

Decision No. R00-830

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 99A-557E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING ITS INCENTIVE COST ADJUSTMENT FILING FOR THE PERIOD JULY 1998 THROUGH JUNE 1999.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
APPROVING STIPULATION AND AGREEMENT**

Mailed Date: August 1, 2000

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. On November 17, 1999, Public Service Company of Colorado ("Public Service") filed an application for an order of the Commission approving its incentive cost adjustment ("ICA") filing for the period of July 1998 through June 1999.

B. On January 14, 2000, Staff of the Colorado Public Utilities Commission ("Staff") filed an Entry of Appearance and Notice of Intervention.

C. A hearing on the application was scheduled for June 19 and 22, 2000.

D. On May 31, 2000, Public Service and Staff filed a Stipulation and Agreement. The Stipulation was filed in settlement of all of the outstanding disputed issues in the ICA filing for the period of July 1998 through June 1999.

E. The Stipulation and Agreement, which is attached to and made a part of this recommended decision addresses disputed issues in the instant docket, including the treatment of energy trading in the ICA, the treatment of "all-in-one" energy purchases, the treatment of tolling contracts, and the treatment of the CPP (Brush) contract.

F. The Stipulation and Agreement contains specific provisions which are agreed to by the parties. Public Service and Staff stipulate and agree that Public Service's proposed ICA for the test year of July 1998 through June 1999, as modified by the express terms of the Stipulation and Agreement of the parties should be accepted as filed by Public Service.

G. It is found and concluded that the Stipulation and Agreement filed by Public Service and Staff on May 31, 2000 is just, reasonable, and in the public interest.

H. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Agreement filed by Public Service Company of Colorado and the Staff of the Colorado Public Utilities Commission on May 31, 2000 is accepted.

2. All of the prefiled testimony, with the exception of the prefiled testimony concerning testimony relating to the CPP contract, stipulated by the parties as Exhibit A, attached to the Stipulation and Agreement, is admitted into evidence.

3. The parties shall comply with all of the terms of the Stipulation and Agreement.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set

out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



WILLIAM J. FRITZEL

Administrative Law Judge

ATTEST: A TRUE COPY

Bruce N. Smith
Director

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF COLORADO) DOCKET NO. 99A-557E
FOR AN ORDER APPROVING ITS INCENTIVE)
COST ADJUSTMENT FILING FOR THE PERIOD)
JULY 1998 THROUGH JUNE 1999)

STIPULATION AND AGREEMENT

Public Service Company of Colorado ("Public Service" or "PSCo") and the Staff of the Colorado Public Utilities Commission ("Staff") hereby stipulate to settlement of all outstanding disputed issues in this Docket. As part of this Stipulation and Agreement, both Staff and Public Service agree that the Company's proposed Incentive Cost Adjustment for the Test Year Period of July 1998 through June 1999 should be accepted as filed by Public Service.

In prefiled testimony, both Staff and the Public Service discussed certain disputed regulatory principles or concepts. This Stipulation and Agreement resolves these disputes for the period of time specified below as the Term of this Stipulation.

A. TREATMENT OF ENERGY TRADING IN THE ICA.

In her prefiled testimony, Staff witness Vivian Pederson recommended that the Commission disallow recovery through the ICA of certain non-economy sales and associated transmission expense which appeared to create a loss, as set forth on her Exhibit 6. She also expressed the concern that Public Service was not following its Cost Allocation Manual ("CAM") because off-system electric sales were listed in the CAM as nonregulated business activity.

Staff believes that the intent of the ECA and ICA was to include only economy sales, defined as short term sales subject to curtailment prior to Public Service's existing firm sales and power pool operating requirements. By definition, economy sales present no risk of losses to retail customers, and therefore such sales were approved to be shared between shareholders and customers on a 50/50 basis. Since the ECA and ICA were first approved by the Commission, Public Service has engaged in substantial energy trading activity outside of economy sales. Such trading has increased substantially from year to year. Staff believes that Public Service should have asked the Commission for its permission prior to engaging in such activity, because Staff believes that the activity is subsidized with ratepayer funds or retail jurisdictional assets and made possible by Public Service's captive customer base. Staff believes that, before trading activity outside of economy sales is allowed, the Commission needs to decide whether the ICA should include such activity.

