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Decision No. C08-0369

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07A-469E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT TWO COMBUSTION TURBINES AT THE FORT ST. VRAIN GENERATING STATION, FOR AN AMENDMENT TO ITS CONTINGENCY PLAN, AND FOR EXPEDITED TREATMENT.

COMMISSION ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR TWO COMBUSTION TURBINES AT THE FORT ST. VRAIN GENERATING STATION AND AMENDMENT TO THE CONTINGENCY PLAN WITH SPECIFIC FINDINGS

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application for a Certificate of Public Convenience and Necessity (CPCN) to construct additional generating facilities at its Fort St. Vrain station (Application) filed on November 27, 2007 by Public Service Company of Colorado (Public Service or the Company). Specifically, Public Service is seeking a CPCN to construct two gas combustion turbines (CTs) at this location.

2. Public Service contends that approval of the Application is necessary because of the termination of a purchase power agreement (PPA) between Public Service and Squirrel Creek Energy, LLC (Squirrel Creek), which results in a 383 megawatts (MW) capacity shortfall for the projected peak load in summer 2009.

3. Public Service asserts that it must replace the peaking power it would have obtained from the Squirrel Creek PPA in order to meet its reserve margin and avoid potential outages during the summer of 2009. To accomplish this, Public Service contends that it must begin construction by April 2008 and the Commission must issue a decision no later than April 1, 2008.

4. On November 27, 2007, Public Service filed a Motion for Modified Procedure or in the Alternative Expedited Procedure (Motion for Modified Procedure). The Motion for Modified Procedure was filed contemporaneously with its Application.

5. Citing these time constraints, Public Service requested that the Commission grant the Application for a CPCN without a hearing pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403 if the Application is uncontested.

6. In the alternative, Public Service requested that the Commission grant expedited treatment of the Application pursuant to its proposed schedule. Additionally, Public Service requested, that, if this matter proceeded to a hearing, the Commission hear this matter *en banc* because of its familiarity with the Company's resource needs and dockets.

7. In Decision No. C07-1043, effective December 13, 2007, we ordered potential intervenors to respond to Public Service's Motion for Modified Procedure and file Petitions to Intervene by December 31, 2007.

8. The following parties sought permissive intervention: Ms. Leslie Glustrom; CF&I Steel, LP and Climax Molybdenum Company (CF&I and Climax); Ms. Nancy LaPlaca; Colorado Independent Energy Association (CIEA); and Ratepayers United of Colorado (RUC). Interventions as of right were filed by Commission Staff (Staff) and the Colorado Office of Consumer Counsel (OCC).

9. No intervenor objected to the proposed expedited procedure for this docket. However, a majority of intervenors requested an evidentiary hearing due to concerns about lack of capacity caused by the PPA termination, the costs for the construction and operation of the two CTs, environmental effects of the proposed project, and the Company's preference for the two gas CTs instead of using renewable, clean energy, or other alternatives.

10. In Decision No. C08-0075, mailed on January 22, 2008, we granted all interventions and the Motion for Expedited Procedure. We also requested that parties, in their testimony, address specific topics which would be helpful to our assessment and analysis. The topics included the following: options available to the Commission at this stage of the project and going forward; the effect of a Demand Side Management (DSM)/energy efficiency program on reducing the 2009 peak demand and future peak demand; alternatives that had been evaluated

(e.g., demand curtailment, PPA, energy conservation, etc.) and why these alternatives were rejected; how Public Service determined that the self-build alternative was the best option for addressing this short-term capacity shortfall; what DSM and energy conservation programs provide solutions; and, how this situation can be avoided when considering future resources.

11. On February 5, 2008, a Stipulation and Settlement Agreement between Public Service, OCC, and Staff was filed with Public Service's rebuttal testimony. Terms of the Settlement address: 1) Approval of the CPCN Application and Modification of the Contingency Plan; 2) estimated project costs and prudence of the costs; 3) treatment of the reservation fee; 4) accounting for the combustion turbines; 5) accounting for the steam turbine; and 6) modifications to future contracts.

