

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-275G

APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR RELIEF FROM CERTAIN TERMS AND CONDITIONS OF THE STIPULATION AND AGREEMENT ADOPTED IN DOCKET NO. 92A-352G PERTAINING TO THE HOLDING OF GAS GATHERING CAPACITY UPSTREAM OF ITS TIFFANY COMPRESSOR STATION IN LA PLATA COUNTY, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DENYING MOTION TO COMPEL
AND FOR EXTENSION OF TIME
TO FILE TESTIMONY**

Mailed Date: November 9, 2004

I. STATEMENT

1. On October 22, 2004, Kinder Morgan, Inc. (Kinder Morgan), filed a Motion to Compel, requesting an order of the Commission compelling Public Service Company of Colorado (Public Service) to respond to Kinder Morgan's First Set of Discovery Requests.

2. Kinder Morgan served the discovery request upon Public Service on October 12, 2004. Public Service objected to Kinder Morgan's Discovery Request Nos. KMI 1-3, KMI 1-4(i) and (j), and KMI 1-5.

3. Kinder Morgan also requested an extension of time to file its testimony which is currently due on October 29, 2004. Kinder Morgan requests an additional five working days from the date it receives discovery responses on the above requests, if Kinder Morgan prevails in its Motion to Compel.

4. Kinder Morgan summarizes its reasons for its Discovery Request Nos. KMI 1-3, KMI 1-4(i) and (j), and KMI 1-5 as follows:

[The discovery requests] seek information to determine whether the assertions made by Public Service in its Application are true and whether Public Service gained any unfair advantage over Kinder Morgan and other competing buyers of gas at the La Boca delivery point through its negotiations with Red Cedar which resulted in a new gathering agreement and a new gas purchase contract between Public Service and Red Cedar. (Page 2 of Kinder Morgan's Motion)

5. On October 26, 2004, Public Service filed a Response in Opposition to Kinder Morgan's Request for Extension of Time to File Answer Testimony, and on November 5, 2004 Public Service filed its Response to the Motion to Compel.

6. In its Response to the Motion to Compel, Public Service objects to the granting of the Motion. Public Service correctly points out that the instant proceeding involves the application of Public Service requesting relief from a Settlement Agreement that was adopted and approved in Docket No. 92A-352G, Decision No. R92-1526 (December 7, 1992). The Settlement Agreement involved upstream gathering of gas supplies. In the instant application, Public Service requests relief from an order approving the Stipulation so that it can be relieved of the requirement to continue to contract for and hold firm gas gathering capacity on or over the gas gathering system located upstream of Public Service's Tiffany Compressor Station in La Plata County, Colorado. Public Service contends that due to changed circumstances, it is unable to hold gas gathering capacity as agreed to by the terms of a 1992 Stipulation. Public Service also requests relief from all related requirements of the Stipulation applicable to gas gathering capacity and the regulatory treatment of the costs, in order to allow it to recover these upstream gathering costs in its Gas Cost Adjustment mechanism in the same way it is allowed for all other upstream gathering costs incurred by Public Service.

7. Public Service argues that the Motion to Compel should be denied since the requested discovery is irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Public Service states that Kinder Morgan's data requests to which Public Service objects, requests data concerning the gas supply arrangements of Public Service. Public Service states that the Stipulation and Settlement Agreement and Order approving same does not speak to Public Service's gas supply arrangements or purchasing. Public Service states that in the instant application it is not seeking approval of the Commission for the gas supply arrangements between Public Service and Red Cedar or any other supplier. Public Service summarizes the issues in the instant docket as a request for relief from "(i) the requirement established by the 1992 Stipulation to hold firm gas gathering capacity on the former Tiffany Gathering System upstream of Public Service's Tiffany Compressor Station; and (ii) any impediments on Public Service's ability to treat, for ratemaking purposes, the costs incurred under the new Red Cedar Gathering Agreement in the same manner as the costs Public Service incurs for other upstream services." (Page 7 of the response of Public Service to the motion of Kinder Morgan to compel discovery.)

8. Under the provisions of the Colorado Rules of Civil Procedure 26(b)(1), made applicable to the Commission proceedings pursuant to 4 *Code of Colorado Regulations* 723-1-77(b), discovery must be relevant to the subject matter of an action, and must reasonably be calculated to lead to the discovery of admissible evidence. *Lucas v. District Court*, 345 P.2d 1064 (1959). Having read the disputed discovery requests and responses and the pleadings of the parties, it is concluded that the discovery request to which Public Service objects is not relevant to this narrow proceeding and it is not reasonably calculated to lead to the discovery of admissible evidence. Therefore the motion of Kinder Morgan to compel will be denied. Since

Kinder Morgan's Motion for an Extension of Time to file its testimony relies on the results of its Motion to Compel, the Motion for an Extension will be denied.

II. ORDER

A. It Is Ordered That:

1. The motion of Kinder Morgan, Inc., to compel and for extension of time to file its testimony is denied.
2. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge