

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

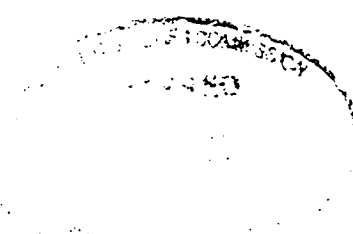
2000 DEC 14

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IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF )  
COLORADO FOR COMMISSION )  
AUTHORIZATION TO SELL FACILITIES )  
AND PROPERTY, AND FOR REQUEST )  
FOR DECLARATORY ORDER OR )  
ALTERNATIVELY FOR EXEMPTION UNDER )  
INTEGRATED RESOURCE PLANNING )  
RULES )

DOCKET NO. 00A-351E

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STIPULATION AND SETTLEMENT AGREEMENT

Introduction

This Stipulation and Settlement Agreement is by and among Public Service Company of Colorado ("PSCo"), the City of Boulder, Colorado ("Boulder"), the Staff of the Public Utilities Commission of the State of Colorado ("Staff"), and the Office of Consumer Counsel ("OCC") (each a "Party" and collectively the "Parties").

This proceeding involves the application ("Application") by PSCo for Commission authorization to sell the Boulder Canyon Hydroelectric Project ("Boulder Project") to Boulder. As part of the Application, PSCo submitted the Power Purchase Agreement ("PPA") (submitted as Application Exhibit 3 and admitted into evidence as Hearing Exhibit 5)

it has entered into with Boulder. Under the PPA, Boulder agrees to sell to PSCo the entire electrical energy output, if any, of the Boulder Project to PSCo at agreed upon terms.

Boulder intervened and has participated in this proceeding in support of the Application. Staff and the OCC submitted testimony raising various issues regarding the Application and recommended that the Commission deny the Application unless certain conditions were imposed. Staff's and OCC's concerns were largely centered on the issues of how much energy Boulder will make available to PSCo pursuant to the PPA and the impact on PSCo's system of any reduction in energy output from the Boulder Project, as compared to average generation levels since 1990. Staff and the OCC raised these concerns, in part, because of the currently projected electric capacity shortfall scenario facing PSCo in the years 2001 and 2002.

Through this Stipulation and Settlement Agreement, the Parties are agreeing to measures that will provide greater assurance that Boulder will make energy available to PSCo from (i) the Boulder Project in accordance with the PPA and (ii) five of Boulder's existing hydroelectric projects (Boulder's Betasso Power Plant (FERC Project No. 6282), Orodell Project (FERC Project No. 9903), Sunshine Project (FERC Project No. 9087), Maxwell Power Production Facility (FERC Project No. 7564), and Kohler Power Project (FERC Project No. 8962) (collectively the "Boulder Hydroelectric Facilities")) from which Boulder provides power and energy to PSCo in accordance with existing power sales agreements. Specifically, in Article 1 of the Stipulation and Settlement Agreement, PSCo and Boulder commit to amend the PPA as specified therein, and in Article 2, Boulder commits to certain reporting requirements. Article 3 sets forth various general provisions applicable to all Parties.

The Stipulation and Settlement Agreement addresses the concerns raised by Staff and the OCC. Therefore, Staff and the OCC no longer oppose the Application. The OCC believes that Commission approval of the Application, as modified by this Stipulation and Settlement Agreement, is in the public interest.

Article 1

A. Boulder and PSCo agree to modify the PPA to set forth the following additional commitments:

1. For purposes of implementation of paragraph 6.1 of the PPA during the period from the effective date through 12:00 midnight December 31, 2003, Boulder agrees that it will use best efforts to generate electricity at the Boulder Project at all times, subject to the following:

- a. The operational availability of the facility;
- b. The legal and physical availability of water for generation, including releases for stream flows which shall include reasonable bypass flows or reasonable mitigation requirements;
- c. Unforced outages for:
  - i. Repairs to the gravity line;
  - ii. Transfer of the SCADA control system;
  - iii. Repair of the dam gates at Barker Dam;
  - iv. Such other facilities repair as may be required for the prudent operation of the Boulder Municipal Water System; and

v. Such other repairs or modifications required by any governmental agency with jurisdiction over the Boulder Project.

2. Boulder agrees to avoid interruptions in production of electricity to the greatest extent practicable during the months of June, July, and August.

3. In addition, Boulder agrees that it will use best efforts, subject to conditions a through c of paragraph A.1, above, to maximize production of electricity from Boulder Hydroelectric Facilities utilizing incremental water available from Boulder's acquisition of the Boulder Project.

4. During the months of June, July, and August in the years 2001, 2002, and 2003, PSCo shall not make the Monthly Fixed Payment set out in paragraph 8.3 of the Power Purchase Agreement for that month if all three of the following criteria are met:

- a. The Boulder Project was available for operation;
- b. Water was legally and physically available for generation, which availability takes into account releases for stream flows, which shall include reasonable bypass flows or reasonable mitigation requirements; and
- c. Boulder incurred an outage, other than a Forced Outage, at the Boulder Project, which resulted in Boulder failing to produce in any of such months at least one-hundred percent (100%) of the six-year average monthly on-peak generation (as defined in paragraph 8.2 of the PPA) for the period 1994-1999 for that

month at the Boulder Project from a combination of the following resources:

- (1) The Boulder Project; and
- (2) Incremental Generation from the Boulder Hydroelectric Facilities.

5. The terms used and levels described in subparagraph c of paragraph A.4 mean or are as follows:

- a. Forced Outage means the occurrence of an unplanned component failure as specified by NERC cause codes at the Facility that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms, or other failure of equipment or facilities that are necessary for generation and transmission of electricity.;
- b. The six-year average monthly on-peak generation (as defined in paragraph 8.2 of the PPA) for the period 1994-1999 for that month at the Boulder Project is 570 MWh for June, 266 MWh for July, and 448 MWh for August;
- c. Incremental Generation means the Contract Energy available to PSCo from Boulder under the applicable power purchase agreements, between Boulder and PSCo, for each of the Boulder

Hydroelectric Facilities that is on a combined basis in excess of the six-year average monthly generation for the period 1994-1999 for the applicable month at the Boulder Hydroelectric Facilities—i.e., 1,893,243 kWh for June, 2,403,522 kWh for July, and 2,221,802 kWh for August.

B. Attachment A to this Stipulation and Settlement Agreement is a form of Amendment No. 1 to the Power Purchase Agreement, which sets forth the commitments specified in Article 1.A. Boulder and PSCo will execute this amendment prior to the closing of the Boulder Project sales transaction.

## Article 2

A. In May 2001, 2002, and 2003, Boulder shall report in writing to Staff, OCC, and PSCo any planned maintenance outages at the Boulder Project during the months of June, July, and August.

B. In 2001, 2002, and 2003, thirty business days after the Boulder Project metering devices, as set forth in paragraph 5.10 of the Agreement, are read by PSCo in June, July, and August, Boulder shall report to Staff, OCC, and PSCo. The report shall state: (1) the amount of on-peak generation (as defined in paragraph 8.2 of the PPA) at the Boulder Project for the month of the report; (2) the total amount of Incremental Generation at the Boulder Hydroelectric Facilities for the month of the report, as specified in Article 1.A.5.c of this Stipulation and Settlement Agreement; and (3) the six-year average monthly on-peak generation (as defined in paragraph 8.2 of the PPA) at the Boulder Project for the period 1994-1999 for the month of the report, as specified in Article 1.A.5.b of this Stipulation and Settlement Agreement. The Parties agree that, if the actual amount of on-peak generation at

the Boulder Project for the month of the report exceeds the agreed upon level of six-year average monthly on-peak generation at the Boulder Project for the period 1994-1999 for the month of the report, then Boulder need not state the amount of Incremental Generation that is responsive to the second item in the required report. If the sum of the reported on-peak generation for the Boulder Project and the reported Incremental Generation for the Boulder Hydroelectric Facilities is below the six-year average monthly on-peak generation at the Boulder Project for the period 1994-1999 for that month, then Boulder shall state in the report whether any scheduled maintenance at the Boulder Project took place in that month and whether such scheduled maintenance, if any, could have contributed to the generation shortfall.

### Article 3

A. If this Stipulation and Settlement Agreement is not accepted and approved by the Commission, or is modified in a manner that is unacceptable to any Party, then the Stipulation and Settlement Agreement shall at the option of such Party be considered null and void and not binding on any Party, provided that the Party withdrawing from the Stipulation and Settlement Agreement due to the Commission's modification of the Stipulation and Settlement Agreement must notify the Commission and the other Parties to this Stipulation and Settlement Agreement in writing within ten (10) calendar days of the date of the Commission Order modifying the Stipulation and Settlement Agreement, except that in the event the Commission denies approval to this Stipulation and Settlement Agreement in its entirety, each Party shall be deemed to have withdrawn from it without further notice to the other Parties. In that event (i) the Parties shall be deemed to have reserved all of their respective rights and remedies in this proceeding which are sought to be resolved by this

Stipulation and Settlement Agreement and (ii) this Stipulation and Settlement Agreement shall not be part of the record in this proceeding, and all discussions and negotiations that led to this Stipulation and Settlement Agreement shall be privileged and inadmissible in evidence in this or any other proceeding

B. The Parties acknowledge that they reached this Stipulation and Settlement Agreement after the presentation of PSCo's direct case at the hearing held in this proceeding on December 7, 2000, and that subsequent to the reaching of the Stipulation and Settlement Agreement, Boulder, OCC, Staff, and PSCo were allowed to submit testimony and exhibits into the record and the other Parties did not pursue cross-examination of the testimony and exhibits so presented. Accordingly, the Parties agree that in the event it becomes necessary to resume the hearing in this proceeding, they shall resume with the cross-examination of Boulder's witnesses presenting Boulder's case. Moreover, the Parties agree to cooperate so as to resume the hearing at the earliest possible date.

C. Nothing in this Stipulation and Settlement Agreement shall constitute an admission or be deemed an agreement by any Party of the correctness or applicability of any claim, defense, rule, interpretation of law, allegation of fact, or any other principle raised, presented, or at issue in this proceeding.

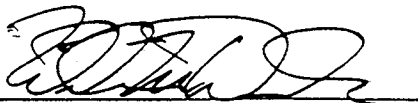
D. In any future negotiation or proceeding (other than any proceeding involving the enforcement, interpretation, or construction of this Stipulation and Settlement Agreement), the Parties shall not be bound or prejudiced by this Stipulation and Settlement Agreement and are free to advocate any position in any other docket or proceeding.

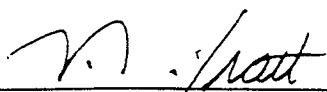


Entered this 14th day of December, 2000.

Approved as to form:

PUBLIC SERVICE COMPANY  
OF COLORADO

By:   
William M. Dudley, #26735  
Assistant General Counsel  
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Fax: (303) 308-7683

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Vice President, Trading Marketing &  
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Approved as to form:

CITY OF BOULDER

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By: \_\_\_\_\_  
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Entered this 14th day of December, 2000.

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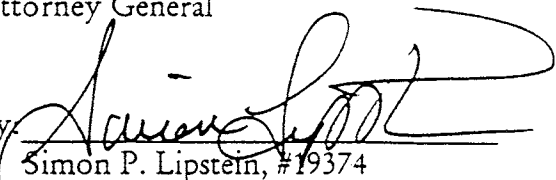
CITY OF BOULDER

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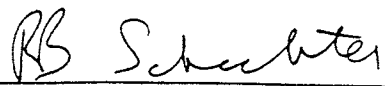
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TRIAL STAFF

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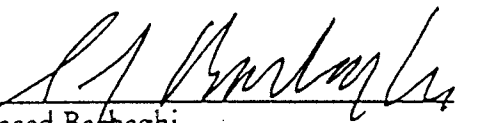
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**ATTACHMENT A**

**FIRST AMENDMENT TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF BOULDER, COLORADO  
AND  
PUBLIC SERVICE COMPANY OF COLORADO**

This First Amendment to the Power Purchase Agreement (this "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the City of Boulder, Colorado ("Seller") and Public Service Company of Colorado, a Colorado corporation ("PSCo"). Seller and PSCo are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, PSCo in Docket No. 00A-351E has filed an application with the Colorado Public Utilities Commission ("Commission") requesting its authorization to sell the Boulder Canyon Hydroelectric Project ("Boulder Project") to Boulder; and

WHEREAS, in connection with the sales transaction Seller and PSCo entered into that certain Power Purchase Agreement dated April 21, 2000 (the "PPA" or the "Agreement") pursuant to which Seller agreed to sell and PSCo agreed to purchase the electrical output of the Boulder Project; and

WHEREAS, in the Docket No. 00A-351E proceeding PSCo also sought the Commission's authorization to enter into the PPA; and

WHEREAS, as of December 13, 2000, Seller, PSCo, the Staff of the Commission, and the Colorado Office of Consumer Council entered into a Stipulation and Settlement Agreement settling all issues associated with Docket No. 00A-351E, and which detailed certain changes that would be made to the Agreement to address the Commission Staff's and OCC's concerns; and

WHEREAS, this Amendment makes the changes to the Agreement that Seller and PSCo agreed to as part of the Stipulation.

NOW THEREFORE, in consideration of the promises and covenants provided for herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized terms used but undefined in this Amendment, including but not limited to the term "Facility", shall have the meaning ascribed to such terms in the Agreement.
2. Insert the following definitions, as they would appear in alphabetical order, in Article 1:

“Boulder Hydroelectric Facilities” means Seller’s Betasso Power Plant (FERC Project No. 6282), Orodell Project (FERC Project No. 9903), Sunshine Project (FERC Project No. 9087), Maxwell Power Production Facility (FERC Project No. 7564), and Kohler Power Project (FERC Project No. 8962).

“Forced Outage” means the occurrence of an unplanned component failure as specified by NERC cause codes at the Facility that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms, or other failure of equipment or facilities that are necessary for generation and transmission of electricity.

3. Insert the following as Article 6.4:

Operation through 2003. For the purposes of implementation of Section 6.1, during the period from the Commencement Date through the hour ending 2400 on December 31, 2003, Seller agrees that it will use best efforts to generate electricity at the Facility at all times, subject to the following:

- (A) The operational availability of the Facility;
- (B) The legal and physical availability of water for generation, including releases for streamflows which shall include reasonable bypass flows or reasonable mitigation requirements;
- (C) Any outage, provided that such outage is not a Forced Outage, for
  - (1) Repairs to the gravity line which runs from Barker Meadow Reservoir to Kossler Reservoir;
  - (2) Transfer of the SCADA control system from its present configuration to one connected to Betasso Water Treatment Plant or other hydroelectric or control facilities belonging to Seller;
  - (3) Repair of the dam gates at Barker Dam;
  - (4) Such other facilities repair as may be required for the prudent operation of the Boulder Municipal Water System; and
  - (5) Such other repairs or modification required by any governmental agency with jurisdiction over the Facility or any component thereof.

4. Insert the following as Article 6.5:

Generation at the Boulder Hydroelectric Facilities. Seller shall use best efforts, subject to the conditions in Sections 6.4 (A), 6.4 (B), and 6.4 (C), to maximize production of electricity from the Boulder Hydroelectric

Facilities, the electrical capacity and energy of which is sold by Boulder to PSCo under separate agreements, utilizing incremental water available from Seller's acquisition of the Facility.

5. Revise Section 8.3 of the PPA to add at the end thereof:

During the months of June, July, and August in the years 2001, 2002, and 2003, PSCo shall not make the Monthly Fixed Payment for that month if all three of the following criteria are met:

- (A) The Facility was available for operation;
- (B) Water was legally and physically available for generation, which availability takes into account releases for stream flows, which shall include reasonable bypass flows or reasonable mitigation requirements; and
- (C) Seller incurred an outage, other than a Forced Outage, at the Facility which resulted in Seller failing to provide in any of such months at least one-hundred percent (100%) of the energy listed on Exhibit A from a combination of the following resources:
  - (1) The Facility; and
  - (2) Incremental Generation from the Boulder Hydroelectric Facilities where "Incremental Generation" means the Contract Energy available to PSCo from Boulder under the applicable power purchase agreements, between Seller and PSCo, for each of the Boulder Hydroelectric Facilities that is on a combined basis in excess of the six-year average monthly generation for the period 1994-1999 for the applicable month at the Boulder Hydroelectric Facilities, as set out in Exhibit B.

6. Revise Section 10.2 by adding at the end thereof:

Seller shall avoid interruptions to the production of electricity to the greatest extent practicable during the months of June, July, and August.

7. Insert Exhibit A and Exhibit B attached to this Amendment.

8. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original as against the Party whose signature appears thereon, and all of which taken together shall constitute one and the same instrument. This Amendment shall become binding when one or more counterparts, individually or taken together, shall bear the signature of all Parties to this Amendment. Delivery of an executed signature page of this Amendment by facsimile transmission shall constitute effective and binding execution and delivery of the instrument to which such signature page relates.

9. Severability. If any of the provisions of this Amendment are held to be invalid or unenforceable under the applicable law of any jurisdiction, the remaining provisions shall not be affected, and any such invalidity or unenforceability shall not invalidate or render unenforceable that provision in any other jurisdiction. In that event, the Parties agree that the provisions of this Amendment shall be modified and reformed so as to effect the original intent of the Parties as closely as possible with respect to those provisions that were held to be invalid or unenforceable.
  
10. Further Assurances. Each Party shall procure all acts, matters, and things and the execution or signature of all other documents to give full effect to the provisions of this Amendment.
  
11. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the Agreement as amended by the First Amendment remain in full force and effect.
  
12. Entire Agreement. This Amendment and the underlying Agreement, dated April 21, 2000, by and between the Parties are the entire agreement between the Parties with respect to the subject matter hereof and supercedes all previous understandings and agreements.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date written above effective as of the Effective Date.

**THE CITY OF BOULDER, COLORADO**

By: \_\_\_\_\_  
[Insert Name]  
[Insert Title]

Date: \_\_\_\_\_

**PUBLIC SERVICE COMPANY OF COLORADO**

By: \_\_\_\_\_  
[Insert Name]  
[Insert Title]



**Exhibit A  
To the  
City of Boulder  
Power Purchase Agreement**

**On Peak Generation for the Facility – in Megawatt-Hours**

**6-Year Average (1994-1999)**

<b>Month</b>	<b>Generation (MWh)</b>
June	570
July	266
August	448

**Exhibit B  
To the  
City of Boulder  
Power Purchase Agreement**

**(Generation in Kilowatt-Hours from the City of Boulder's Betasso Power Plant,  
Orodell Project, Sunshine Project, Maxwell Power Production Facility, and  
Kohler Power Project)**

**6-Year Average (1994-1999)**

<b>Month</b>	<b>Cumulative 6-Year Average</b>
June	1,893,243
July	2,403,522
August	2,221,802

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2000, the original and 3 copies of the foregoing **STIPULATION AND SETTLEMENT AGREEMENT** were served via hand delivery, addressed to the following:

Bruce Smith, Director  
Colorado Public Utilities Commission  
1580 Logan, OL2  
Denver, Colorado 80203

and copies were faxed, hand delivered, or placed in the United States Mail, postage prepaid, addressed to:

Kenneth V. Reif, Esquire  
Director, Office of Consumer Counsel  
1580 Logan Street, Suite 610  
Denver, CO 80203

Saeed Barhaghi  
Colorado Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203

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Municipal Building  
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Audrey L. Kitzman

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

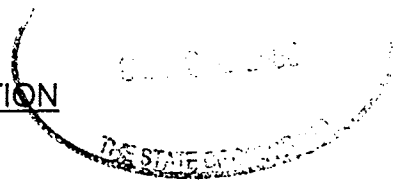
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INTEGRATED RESOURCE PLANNING	)	
RULES	)	

*file  
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PARTIAL STIPULATION



This proceeding involves the application ("Application") by Public Service Company of Colorado ("Public Service" or "PSCo") for Commission authorization to sell certain electric generating and other related assets to the City of Boulder ("Boulder"), specifically the Boulder Canyon Hydroelectric Project ("Boulder Project"). In addition to Boulder, the Commission Staff ("Staff") and the Office of Consumer Counsel ("OCC") (collectively with Public Service, the "Parties") have intervened in this proceeding.

