefully balanced RG&E's right to rate relief against its customers' need to convert from steam to another energy source. . . ." It urges us to reaffirm the October 1 date.

The petitioners have presented no reason for us to reconsider our decision to authorize an October 1, 1985 abandonment date. First, the February 12 letter sought comments on the financial assistance plan, not on the abandonment date. The comments thus are unsolicited and untimely. We announced the October 1, 1985 date in our July 11, 1984 opinion, and the proper method for challenging that date was to submit petitions for rehearing--within the thirty-day time limit--of that opinion. Second, we considered and explicitly rejected, at our January 30, 1985 session, similar arguments that we should extend the abandonment date. The arguments raised here are no different and are unsupported by analyses of why the abandonment date need be

extended (e.g., a showing--instead of bare assertion--that conversion is not practicable within that time). Finally, our decision, while dictated by fundamental marketing principles, to deny the company a conventional return on its steam investment contemplated that the company would be allowed to abandon the system after a reasonable transition period.

Notwithstanding the foregoing, the company remains free, of course, to negotiate with its customers--with whose needs it is familiar--concerning an extension of the termination date. If, following such negotiations, the company concludes it is prepared to maintain service for a temporary period beyond October 1, it is free to do so. For now, however, we see no need to reconsider our original determination that RG&E is authorized to cease providing steam service on October 1, 1985.

The Commission orders:

1. The petitions for an extension of the previously authorized steam system abandonment date of October 1, 1985 are denied.
2. These proceedings are continued.

By the Commission,

(SIGNED)

JOHN J. KELLIHER
Secretary

APPENDIX

PARTIES COMMENTING ON THE
STEAM ABANDONMENT PLAN

Assemblywoman Pinny Cooke
Assemblyman David F. Gantt
Chase Lincoln First Bank, N.A.
St. Luke's Episcopal Church
New York State Energy Research and
Development Authority
The Temple Building
Lowell Colvin, Inc.
Mr. David Thurston
Mr. Jack Rubens
City of Rochester
Monroe County
Rochester Community Savings Bank
Xerox Corporation
The Genesee Hospital
Berghash Realty Company, Inc.
Monroe Reprographics, Inc.
P.S. Prince Corporation
Rochester District Heating Cooperative
Multiple Intervenors
Department of Public Service Staff
Rochester Optical Manufacturing Co., Inc.
Sibley Real Estate Services, Inc.
Sibley's, A Division of Associated Dry Goods
RG&E
Department of the Navy
YWCA of Rochester and Monroe County
Christ Church
Executive Office Building

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