

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-665E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVALS IN CONNECTION WITH THE THIRD AMENDMENT TO THE ON-SYSTEM POWER PURCHASE AGREEMENT BETWEEN THERMO POWER AND ELECTRIC, INC., AND PUBLIC SERVICE COMPANY OF COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SCHEDULING PREHEARING CONFERENCE,
AND LISTING ISSUES FOR DISCUSSION**

Mailed Date: February 3, 2003

I. STATEMENT

1. On December 20, 2002, Public Service Company of Colorado (PSCo or Applicant) filed its Verified Application seeking approval of the Third Amendment to the On-System Power Purchase Agreement between Thermo Power and Electric, Inc., and PSCo (the Application). Applicant filed its direct testimony and exhibits with the Application. PSCo requests that the Commission decision in this matter issue within 120 days, as provided in § 40-6-109.5, C.R.S.

2. On December 24, 2002, the Commission issued a Notice of Application Filed (Notice) in this proceeding. The Notice established a 30-day intervention period, which expired on January 23, 2003, and a procedural schedule. The Commission did not set a hearing date.

3. On January 21, 2003, Thermo Power and Electric, Inc. (Thermo), filed a Petition to Intervene in Support of the Application and in Support of Decision by August 28, 2003. On

January 23, 2003, the Colorado Office of Consumer Counsel intervened of right and requested a hearing in this docket. On January 28, 2003, Staff of the Commission intervened of right and requested a hearing in this docket.

4. By this Decision, the Administrative Law Judge will vacate the procedural schedule established in the Notice.

5. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. For this purpose a prehearing conference will be held on February 14, 2003. The provisions of Rules 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) govern this prehearing conference.

6. The parties should be prepared to discuss these matters at the prehearing conference: (a) date for filing intervenor answer testimony and exhibits;¹ (b) date for filing PSCo's rebuttal testimony and exhibits; (c) date for filing intervenor cross-answer testimony and exhibits; (d) date(s) on which parties will file corrected testimony and exhibits; (e) date on which parties will file prehearing motions; (f) a final prehearing conference date; (g) response times for discovery and for audit, including discovery and audit on rebuttal, cross-answer, and corrected testimony and exhibits; (h) procedures for handling disputes arising with respect to discovery and audit, including discovery and audit on rebuttal, cross-answer, and corrected testimony and exhibits; (i) number of days required for hearing; (j) hearing dates; (k) date for post-hearing statements of position and whether the statements should be written or oral and, if written,

¹ Thermo should be prepared to explain the process it suggests be used to implement its stated intention to sponsor and to defend on cross-examination the direct testimony of Mr. Robert Kartheiser filed by PSCo as part of its direct case. See Petition to Intervene of Thermo Power and Electric, Inc., in Support of Application and in Support of Decision by August 28, 2003, at ¶ 7. Part of this discussion should focus on whether or not Thermo should be permitted to file cross-answer testimony if its testimony is being presented as part of PSCo's direct case.

whether responses should be permitted; and (l) whether (and, if so, how) electronic service of documents should occur in this docket. Parties should also review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Parties may raise any additional issues.

7. In considering proposed dates, parties should keep in mind that, by minute entry, the Commission deemed the Application complete as of February 7, 2003. Absent extraordinary circumstances or Applicant's waiver of the statutory time frames, the decision in this proceeding should issue within 210 days of that date (*i.e.*, by September 5, 2003). *See* §§ 40-6-109.5(1) and 40-6-109.5(4), C.R.S. Further, the parties should bear in mind that the PSCo-Thermo power purchase agreement now in effect, which the Third Amendment seeks to extend for a ten-year period, will expire on August 28, 2003.

8. The undersigned expects the parties to come to the prehearing conference with proposed dates for all deadlines and expects the parties to check the Commission's calendar with respect to any suggested hearing dates. In addition, the parties are directed to consult prior to the prehearing conference with respect to issues and matters for discussion, listed above. Finally, the parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to all parties.

II. ORDER

A. It Is Ordered That:

1. A prehearing conference in this docket is scheduled as follows:

DATE: February 14, 2003

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

2. The procedural schedule established in the Notice of Application Filed, entered in this docket and dated December 24, 2002, is vacated.

3. The parties shall follow the procedures as set forth above.

4. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

**THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

MANA L. JENNINGS-FADER

Administrative Law Judge