On page 10 of the Application, Public Service represented that "[a]ny gains from the sale [of the Boulder Project] will be addressed as an aspect of PSCo's annual earnings test for the year that the gains are realized." It is projected that Public Service will achieve a gain of approximately \$10 million to \$11 million from the sale of the Boulder Project (i.e., the sales price of the Boulder Project minus the book value of all components of the Boulder Project) (the "Gain").

The Parties have met to discuss the issues raised by the Application. Although the Parties were unable to reach a resolution of all issues, the Parties were able to agree to the following principles regarding the proposed treatment of the Gain:

1. Public Service in this proceeding will not seek a Commission ruling on its proposed treatment of the Gain as specified on page 10 of the Application.
2. In the applicable earnings test filing (e.g., in 2001 for calendar year 2000 if the sales transaction closes this year), Public Service will explicitly propose to treat the Gain as an item to be considered in the earnings test proceeding.
3. Staff and OCC reserve the right to take any position that either wishes with regard to the propriety of the proposed earnings test treatment of the Gain in the proceeding referenced in Paragraph 2 above.
4. Staff and OCC will not assert in this proceeding that the appropriate treatment of the Gain must be decided in this proceeding in order for the Commission to act upon the Application.
5. In the event that the Commission nevertheless determines that the treatment of the Gain must be addressed in this proceeding before it may approve the Application, Public Service reserves the right to advocate that its originally proposed earnings test treatment (referenced in Paragraph 1) is an appropriate treatment of the Gain, and Staff and OCC reserve the right to take whatever position regarding the Gain that each deems appropriate.
6. The Parties agree that the ultimate disposition of the Gain treatment issue shall not be deemed by any of them as binding precedent with respect to


any future gain that Public Service may obtain through the disposition of any other assets in the future.

7. This Partial Stipulation shall be applicable only if the Commission authorizes Public Service to sell the Boulder Project to Boulder and if Public Service and Boulder in fact consummate the sale of the Boulder Project. In the event that the Commission does not authorize Public Service to sell the Boulder Project to Boulder or Public Service and Boulder do not consummate the sale of the Boulder Project, this Partial Stipulation shall be null and void and of no effect and no force.

Entered this 13<sup>th</sup> day of October, 2000.

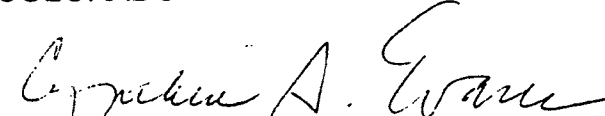
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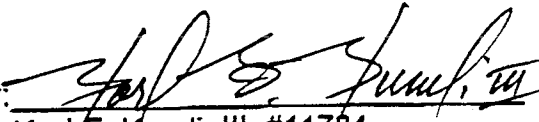
PUBLIC SERVICE COMPANY  
OF COLORADO

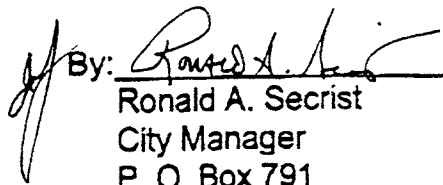
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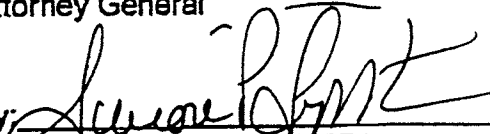
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## CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of October, 2000, the original and 15 copies of the foregoing **PARTIAL STIPULATION** were served via hand delivery, addressed to the following:

Bruce Smith, Director  
Colorado Public Utilities Commission  
1580 Logan, OL2  
Denver, CO 80203

and copies were faxed, hand delivered, or placed in the United States Mail, postage prepaid, addressed to:

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