12. Beginning on February 12, 2008, the Commission, *en banc*, held a week-long evidentiary hearing in the matter. During the hearings, all parties had the opportunity to cross-examine the following witnesses: from Public Service, Ms. Karen Hyde, Ms. Debra Sundin, Ms. Debra Blair, Mr. Gregory Ford, Mr. Kurt Haeger, Mr. Gary Magno, Mr. John Lupo, Mr. Gerald Stellern, and Mr. Frederic Stoffel; from OCC, Dr. P.B. Schechter; from RUC, Dr. Ronal Larson; *pro se* witness Ms. Leslie Glustrom; and from Staff, Mr. Gene Camp.

13. Parties were directed to file statements of position on or before February 25, 2008. Statements of Position were filed by Public Service, Staff, the OCC, RUC, Ms. Glustrom, and Ms. LaPlaca.

14. The Commission held deliberations on the issues in this docket on March 13, March 18, and March 19, 2008.

B. Discussion and Findings**1. Two Combustion Turbines at Fort St. Vrain Generating Station**

15. As indicated above, without the Squirrel Creek project, Public Service would be 383MW short of meeting its load and maintaining a 16 percent planning reserve margin for the summer 2009 peak. Consequently, Public Service asserts the summer 2009 peak shortage necessitates immediate construction of two CTs. The estimated project cost is \$192,177,000, plus or minus ten percent.

16. Public Service indicates that, although the need for the second turbine decreases in the years 2010 through 2012, the need for the second turbine returns in 2013 to meet Public Service's planned reserve margin and estimated peak loads. Public Service also argues that it is more cost effective, due to economies of scale, to construct both turbines at the same time.

17. Public Service indicates that the Company assessed other resources and alternatives that could potentially aid in meeting the summer 2009 shortage. These other resources included implementing additional Demand Side Management (DSM), increasing interruptible load, obtaining capacity from expiring contracts, engaging in market purchases using transmission import capability, accelerating Comanche Unit 3 completion date, and using capacity available from area utilities.

18. The proposed combustion turbines provide a total of 260MW, whereas the peak summer 2009 shortfall requires 383MW. Public Service intends to obtain an additional 123MW of capacity in power purchases imported through the 236MW of firm transmission capacity reserved by the Company.

19. Public Service asserts that Colorado ratepayers would save \$14,523,288 (net present value) by the installation of these two combustion turbines in a simple cycle

configuration at Fort St. Vrain, compared to the case of a modified PPA with Squirrel Creek Energy.

20. RUC and Miss Glustrom state in Answer Testimony they are opposed to the construction of these two combustion turbines.

21. Having fully reviewed Public Service's Application and the accompanying testimony and exhibits provided by all Parties, we find good cause exists to grant this Application and to approve the Amendment to the Contingency Plan.

2. Project Prudence

22. CF&I and Climax raise a concern regarding the cost prudence of the project, but do not advocate any technical modifications to the Company's proposal. CF&I and Climax recommend that the Commission limit its approval of Public Service's Application by assigning the expenditures associated with the Project a rebuttable presumption of prudence, in contrast to a finding of prudence. Additionally, CF&I and Climax recommend the Commission require the total cost of the Fort St. Vrain project be offset by a credit of \$8,250,000 to ratepayers, the amount of the performance security deposit which the Company relinquished in its negotiations with Squirrel Creek Energy.

23. Public Service states that the Commission should make a finding that this project is prudent because (a) the termination of the Squirrel Creek PPA was based on Squirrel Creek Energy contract non-performance; (b) Public Service's purchase of the two combustion turbines and steam turbine resolved the dispute between the parties; (c) project costs should not be subject to review within a later docket because the information in this record is the best that will ever be available regarding project prudence; and, (d) project costs that been incurred are prudent

specifically for the two combustion turbines, the step-up transformers and \$2,000,000 turbine reservation fee to Siemens.