PSCo does not agree that it must ask the Commission for permission prior to engaging in wholesale energy trading. PSCo does not agree that energy trading activity is "subsidized" by ratepayers in any way. PSCo's position is that energy trading is the appropriate and necessary response to Commission policy, reflected in the ICA, to place PSCo at risk for increased fuel and energy costs. PSCo believes that it has developed a sophisticated energy trading operation that wisely hedges fuel and energy price risks that exist in the wholesale energy market within which PSCo must operate. PSCo further believes that prior Commission ECA/ICA orders are broad enough to allow the results of energy trading to be reflected in the ICA. The espoused purpose of the ICA 50/50 energy cost sharing is to align the interests of shareholders and

customers. This alignment provides appropriate incentives to engage in transactions that benefit both shareholders and customers. Further, given PSCo's experiences in the market, PSCo strongly believes that annual net trading losses are unlikely.

In specific response to Ms. Pederson's testimony, Public Service rebuttal witness David Eves states in his prefiled testimony that the off-system sales delineated on Ms. Pederson's Exhibit 6 represent just one portion of a comprehensive system of short term wholesale energy transactions employed by Public Service to manage its energy costs. When this energy trading is considered as a whole for the ICA Test Year Period of July 1998 through June 1999, the result is a sharing of net gains with retail customers. The retail customer share of energy trading margins in this ICA Test Year Period is \$2.7 million. Public Service rebuttal witness Deborah Blair submitted prefiled testimony stating that the CAM is in error and that off-system sales transactions have historically been treated as regulated transactions.

Even though in this ICA Test Year Period energy trading resulted in a sharing of net gains with retail customers, Staff is concerned that subsequent ICA Test Year Periods could result in negative net margins (or losses) from energy trading activities. For the reasons expressed in Staff's prefiled testimony, Staff believes that net losses due to energy trading activity should not be shared with Public Service's retail customers through the ICA mechanism, but that net gains should be shared on a 50/50 basis. For the reasons expressed in Public Service's testimony, Public Service believes that both net gains and net losses due to energy trading activity should be shared with retail customers on a 50/50 basis. The Commission has not specifically addressed this

Staff and Public Service hereby stipulate that for the Term of this Stipulation (defined below) energy trading should be afforded the following treatment in the ICA:

1. Net gains or losses from short term (12 months or less in term length) electric energy transactions¹ shall be determined by aggregating all margins from these transactions over the ICA Test Year Period.² The net short-term transactions aggregated shall include, but not be limited to the following products:

- economy and short-term firm sales (energy sales that can be physically interrupted (e.g. economy, 1-hour firm, financially firm))
- Rocky Mountain Reserve Group ("RMRG") sales (spinning reserve service, operating reserve service, and energy associated with activated reserves),
- ancillary services (spinning reserve service, supplemental operating (non-spinning) reserve service, reactive supply and voltage control from generation sources service, regulation and frequency response service, energy imbalance service, and replacement reserve service)
- options, including call options (the right but not the obligation to receive and buy energy at a specified strike price) and put options (the right but not the obligation to provide and sell energy at a specified strike price)

The net short-term transactions shall include transactions entered into either as:

- system hedges (sales made against the natural excess energy position of the PSCo system and purchases made against the natural deficit energy

¹ Gains and losses from trading in power plant fuels (e.g., coal and gas) shall not be included in the aggregation used to determine the sharing of the Economy Sales Margin (E) in the ICA formula

² The net margins that are aggregated under this Stipulation shall be used to determine the sharing of the Economy Sales Margin (E) in the ICA formula.

position of the PSCo system, where the PSCo system means PSCo generation, purchased power resources and native load obligation), or

- purchase for resale transactions, which are also described in PSCo witness Mr. Eves' testimony as "non-asset" or "proprietary" transactions.

The net short-term transactions shall include transactions that are settled either physically or financially.

Staff and Public Service agree that this stipulated list of products is representative of the energy products currently bought and sold in the wholesale market and that additional products will develop which PSCo may also wish to transact. Nothing in this Stipulation shall prevent PSCo from engaging in transactions that involve a product or service that is not encompassed within the listed products in this section A1. However, if Public Service trades any products or services not listed in this section A1, Staff reserves the right to challenge the reflection of the margins from such transactions in the calculation of aggregated net gains or losses from short term transactions. Staff agrees to provide Public Service with a determination as to whether Staff objects to including the margins from any such new product or service in the aggregation of short term transactions in the ICA. Staff shall advise PSCo in writing, within fifteen days of receiving a written description from PSCo of the new product or service, of whether Staff supports, or objects to, inclusion of the described new product or service in the aggregation of short term transactions. If Staff supports the inclusion, then the new product or service will be deemed to be added to the stipulated list in this section A1. If Staff objects to the inclusion of the new product or service in the aggregation, then Public Service shall bear the burden of going forward and the burden

of proof in a subsequent ICA proceeding that such new product or service is appropriately included in the aggregation and Staff reserves the right to contest such inclusion in the aggregation.

The aggregated net margins shall be split between the federal and state jurisdictions. Any Colorado jurisdictional positive aggregated margin shall be shared on a 50/50 basis with retail customers through the ICA (see footnote 2). If the Colorado jurisdictional aggregated margin is negative, it shall not be reflected in the ICA, without a specific Commission order, as discussed below.

2. Public Service retains the right to file an application with the Commission, in a proceeding separate from the ICA proceeding, to request that it be permitted to share all or a portion of any net aggregated negative margins with retail customers on a 50/50 basis. In such a proceeding, Public Service would have the burden of going forward and the burden of proof to show why net losses should be recoverable from retail customers. Staff reserves its right to argue in such a proceeding that losses should not be recovered from retail customers. Until the Commission renders a final decision and order on any such Public Service application, Public Service would not reflect annual net aggregated negative margins through the ICA.

3. Public Service's CAM shall be revised to reflect energy trading activity as a regulated service for the Term of this Stipulation.

4. Public Service agrees to undertake any short-term wholesale transactions with affiliates in accordance with the Joint Operating Agreement ("JOA") for Xcel Energy which is on file with the Federal Energy Regulatory Commission and which was discussed by Public Service in testimony in the NCE/NSP merger docket, Docket No.

99A-377EG. The JOA specifies the revenue and cost accounting treatment to be used for affiliate transactions among operating companies and non-asset trading (i.e., trading of electricity that is not produced from a generating asset owned by an Xcel operating company or contracted to an Xcel operating company under a long term supply contract.)

5. Public Service shall provide to Staff quarterly reports, thirty days after the end of each calendar quarter, which disaggregate Public Service's energy trading activities for the preceding quarter and year-to-date. The contents and format (including the level of disaggregation) of the quarterly report will be mutually determined by Staff and Public Service by July 1, 2000.

6. Whenever it engages in energy trading activities, Public Service agrees to abide by its Risk Management Policies and Procedures Manual (the "Manual"). Public Service has permitted Staff to review the Manual. Whenever any changes are made to the Manual, Public Service shall notify Staff in writing within ten days that a change has been made and shall describe to Staff the nature of the modification and permit Staff to review the Manual at Public Service's offices. It is understood by Staff that the information in the Manual is highly sensitive confidential commercial information, release of which could be very detrimental to the success of Public Service's energy trading activity. All information provided to Staff through its review of the Manual shall be treated as confidential and shall not be disclosed, except that confidential information may be provided to the Commission under seal. Any Staff member reviewing the Manual shall execute a non-disclosure agreement under which the Staff

member agrees to comply with the restrictions of this paragraph and be bound by the provisions of Commission Rule 723-16.

B. TREATMENT OF "ALL-IN-ONE" ENERGY PURCHASES

A significant portion of purchases are made on the basis of a price per kilowatt hour, referred to in the prefiled testimony as "all-in-one" energy rates. Staff witness Sharon Podein prefiled testimony arguing that a portion of the all-in-one price is a payment for capacity, not energy. Public Service witness Karen Hyde filed rebuttal testimony taking issue with Staff's testimony. Public Service and the Staff stipulate and agree that all-in-one energy purchases may be reflected as prices paid for energy during the Term of this Stipulation, so long as Public Service treats these same purchases as energy purchases for all other regulatory dockets during this same period. Specifically, Public Service shall not be permitted to double recover any of these costs by arguing in any earnings test proceeding that test year capacity costs should be higher by considering a portion of any all-in-one energy transaction, which has been reflected in the ICA as an energy transaction, to be a capacity payment. Nothing in this paragraph shall preclude either Party from arguing in Public Service's next rate case that the all-in-one energy purchases shall be treated in a manner different from this Stipulation for the new rates that go into effect in 2003.

C. TREATMENT OF TOLLING CONTRACTS

Since 1998, Public Service has entered into several gas tolling arrangements. A tolling arrangement is one in which Public Service procures natural gas, arranges for its delivery to a specific generating facility, and then pays the facility owner to convert the natural gas to electricity. Public Service believes that this arrangement provides

several benefits for Public Service over arrangements in which Public Service purchases energy under a fixed or cost-based energy payment: operational flexibility, control of gas costs, and control of gas deliveries (which is particularly beneficial during peak gas usage periods). In this way the tolling arrangement is analogous to how Public Service purchases gas for generation facilities which it owns. Tolling arrangements can be attractive for facility owners because they do not have exposure to gas markets and availability. Staff expressed concern in prefiled testimony about the ICA treatment of tolling arrangements. Staff and Public Service agree that gas purchases and other fees in tolling agreements shall be reflected in the ICA and that the following procedures shall apply:

1. Public Service shall track gas purchases for each tolling arrangement and for each of its own generation facilities. Public Service shall record by power plant the following information: MMbtu's of gas purchased (segregated as either baseload or swing/spot); the price paid per MMbtu; the gas transportation charges paid; and the storage charges paid. This information shall be aggregated on a monthly basis and be available for review by Staff upon request. Further, this information shall be supplied to Staff as part of the quarterly reports discussed in Section A5 of this Stipulation.

2. Gas purchases for tolling arrangements shall not be treated any differently in the ICA from gas purchases for Public Service's own generation facilities.

3. Public Service may include in its ICA filing, and treat in the same manner as purchased energy costs, other variable fees that are included in tolling agreements, including but not limited to, tolling fees, variable fees, conversion fees, start-up fees, stand-by fees, and O&M fees, so long as these costs are appropriately considered to

be variable costs of purchased energy under tolling agreements. Staff reserves the right to challenge whether any of the fees included in the Public Service ICA filing are appropriately considered to be variable costs of purchased energy.

D. TREATMENT OF CPP (BRUSH) CONTRACT

In the QFCCA docket (Docket No. 99A-541E), Staff and Public Service entered into the following Stipulation:

The Parties desire to avoid the need for duplicative litigation in numerous Commission dockets with respect to the cost recovery treatment of Public Service's contract with Colorado Power Partners, dated March 30, 1999 (referred to in the pre-filed testimony as the "Brush 1 – Brush 3 QF Restructuring.") Cost recovery issues with respect to this Brush restructuring could create disputes within this Docket No. 99A-541E; Docket No. 99A-557E, Re: Public Services Incentive Cost Adjustment; and the docket which will be opened on April 1, 2000 to address Public Service's 1999 Earnings Test filing. Consequently, the Parties have agreed that a better procedure would be one where all cost recovery issues with respect to the Brush 1 – Brush 3 QF Restructuring are handled in one docket.

Consistent with that settlement Staff and Public Service agree to withdraw their testimony regarding the CPP (also called El Paso and/or Brush 1 & 3) contract restructuring. A list of the withdrawn prefiled testimony is set forth in Exhibit A to this Stipulation. Public Service will file an application to address this contract according to the settlement in Docket No. 99A-541E.

E. TERM OF THIS STIPULATION

This Stipulation shall apply to the Company's ICA for the period of time that Staff, Public Service and others have stipulated in Docket No. 99A-377EG (NCE/NSP merger) that the ICA should remain in effect. According to Exhibit 2 of the Stipulation and Agreement filed in Docket No. 99A-377EG, the ICA shall remain in effect through a

Test Year Period of calendar year 2002 with a Recovery Period through March 31, 2004 ("Term of this Stipulation"). Therefore, the ICA treatment of the activities discussed in this Stipulation should be considered to be a pilot program that will not continue beyond the Term of this Stipulation without further Commission action.

Staff and Public Service each reserve the right to argue any position that it deems appropriate in Public Service's general rate case proceeding, which the Company must file in 2002, with respect to the continuation, modification or termination of the ICA after the time periods stipulated in the NCE/NSP Merger Docket. Each party also reserves the right to argue any position that it deems appropriate with respect to any of the matters set forth in this Stipulation and Agreement.

F. GENERAL PROVISIONS

The Parties shall file this Stipulation with the Administrative Law Judge and request that it be accepted by the Judge and by the Commission in full settlement of all issues raised in this docket. Except for the withdrawn testimony with respect to Brush 1 & 3, the Parties stipulate to the admission into evidence of all testimony prefiled in this docket and waive all cross-examination of the prefiled testimony.

This Stipulation and Agreement shall not become effective until the issuance of a final Commission order approving the Agreement, which Order does not contain any modification of the terms and conditions of this Stipulation which is unacceptable to either Public Service or the Staff. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Agreement and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket. The withdrawing Party shall notify the

Commission and the other Party in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Agreement and that the Party is ready to proceed to hearing; the notice shall designate the precise issue or issues on which the Party desires to proceed to hearing. Hearing shall be scheduled on the issues designated in the notice of the withdrawing Party as soon as practicable. In the event that this Agreement is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Agreement shall not be admissible into evidence in this or any other proceeding.

Approval by the Commission of this Stipulation and Agreement shall constitute a determination that the Agreement represents a just, equitable and reasonable resolution of all issues which were or could have been contested among the Parties in this proceeding.

The Parties to this Stipulation state that reaching agreement in this docket as set forth herein by means of a negotiated settlement is in the public interest and that the results of the compromises and settlements reflected by this Agreement are just, reasonable and not contrary to the public interest.

This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Agreement.

Dated this 31st day of May, 2000.