

IN THE MATTER OF
PUBLIC SERVICE CO. OF COLORADO

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2927. Complaint, Sept. 12, 1978 — Decision, Sept. 12, 1978

This consent order, among other things, requires a Denver, Colo. utility company to cease, in connection with the advertising and sale of non-utility products and services, failing to properly provide consumers with credit disclosures required by Federal Reserve System regulations.

Appearances

For the Commission: *John H. Evans and Kenneth R. Bennington.*
For the respondent: *James R. McCotter, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Public Service Co. of Colorado, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing regulations promulgated under the Truth in Lending Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Public Service Co. of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 550 Fifteenth St., Denver, Colorado.

PAR. 2. Respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and sells to consumers a variety of products and services not provided through pipe, wire, or other connected facilities. Such products and services include insulation for, and the installation of insulation in, residential premises.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and

"creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, *as amended*), duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

PAR. 5. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 4.

PAR. 6. Respondent's entry into the transactions described in Paragraph 4, in which a security interest is or will be retained by respondent or other potential lien claimants, entitles respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

PAR. 7. In connection with the credit transactions referred to in Paragraph 4, respondent has failed to give consumer customers proper notice of their right to rescind, as well as notice of the effect of rescission, as required by Section 226.9 of Regulation Z in the manner and form set forth therein.

PAR. 8. Subsequent to July 1, 1969, in the ordinary course and conduct of its business as aforesaid, respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

PAR. 9. In certain of the advertisements referred to in Paragraph 8, respondent has stated the rate of the finance charge as other than an "annual percentage rate," contrary to the provisions of Section 226.10(d)(1) of Regulation Z.

PAR. 10. In certain of the advertisements referred to in Paragraph 8, respondent has stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, all of the following terms:

(a) the cash price;

(b) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(c) the amount of the finance charge expressed as an annual percentage rate; and

(d) the deferred payment price.

PAR. 11. By and through the acts and practices set forth above, respondent has failed to comply with the requirements of Regulation Z, the implementing Regulation of the Truth in Lending Act. Pursuant to Section 103(s) of the Truth in Lending Act, such failure to comply with Regulation Z constitutes a violation of that Act, and pursuant to Section 108(c) thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondent with violation of the Federal Trade Commission Act and of the Truth in Lending Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of the findings of facts attached as Appendix A to the aforesaid agreement, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated said Acts, and that complaint should issue stating its charges in that respect and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following findings of fact, and enters the following order:

FINDINGS

1. Respondent Public Service Co. of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at 550 Fifteenth St., in the city of Denver, State of Colorado.

2. Respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and/or sells to consumers products and services not provided through pipe, wire, or other connected facilities. In order to promote the conservation of energy, respondent has initiated an insulation program in connection with which it advertises for sale and sells to consumers insulation for, and the installation of insulation in, residential premises.

3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and "creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, *as amended*), duly promulgated by the Board of Governors of the Federal Reserve System.

4. Subsequent to September 1, 1975, respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

5. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 3; however, respondent has never attempted to enforce such lien rights.

6. Respondent's entry into the transactions described in Paragraph 3, in which a security interest is or will be retained by respondent or other potential lien claimants, entitles respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery

of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

7. In connection with the credit transactions referred to in Paragraph 3, respondent notified its customers of their right to rescind the transactions within three days; however, such notice did not completely comply with the requirements of Section 226.9 of Regulation Z in that it failed to include substantive information and follow the form set forth therein. Once the matter was brought to respondent's attention, its forms were revised to comply with Section 226.9 of Regulation Z.

8. Subsequent to September 1, 1975, in the ordinary course and conduct of its business as aforesaid, respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

9. In one of the advertisements referred to in Paragraph 7, respondent stated the rate of the finance charge as "annual interest rate," rather than as an "annual percentage rate," as required by the provisions of Section 226.10(d)(1) of Regulation Z.

10. In the same advertisement referred to in Paragraph 7, respondent stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, the deferred payment price.

11. Respondent has cooperated fully in the Commission's investigation and has made available all records and documents requested by the Commission during the course of such investigation.

12. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Public Service Co. of Colorado, a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, as amended) do forthwith cease and desist from:

- 1) Entering into any credit transaction, including, but not limited

to, transactions for the installation of insulation, in which a security interest, as "credit" and "security interest" are defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of a consumer customer, without giving the customer notice of his or her right to rescind said transaction, without penalty, until midnight of the third business day following the date of consummation of the transaction or delivery of all material disclosures, whichever is later, as required by Section 226.9 of Regulation Z and in the manner and form set forth therein.

2) Stating in any credit advertisement the rate of finance charge unless said rate is expressed as an annual percentage rate (using the term "annual percentage rate"), as "finance charge" and "annual percentage rate" are defined in Section 226.2 of Regulation Z, as required by Section 226.10(d)(1) of Regulation Z.

3) Stating in any credit advertisement that no downpayment is required, or stating the amount of the downpayment or of any installment payment required (either in dollars or as a percentage), the dollar amount of any finance charge, the number of installments or the period of repayment, or stating that there is no charge for credit, unless all of the following items are also clearly and conspicuously set forth in terminology prescribed by Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- (a) the cash price;
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, the amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) the amount of the finance charge expressed as an annual percentage rate; and
- (e) the deferred payment price.

4) Failing in any consumer credit transaction or advertisement, to make all disclosures that are required by Section 226.6, Section 226.7, Section 226.8, Section 226.9, and Section 226.10 of Regulation Z in the manner, form, and amount specified therein.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions, to

each person responsible for or connected with preparation of its advertisements, and to each person responsible for or connected with solicitation and sale of residential insulation for respondent, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered. That respondent Public Service Co. of Colorado shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A

FINDINGS OF FACT

FINDINGS

1. Proposed respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and/or sells to consumers products and services not provided through pipe, wire, or other connected facilities. In order to promote the conservation of energy, proposed respondent has initiated an insulation program in connection with which it advertises for sale and sells to consumers insulation for, and the installation of insulation in, residential premises.

2. In the ordinary course and conduct of its business as aforesaid, proposed respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and "creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, as amended), duly promulgated by the Board of Governors of the Federal Reserve System.

3. Subsequent to September 1, 1975, proposed respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

4. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 3; however, proposed respondent has never attempted to enforce such lien rights.

5. Proposed respondent's entry into the transactions described in Paragraph 3, in which a security interest is or will be retained by proposed respondent or other potential lien claimants, entitles proposed respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

6. In connection with the credit transactions referred to in Paragraph 3, proposed respondent notified its customers of their right to rescind the transactions within three days; however, such notice did not completely comply with the requirements of Section 226.9 of Regulation Z in that it failed to include substantive information and follow the form set forth herein. Once the matter was brought to proposed

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respondent's attention, its forms were revised to comply with Section 226.9 of Regulation Z.

7. Subsequent to September 1, 1975, in the ordinary course and conduct of its business as aforesaid, proposed respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

8. In one of the advertisements referred to in Paragraph 7, proposed respondent stated the rate of the finance charge as "annual interest rate," rather than as an "annual percentage rate," as required by the provisions of Section 226.10(d)(1) of Regulation Z.

9. In the same advertisement referred to in Paragraph 7, proposed respondent stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, the deferred payment price.

10. Proposed respondent has cooperated fully in the Commission's investigation and has made available all records and documents requested by the Commission during the course of such investigation.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Sept. 13, 1978

Affirmance of ALJ's order denying intervention and allowing filing of amicus curiae brief.

ORDER AFFIRMING ORDERS OF THE ADMINISTRATIVE LAW
JUDGE

On July 10, 1978, having been granted an extension of time, the American Federation of Grain Millers (AFL-CIO) ("International Union") filed an Application for Review from the Administrative Law Judge's denial of their Motion to Intervene. The Application was filed pursuant to Rule 3.23(a) of the Commission's Rules of Practice.

The complaint in this matter was filed over six years ago on April 26, 1972. As part of the relief, should a violation be found, it has been proposed that five corporate entities be divested or "spun-off" from the various respondents. Because the newly created entities would not be legally bound to hire the employees currently working for the respondents, nor be bound to adopt, preserve or maintain the level of benefits in the collective bargaining agreements, the International Union requests intervention.

Section 5(b) of the Federal Trade Commission Act and Rule 3.14 of the Commission's Rules of Practice provide for the intervention by any person, partnership, or corporation "upon good cause shown." Both provisions "clearly reflect the fact that intervention in Commission adjudications is a matter of privilege, and that its grant or denial is a discretionary matter, to be decided on the basis of the particular facts and circumstances involved in each case in which intervention is sought." *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1668 (1970).

As was noted by Judge Hinkes, the issue before us is similar to that in *Heublein, Inc.*, 82 F.T.C. 1826 (1973), in which the Allied Grape Growers sought to intervene for purposes of protecting their interests in a joint venture agreement with Heublein. Though we noted that Allied's contractual relations might be adversely affected by the outcome of the Commission's proceeding, we held there that Allied's concerns dealt primarily with the issue of relief rather than the issue of liability, and so limited their participation. Insofar as Allied's interests related to the competitive questions at stake in the