24. We are limiting our approval of this project to a rebuttable presumption of the prudence of its costs up to the \$192,177,000 project estimate amount, *without* a ten percent margin above this total. In assigning a conditional rebuttable presumption of prudence to the cost of the Fort St. Vrain project, we find that we will allow questions about the cost of construction to be raised by any party when Public Service proposes to include the facility in rate base, presumably in the Company's next rate case filing with the Commission. This approach is consistent with the Commission's rules on resource acquisition planning, in which the Commission assigns a presumption of prudence to the resources comprising the resource plan upon approving a resource plan, *see* 4 CCR 723-3-3613(d).

3. Reserve Margin

25. Ms. Glustrom and RUC Witness Larson advocate in Answer Testimony that Public Service should reduce its reserve margin from 16 percent to 12 percent, similar to the level that is being considered on the Xcel system in Minnesota

26. Public Service states there is no basis for reducing the reserve margin and that doing so would be unreasonable and imprudent. The reserve margin was set in the 2003 Least Cost Plan docket after an extensive review of future Public Service loads and resources. Witnesses Hyde (Public Service) and Camp (Staff) testified that a short-term reduction in reserve margin would not present an emergency. On the other hand, we received other testimony from Mr. Camp and Ms. Hyde that an ongoing reserve margin study was being conducted and would be completed in May 2008. Ms. Hyde states, in oral testimony, the new reserve margin study addresses many changes to Public Service's system and includes a myriad factors such as the

Comanche Unit 3 system addition, regional transmission, and additional interruptible and DSM programs. Ms. Hyde testifies that changes made to the reserve margin should be made with the benefit of the final study.

27. We find that an adequate reserve margin is fundamental to ensuring a reliable electric system and its service, which is why the Commission approved the 16 percent during the 2003 Least Cost Planning docket. Although oral testimony from Ms. Hyde and Mr. Camp suggested a temporary reduction in planning reserve margin from 16 percent to 15 percent would not create an emergency, we do not have an adequate record in this case to find that we should lower the reserve margin, especially since a new study is near completion.

28. We find the adequacy of the reserve margin study will be determined within Docket No. 07A-447E (Public Service's ERP). This determination shall be based upon how effectively Public Service incorporates available regional transmission capacity, more robust ISOC, DSM and DR programs, and expanded use of Saver Switch into this new reserve margin study.

4. Transmission System Imports

29. Public Service states that it has 236MW of firm transmission capacity available for the summer 2009 peak and plans to import 123MW of purchased power. These purchases, combined with the two combustion turbines, adequately address the 2009 summer shortfall in reserve margins and anticipated peak load. The remaining 113MW of transmission capacity will be available to address any additional contingencies Public Service's system may encounter. Public Service asserts it would be imprudent to fully utilize the 236MW of transfer capability because it would jeopardize system reliability by limiting the Company's ability to react to an unforeseen system element outage or higher than expected load growth on the Western Slope.

30. This 113MW of transmission capacity is in addition to contingency mitigation measures, such as Public Service's planning reserve margin requirement and the Western Electricity Coordinating Council's (WECC) n-minus-1 bulk electric system reliability criteria, currently in place. As testified to by Public Service witnesses Ms. Hyde and Mr. Stellern, the planning reserve margin requirement is in place to address unforeseen load growth, while WECC's n-minus-1 bulk electric system reliability criteria is enforced to ensure continuous, reliable system operations with the loss of any one system element such as a transmission line or generator unit.

31. We find there is a potential need for up to 123MW of capacity in the summer of 2009, beyond the capacity of the two turbines, in order to reliably secure reserve margins and serve peak loads. We agree that it is plausible that this capacity be provided using the 236MW of available firm transmission capacity reserved by Public Service for summer 2009. On the other hand, we are not convinced that this approach has fully considered the option of expanding demand side strategies, including ISOC, Saver's Switch and third-party aggregation of demand response.

5. Demand Side Management

32. Ms. Glustrom and RUC recommend several alternatives to the two combustion turbines at Fort St. Vrain proposed by Public Service. One alternative called for a combination of DSM, Interruptible Service Option Credit (ISOC) and other Demand Response (DR) programs.

33. Public Service states that it considered various demand-side resources in its analysis of responses to the anticipated capacity need, particularly concerning the anticipated shortfall in the summer of 2009. Public Service states that it concluded that no combination of

resources, including demand-side resources, could meet the summer 2009 need without constructing new generating capacity. The OCC concurred with this assessment.

34. Staff questioned the reliability of interruptible demand programs and other demand-side resources to substitute for firm capacity, and whether such resources could be relied upon to meet the anticipated capacity needs for summer 2009.

35. RUC, Glustrom and LaPlaca questioned the level of diligence with which Public Service considered demand-side resources to address the summer 2009 capacity needs. In view of the excess capacity in 2010-2012 resulting from the two turbines, these parties challenged whether demand-side resources should be pursued more aggressively for 2009, thereby avoiding the need for two combustion turbines and providing more options for amending the resource plan for the subsequent years.

36. Further, Ms. LaPlaca asserts, using Exhibit 46, that cost forecasts for natural gas are significantly underestimated so that any economic analysis comparing these CTs to the cost of DSM, ISOC, or DR programs could be questioned.

37. Public Service agreed that there is some potential to expand the Interruptible Service Option Credit (ISOC) program, the residential Saver's Switch program, and demand-response capacity through a third-party aggregator. Two existing DSM programs were identified as having the potential for expansion in time to impact about 8MW of the summer 2009 peak demand. Taken together, Public Service estimated that all of these resources could yield approximately 73MW of peak demand capacity for the summer of 2009. These resources were acknowledged as having the potential to reduce projected short-term capacity purchases that would otherwise need to be made in order to meet peak demand.

38. Despite significant testimony on this subject, we find that the weight of the evidence does not support the proposition that a combination of ISOC, DSM and other DR strategies can substitute for the proposed Fort St. Vrain turbines. We further find that the urgency of assuring reliable service in the summer of 2009 restricts our options to the two turbines as proposed.

39. We find, however, that significant expansion of the existing DSM, ISOC and Saver's Switch programs is feasible, as is a third-party aggregation DR program. We further find that these actions can offset a portion of the anticipated imported electric energy and capacity used to meet the peak loads and may be less costly than short-term power purchases. We desire to see expanded demand side management promptly and aggressively pursued, and will address this matter in greater detail later in this decision.

6. Combustion Turbine Rentals

40. In Answer Testimony, RUC recommends renting twelve 22MW combustion turbines and locating them at the FORT ST. VRAIN site to meet the 2009 resource need. RUC also presented testimony and evidence supporting the proposition that these turbines could be provided by General Electric (GE) at a total cost of \$38.4 million, resulting in a significant cost savings over the two CTs proposed by Public Service. RUC states that Public Service neglected to consider such an option.

41. In Rebuttal Testimony, Public Service expressed numerous concerns regarding the use of rental combustion turbines. First, Public Service was concerned about the cost of this RUC alternative. For example, the rental turbine cost estimates of \$700,000 to \$800,000 per turbine quoted in a letter from General Electric (GE) to RUC failed to include fuel and electrical interconnections, site preparation, transportation, permits, taxes, and other ancillary costs.

Second, Public Service states the rental turbines would have roughly a 17.4 percent reduction in MW output for altitude and further reduction for temperature, based on the Application of the International Standards Organization (ISO). Third, Public Service alleges that the Fort St. Vrain site would likely not be large enough to handle the required twelve turbines of this type. Lastly, regarding RUC's allegation of its failure to consider this option, Public Service argues that, based on two past experiences, such solutions have been prohibitively expensive.

42. When questioned on this matter, Staff was concerned with integrating twelve small turbines into an automatic generation control network used in the state. Staff stated that this rental turbine option would have been dismissed fairly quickly, based on this concern.

43. We find that rental turbines are not a viable alternative in this situation. This particular solution is lacking specific information such as detailed cost, site and system integration information as argued by Public Service and Staff. We appreciate RUC's attempt to exhaust all alternative options, but find that ratepayer funds would be better applied toward resources that will meet future needs as well.

C. Ms. Glustrom's Motion

44. On March 14, 2008, after the initial deliberations meeting, Ms. Leslie Glustrom filed a Motion Requesting the Commission to Submit Questions to the Parties, Establish Additional Time for a Hearing, Extend the Decision Date and Shortening Response Time.

45. In her Motion, Ms. Glustrom asserts that she believes the existing record is inadequate to support a Commission decision in this matter. Therefore, in order to avoid the consequences of a decision based on an inadequate record, Ms. Glustrom requests that the Commission issue a list of questions to the parties, establish time for a hearing, extend the decision date and shorten response time to this motion to 2 P.M. on Tuesday, March 18, 2008.

46. Public Service filed its response to Ms. Glustrom's Motion on March 17, 2008. Public Service contends that the Motion attempts to insert additional evidence into the record after the evidentiary phase of the case, and that the Motion attempts to delay the docket although all Parties agreed to the expedited nature of this docket. Additionally, Public Service maintains that it has complied with its obligations under the Colorado Revised Statutes and the Commission's Rules of Practice and Procedure regarding this Application. Finally, Public Service contends that the record is sufficient and complete.

47. We are able to reach a decision regarding Public Service's Application for two turbines fully based on and supported by the record in this case. Therefore, we deny Ms. Glustrom's Motion, but acknowledge that she has raised important issues that should be considered by this Commission in future cases.

D. Commission Concerns

48. Several factors conspired to make this a difficult and nettlesome case for the Commission to decide. Some of these factors were probably unavoidable; others may have arisen from the structure of our rules and regulatory practice, items that we control. For that reason, we think it is worth expressing these concerns to assist in avoiding them in future cases.

49. First, we are concerned with the timeframes in which the Commission was obliged to decide this case and the narrow scope of options provided by the Applicant. The sudden termination of the Squirrel Creek PPA resulted in the potential inability of Public Service to meet short term reserve margins and peak load for summer 2009. Given the contract termination at a relatively late date and the long lead time required for construction of alternatives, the Commission was placed in a difficult position by the severe limits on the time

we had to explore other alternatives. A process must be developed to prevent this or similar instances from occurring in the future.

50. Perhaps related to the timeframe problem is the narrow scope of options – a single option – offered by the Company for Commission consideration. Rather than being a consideration of competing options that could satisfy the capacity shortfall, this case resolved into a disputatious defense by Public Service of the only option placed before the Commission.

51. Second, we are concerned that the financial incentives for utilities to self-build generating capacity may have led the Company to focus on the single option presented to us, to the exclusion of other options that might have resulted in lower costs to consumers. Specifically, a combination of a revised Squirrel Creek contract, together with substantial additions of DSM, ISOC and DR programs might well have been this Commission's first choice for meeting the capacity shortfall. However, we were not offered this option for consideration by the Applicant, the OCC or the Commission's own staff because this option was eliminated by Public Service early in its analysis and these three parties closed ranks on the single proposed solution. In a more nearly ideal world, the Commission would be presented with more than a single option by Public Service, on a time frame that permits real consideration of viable options. As we have said elsewhere, we will seek ways to neutralize any regulatory bias toward self-building, so that this motivation does not crowd out other meritorious alternatives that could be preferable for customers, even if not preferable to the utility.

52. Finally, we are concerned with the state of the record concerning transmission import capacity. It appears that Public Service is reserving transmission capacity that could be characterized as being above and beyond any Commission-required or WECC-approved reserve margin requirement. Public Service states it has 236MW of firm transmission capacity available

to it for the summer 2009 peak and plans to import 123MW of this amount to meet reserve margin requirements and peak load. The remaining 113MW of firm transmission capacity, unused by Public Service, appears to result in the reserve margin being above the Commission-approved 16 percent. We question whether the cost of maintaining this cushion is reasonable and we note that this additional transmission capacity could act as a further disincentive to the development and use of ISOC, DSM and DR programs.

E. Stipulation and Settlement Agreement

53. In Answer Testimony, OCC Witness Schechter expresses concerns regarding how future PPAs could be treated to avoid a similar situation with the attendant need for expedited treatment.

54. In Answer Testimony, Staff Witnesses Camp and McGee-Stiles raise concerns regarding the treatment of several project costs, specifically the total estimated dollar amount, accounting for the steam turbine, and any gain or loss from the sale of the steam turbine.

55. A Stipulation and Settlement Agreement between Staff, the OCC, and Public Service was filed with Public Service's rebuttal testimony on February 5, 2008 addressing these concerns of the OCC and Staff. The Settlement included the following provisions and stipulations: 1) Staff and the OCC support granting the CPCN for the Fort St. Vrain project and modification of the Company's contingency plan by the addition of two 130MW combustion turbines; 2) the Project would be deemed prudent provided it is completed within 10% of Public Service's revised cost estimate of \$192,177,000; 3) Public Service shall be allowed cost recovery of the reservation fee of \$2,000,000 as a component of construction costs, unless these funds can be applied to a different project, in which case the \$2,000,000 shall be removed from the cost for the two CTs; 4) costs of the CTs will be included as a cost of construction of the project and such

amounts will be recorded in the construction work in progress (CWIP) account; 5) costs for the steam turbine will be recorded in an appropriate account until its final disposition, will not be placed in rate base, will not accumulate allowance for funds used during construction (AFUDC), and will not be amortized as part of Fort St. Vrain; 6) any gain or loss on the sale of the steam turbine shall be booked to Fort St. Vrain construction work order for the CTs; and 7) concerns expressed by the OCC regarding Public Service's power purchase agreements shall be addressed in the Electric Resource Plan docket (Docket No. 07A-447E), in order to lessen the possibility that contractual problems arise in the future that require expedited approval of alternatives.

56. As stated above, we are limiting our approval in this case to the rebuttable presumption of prudence for a project with costs up to the \$192,177,000.

57. Although we are approving the Application for the CPCN for this project, the appropriateness of the costs of the project is a separate matter. In assigning a rebuttable presumption of prudence for the cost of the Fort St. Vrain Project, we are allowing questions to be raised when the Public Service includes it in rate base during the Company's next rate case.

58. The Commission has addressed independently all of the substantive matters addressed in the Stipulation and Settlement Agreement submitted by three parties. We are entering a decision that rejects certain stipulated agreements, and modifies others. Also, we do not require or rely on the stipulation for our decision. Therefore, we do not accept the stipulation and settlement agreement entered into by Public Service, OCC and Staff.

F. DSM Directives

59. We find that the existing DSM, ISOC and Saver's Switch programs, as well as a new third-party aggregation DR program, can be used to offset a portion of the anticipated imported electric energy and capacity needed to meet the peak loads and reserve margins, and

that it may be less costly than short-term power purchases. We direct Public Service to start now to fully utilize existing DSM capabilities and expand existing programs with the goal of eliminating as much as feasible of the 123MW of projected purchase power for the summer 2009. With a proper focus on the performance of these programs, the Commission hopes and expects that the purchased power necessary to augment the application for summer of 2009 can be significantly less than 123MW.

60. Regarding specific demand response strategies, Public Service is hereby directed to issue by July 1, 2008 a Request for Proposals (RFP) to retain one or more third party demand response aggregators for its Colorado service territory. The Commission expects a meaningful effort by Public Service that will yield a significant increase in interruptible load commitments. In line with the testimony of Company witness Mr. Stoffel and other record evidence, it appears reasonable to expect such a demand-response program to yield at least 20MW by the summer of 2009.

61. The Demand Response RFP prepared by Public Service to secure demand-response services shall be provided to the Commission's advisory staff at least 20 days prior to its scheduled release, so that advisory staff may provide comments and the RFP may be released by July 1, 2008.

62. The Demand Response RFP must require that responsive proposals minimize the shifting of peak demand resources to customer on-site generation that uses fossil fuels likely to yield greater carbon emissions than other peak capacity resources. Because the Commission will be interested in the impact of this limitation, the Company shall report to the Commission on the effect that this condition has upon the response to the RFP.

63. The resulting demand response contract or contracts are to be in effect for a minimum of two years (2009 and 2010), specifically addressing summer peak demand in these years.

64. The Commission will insist on a robust effort by the Company to spur growth in its various demand-side measures. The combined impact of ISOC, DSM and demand response aggregation programs upon short-term power purchases, especially for the summer of 2009, will be closely examined in our future annual review(s) of the Electric Commodity Adjustment (ECA) and Purchased Capacity Cost Adjustment (PCCA) filings.

65. Concerning the Saver's Switch program, Public Service is directed to file, as part of its next electric DSM Plan Application, a plan for expanding this program significantly beyond levels of currently projected growth.

66. The proposed expansion plan shall specifically address methods for targeting existing customers based on individual customers' summer kW and kWh usage. We think that this analysis can serve as a guide to which customers have high usage (demand and energy) and have demand curves indicating air conditioning usage, a service that generally correlates with the utility's summer peak demand. Also, the plan shall propose marketing strategies (messages, methods of contact, etc.) and financial incentives necessary to achieve significant participation by these targeted customers. The plan shall include Public Service's recommendations of whether to apply rate design modifications, such as a time-of-use rates, to more effectively send price signals to high use/air conditioning customers, thereby encouraging their adoption of Saver's Switch. The Company's plan should address the strategy of targeting of new housing, with a goal of increasing penetration of the Saver's Switch program for new meter installations. Tactics here should include establishing home builders as promotional partners, offering a one-

time promotional discount (such as a rebate on an ENERGY STAR appliance), or any other tactics designed to engage builders and/or new homeowners and successfully overcome barriers to participation in Saver's Switch.

67. In sum, Public Service shall submit, in its DSM plan Application, proposals for increasing participation in Saver's Switch for 2009 and beyond. We find that a minimum growth target of 50 percent beyond current plans for summer 2009 is reasonable and expect such a goal to be adopted and pursued. Growth should be measured both in terms of number of customers participating and amount of capacity available to be interrupted. An emphasis on load savings per customer should result in improved targeting of customers with relatively high summer peak air conditioning demand.

G. Conclusions

68. Having reviewed Public Service's Application and the accompanying testimony and exhibits provided by all Parties, we find good cause exists to grant this Application and to approve the Amendment to the Contingency Plan with conditions detailed below.

69. We are limiting our approval of this project to a rebuttable presumption of the prudence of its costs up to the \$192,177,000 project estimate amount, *without* a ten percent margin above this total. In assigning a conditional rebuttable presumption of prudence to the cost of the Fort St. Vrain project, we find that we will allow questions about the cost of construction to be raised by any party when Public Service proposes to include the facility in rate base, presumably in the Company's next rate case filing with the Commission. This approach is consistent with the Commission's rules on resource acquisition planning, in which the Commission assigns a presumption of prudence to the resources comprising the resource plan upon approving a resource plan, *see* 4 CCR 723-3-3613(d).

70. In this order we have charged Public Service to increase the impact of its interruptible load programs and DSM programs. The Administrative Law Judge presiding in Docket No. 07S-521E, the ISOC docket, is directed to take administrative notice of this Decision. In addition, the ALJ is directed to address the issues identified in this order concerning our desire that participation be increased in Public Service's interruptible program for 2009 and beyond, as discussed in below.

71. First, the ALJ and the parties should address what additional incentives, if any, are necessary to encourage Public Service customers to take service pursuant to Public Service's interruptible tariffs. This includes examination of the incentives in the proposed tariffs as filed *and* consideration of any additional incentives that, if adopted, would encourage participation without unduly adversely affecting the cost-effectiveness of the interruptible program from the perspective of the general body of ratepayers.

72. Second, if planning and goal-setting occur in Docket No. 07S-521E (as would be the case, for example, if Public Service obtains an incentive plan), then such planning and goal-setting must factor in the impact of third-party demand response aggregation¹ which would be operating in the market simultaneously with, but independently of, Public Service's interruptible service program. Based on the information now available, our *preliminary* expectation is that, for 2009 and later years, there will be an increase in the total interruptible service goals and that the increase will be in addition to the planned goals for ISOC alone.

73. Public Service is ordered to conduct an optimization study. The objective of this optimization study is to determine the optimal price point(s) or other incentives (or both) that

¹ A third-party demand response aggregator is defined as any firm contracting with Public Service for providing service interruption programs Public Service can use to reduce peak load and address any system emergencies that may occur requiring additional resources.

Public Service must offer into the market in order significantly increase participation in the ISOC program. Public Service is ordered to file with the Commission, on or before October 1, 2009, the results of this optimization study, including detail of the study methodology. If Public Service determines, as a result of the optimization study, that changes should be made to the ISOC tariffs to optimize their effectiveness, then Public Service is ordered to file an Application seeking to change the ISOC tariffs to incorporate the changes that Public Services believes to be necessary.

74. Pending the outcome of Docket No. 07S-521E and subsequent dockets, it is anticipated that Public Service will continue to offer an ISOC tariff during 2009 and 2010. By October 1, 2009, Public Service will file a report with the Commission comparing the results of ISOC and third-party aggregated demand response program. This report shall address such factors as: costs and benefits; operational efficiency and effectiveness; number of customers enrolled; and number of kW and kWh committed. In addition, the aggregation firm(s) selected via the RFP shall provide to Public Service a separate report on the results of third-party aggregation, which report shall be provided to the Commission.

75. Also by October 1, 2009, Public Service will make a filing containing a recommendation of which of these two demand response methods – ISOC or third-party aggregation – or a combination of both, should be continued in 2011, along with the rationale supporting such recommendation.

76. The Commission expects that future ISOC dockets, starting no later than with filings corresponding to plans for 2011, will be expanded beyond ISOC to address demand response strategies and options more generally.

II. ORDER

A. The Commission Orders That:

1. The Application of Public Service Company of Colorado (Public Service) for a certificate of public convenience and necessity to construct two combustion turbines at the Fort St. Vrain Generating Station and for an Amendment to its resource contingency plan is granted consistent with the discussion above.

2. Public Service shall initiate expanded demand side management strategies consistent with the discussion above.

3. We do not accept the Stipulation and Settlement Agreement entered into and offered for approval by Public Service, Office of Consumer Counsel and Public Utilities Commission Trial Staff.

4. The Motion Requesting the Commission to Submit Questions to the Parties, Establish Additional Time for a Hearing, Extend the Decisions Date and Shortening Response Time is denied, consistent with the discussion above.

5. Public Service shall conduct an optimization study, create a report, and file this information with the Commission consistent with the discussion above.

6. The 20-day period provided for in §40-6-114, C.R.S. within which to file Applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
March 19, 2008.**

(SEAL)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners