

(Decision No. C91-1247)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE JOINT)
APPLICATION OF THE PARTIES TO)
REVISED SETTLEMENT AGREEMENT)
II IN DOCKETS NOS. 91S-091EG AND)
90F-226E FOR COMMISSION) DOCKET NO. 91A-480EG
CONSIDERATION OF DECOUPLING)
REVENUES FROM SALES AND)
ESTABLISHMENT OF REGULATORY)
INCENTIVES TO ENCOURAGE THE)
IMPLEMENTATION OF DEMAND-SIDE)
MANAGEMENT PROGRAMS.

**COMMISSION ORDER GRANTING MOTION REQUESTING PREHEARING
CONFERENCE AND ESTABLISHING PROCEDURAL SCHEDULE**

Mailing date: September 19, 1991
Adopted date: September 11, 1991

BY THE COMMISSION:

This matter came on for a Prehearing Conference before the Commission sitting en banc on August 30, 1991, and at the Commission's Open Meeting on September 11, 1991. This docket is known as the "incentives" or the "decoupling" docket. It is one of the 4 dockets which have been opened, or will be opened, as a result of the settlement of the 1991 Public Service Rate Case. See Decision No. C91-918 in Docket No. 91S-091EG (July 23, 1991 Final Corrected Version approving Settlement, upon Clarification) Composite Exhibit C ("Revised Settlement Agreement II").

This docket is known as the "decoupling and incentives" docket because it is the intention of the parties and the Commission to consider the separation of Public Service

Company's profits from its sales, and to consider the provision of incentives to the company to pursue cost-effective energy efficiency programs. Under the current regulatory scheme, with its many potentially perverse incentives, Public Service Company has a disincentive to encourage energy-saving because its profits are dependent on the amount of electricity and gas it sells, with higher profits following higher sales. The parties and the Commission are using this "decoupling and incentives" docket to explore whether, and if so how, to devise a system to separate revenues (and profits) from sales, thereby benefitting everyone. See Decision No. C91-918 in Docket No. 91S-091EG Composite Exhibit C ("Revised Settlement Agreement II") at 3-4.

At the August 30, 1991 Prehearing Conference, the Commission discussed various matters including the "Motion Requesting Pre-Hearing Conference and Establishment of Procedural Schedule" filed on July 19, 1991 by 4 of the 5 original parties to this case, the Public Service Company of Colorado ("PSCo"), Office of Consumer Counsel ("OCC"), the Office of Energy Conservation ("OEC"), and the Land & Water Fund of the Rockies¹. At the Prehearing Conference, the Commission asked the parties whether the proposed schedule filed by these 4 parties (PSCo, OCC, OEC, and the Law & Water Fund) was manageable. All parties supported the schedule as written, and stated that they intended to strictly comply with the deadlines. Given these assurances, the Commission will grant the motion, as amended by the motion

¹. On September 16, 1991, the Office of Energy Conservation, the Land & Water Fund, the Public Service Company of Colorado, and the Office of Consumer Counsel filed a Joint Motion to Amend the Procedural Schedule. The effect of the motion was to move the week of hearings from the week of January 13, 1992 to the week of January 27, 1992. The Commission will grant the amended motion, as it better fits the Commission's calendar as well as the principal parties to this docket, and was filed far enough in advance for all other parties to change their schedules.

filed on September 16, 1991, and as modified by the Commission, and hereby establishes the following procedural schedule:

September 26, 1991	Briefs due on (1) "cost-effectiveness" test, (2) "avoided cost" standard; (3) other issues appropriately decided in this docket; (4) whether the considerations in <u>Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph</u> , ___ P.2d ___, Case No. 89 SA 400 (July 15, 1991), are applicable to the procedure proposed in Revised Settlement Agreement II.
October 8, 1991:	Prehearing Conference, 9:30 a.m.
October 30, 1991:	Answer testimony responding to the Office of Energy Conservation's direct case due from all other parties.
December 16, 1991:	Pre-trial disclosure certificates pursuant Colo.R.Civ.P. 16 due.
January 6, 1992	Rebuttal and cross-rebuttal testimony and exhibits due.
January 9, 1992	Disclosure certificate supplements due.
January 10, 1992	Prehearing Conference, 9:30 a.m.
January 27 through January 31, 1992	Hearings, commencing at 9:30 a.m.
February 14, 1992	Statements of Position due.

At the August 30, 1991 Prehearing Conference, the Commission expressed concerns about whether the parties had properly defined essential terms in advance, and whether the entire process could run adrift in the absence of a clear understanding of basic principles. For example, the Revised Settlement Agreement II refers repeatedly to "cost-effective" demand side management, without ever defining the term. See e.g., Decision No. C91-918 in Docket No. 91S-091EG Composite Exhibit C ("Revised

Settlement Agreement II") at 3. Also, the term "avoided costs" is often used in energy planning, which the Commission defines here, as applied in this docket, as the cost of supply options which one seeks to avoid by demand side management. The Commission, at this preliminary stage, believes that a "cost-effectiveness" test and an "avoided costs" standard is fundamental to evaluation of the merits of any proposed plan to separate the revenues (and profits) of the utility from its sales of electricity and gas. Because these matters may be fundamental and may be necessary to determine in the first instance, the Commission will require the assistance of the parties in developing these underlying terms.

The Commission will require the parties to file briefs proposing the "cost-effectiveness" test, and setting forth a proposed definition of "avoided costs." The Commission will accept argument on whether or not, and/or when, it should determine a (1) "cost-effectiveness" test; (2) an "avoided costs" standard; and, (3) other issues most efficiently or effectively decided by the Commission at this time in a formal proceeding. If the parties believe that the Commission should determine a "cost-effectiveness" test and an "avoided costs" standard, there are at least three possibilities. The "cost-effectiveness" test and the "avoided costs" standard could be decided: (1) now, in this docket; or (2) in the demand side management collaborative process docket, Docket No. 91A-481EG, which has already been filed, and in which the parties are scheduled to file a comprehensive workplan on or before October 1, 1991; or (3) the Integrated Resource Planning rulemaking docket, scheduled to be filed by April 1, 1992, see Decision No. C91-918 at 11, Composite Exhibit C at 4-6.

At the October 8, 1991 Prehearing Conference, the Commission will review and discuss the briefs filed by the parties on September 26, 1991, to determine a course of action with respect to these issues.

At the August 30, 1991 Prehearing Conference, the Commission discussed two recent court decisions. First, the Commission discussed Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph, ___ P.2d ___, Case No. 89 SA 400 (July 15, 1991)². The Supreme Court held that, in Case No. 6647 involving U S West, the Commission conducted rulemaking, not adjudication, even though the Commission styled its proceedings as an adjudication solely of U S West's services. As the Court stated, "while the decision appears in form as a classification of a single public utility's services, it in effect necessarily establishes standards and policies applicable to the telecommunications services of all public utilities." OCC v. Mountain States, supra, Slip Op. at 17. The Commission will require the parties in this docket to brief whether it should convert this application to a rulemaking, or whether the procedure proposed by the parties in Revised Settlement Agreement II, and currently being implemented by the Commission, is proper under Colorado law.

Second, the Commission entered into the record in this docket a recent New York State appellate decision, Multiple Intervenors v. Public Service Commission of New York, 569 N.Y.S.2d, 166 A.d.2d 140, 122 PUR4th 600 (N.Y. App. Div. 1991). In that decision, the New York Appellate Division affirmed the New York Public Service Commission's demand side management incentives (10% profit bonus to one utility, 20% profit bonus to another utility, as a part of demand side management incentives by the New York Commission dating from 1984), in sweeping terms. Apparently, this short opinion is the first reported appellate case in the country on the

². On September 16, 1991, the Colorado Supreme Court modified its July 15, 1991 Decision, upon Petition for Rehearing filed by the Office of Consumer Counsel and U S West Communications, Inc. The Supreme Court added the capitalized word "primarily" (capitalized in the following cite, not in the original) to a sentence on page 14 of the Slip Opinion. "In general, agency proceedings that PRIMARILY seek to or in effect determine policies or standards of general applicability are deemed rule-making proceedings." Slip Op. at 14 (line 16). After modifying the July 15, 1991 Opinion, the Court by a 5-2 vote, then denied the Petition for Rehearing.

legal power of public utility commissions to implement demand side management programs.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Motion Requesting Pre-Hearing Conference and Establishment of Procedural Schedule filed on July 19, 1991 by the Public Service Company of Colorado, the Office of Consumer Counsel, the Office of Energy Conservation, and the Land & Water Fund of the Rockies, is hereby granted, as amended by the Motion to Amend Procedural Schedule filed on September 16, 1991 by the Public Service Company of Colorado, the Office of Consumer Counsel, the Office of Energy Conservation, and the Land & Water Fund of the Rockies, and as modified by the Commission. The schedule, which we approve, is as follows:

September 26, 1991	Briefs due on (1) "cost-effectiveness" test, (2) "avoided cost" standard; (3) other issues appropriately decided in this docket; (4) whether the considerations in <u>Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph</u> , ___ P.2d ___, Case No. 89 SA 400 (July 15, 1991), are applicable to the procedure proposed in Revised Settlement Agreement II.
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January 10, 1992

Prehearing Conference, 9:30 a.m.

January 27 through January 31, 1992

Hearings, commencing at 9:30 a.m.

February 14, 1992

Statements of Position due.

2. On or before September 26, 1991, the parties shall file a brief proposing a "cost-effectiveness" test, and their definition of "avoided costs", and address other issues appropriately decided in this docket. The Commission wants to know if and when the parties think the Commission should determine a (1) "cost-effectiveness" test and (2) an "avoided costs" standard.

3. The Commission will require the parties in this docket to brief their positions on the issue of whether or not the Commission should convert this application to a rulemaking in light of the recent Colorado Supreme Court decision, Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph, ___ P.2d ___, Case No. 89 SA 400 (July 15, 1991) (as modified September 16, 1991).

ADOPTED IN OPEN MEETING ON September 11, 1991.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners