

Opinion No. 48-5138

March 17, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. L. R. Conarty, Member Public Service Commission Post Office Box 561 Santa Fe, New Mexico

{*138} We are in receipt of your letter of March 15th concerning the application of the Southern Rocky Mountain Power Company for authority to bid for the purchase of the common stock of the Public Service Company of New Mexico. You ask whether the Commission may set the date of hearing on less than twenty days notice.

Section 72-805 of the 1941 Compilation provides in part as follows:

"All hearings, and investigations, held or made by the commission, shall be public; and before proceeding to hold any such hearing or make any such investigation, the commission shall give the utility and the complainant at least twenty (20) days notice of the time and place when and where such matters will be considered and determined, and all parties shall be entitled to be heard, through themselves or their counsel."

You will observe that this section requires notice to be given to the Utility and the Complainant. This section follows several sections outlining the procedure by which a municipality or person dissatisfied with the services rendered by a public utility may file a complaint and have a hearing.

In view of the foregoing, it is my opinion that the requirement for twenty days notice applies only to proceedings before the commission initiated by complaint.

Section 72-512 provides that only with express authorization of the commission may a public utility acquire the stock of any other public utility. Section 72-513 provides that the Commission shall investigate the application, with such hearing and upon such notice as the commission may prescribe, and that the commission shall give its approval in writing unless it finds the proposed transaction unlawful or inconsistent with the public interest.

The proceedings contemplated appears to be purely an ex parte proceedings, instituted by the utility. It further appears that since the statute specifically provides that the consent shall be given upon such hearing and such notice as the commission may prescribe; that the commission may or may not require a hearing, as it sees fit; and further, that if the commission deems it advisable to have a hearing, only such notice as the commission determines in its discretion to be necessary need be given.

It is therefore my opinion that if the Commission deems a hearing necessary on the application of the Southern Rocky Mountain Power {*139} Company that it need give

only such notice as it deems necessary and that it is not necessary that twenty days notice be given.

I have examined Rule 27 of the Commission and while this rule provides for twenty days notice, it also provides that hearings may be had without twenty days notice when the public interest is not prejudiced.

By ROBERT W. WARD,

Asst. Atty. General