

Decision No. C12-0882-I

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

DOCKET NO. 11A-869E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2011 ELECTRIC RESOURCE PLAN.

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DOCKET NO. 12A-782E

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IN THE MATTER OF THE APPLICATION OF PSCO FOR APPROVAL OF THE ACQUISITION OF THE BRUSH 1, 3, AND 4 GENERATION FACILITIES AND IN CONNECTION THEREWITH THE GRANT OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY IF REQUIRED AND THE APPROVAL OF COST RECOVERY THROUGH A GENERAL RATE SCHEDULE ADJUSTMENT.

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DOCKET NO. 12A-785E

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IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF THE POWER PURCHASE AGREEMENT FOR 118.8 MW OF NATURAL GAS GENERATION, EARLY RETIREMENT OF ARAPAHOE UNIT 4, AND A GAS SALES AGREEMENT.

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**INTERIM ORDER GRANTING INTERVENTIONS,  
GRANTING MOTION FOR EXTRAORDINARY  
PROTECTION, SHORTENING RESPONSE  
TIME, CONSOLIDATING DOCKETS,  
MODIFYING PROCEDURAL SCHEDULE,  
REQUIRING ADDITIONAL TESTIMONY,  
ESTABLISHING DISCOVERY PROCEDURES,  
REQUIRING STATUS REPORT, AND  
ADDRESSING PROCEDURAL ISSUES**

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Mailed Date: August 1, 2012  
Adopted Date: July 26, 2012

**TABLE OF CONTENTS**

I. BY THE COMMISSION .....2

    A. Statement .....2

    B. Discussion and Findings.....4

        1. Completeness and Interventions in Docket No. 12A-782E (Brush) .....4

        2. Completeness and Interventions in Docket No. 12A-785E (Arapahoe) .....5

        3. Motion for Extraordinary Protection in Docket No. 12A-782E (Brush) .....5

        4. Joint Motion for Extraordinary Protection in Docket No. 12A-785E (Arapahoe).....6

        5. Consolidation of Dockets .....6

        6. ERP Rule Clarification and Requirement for Additional Testimony .....8

        7. Procedural Schedule .....10

        8. Discovery Procedures.....12

        9. Other Issues .....12

II. ORDER.....13

    A. The Commission Orders That: .....13

    B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING July 26, 2012. ....16

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**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of a motion filed on July 5, 2012 (Motion) by Public Service Company of Colorado (Public Service or the Company) requesting leave to file Second Supplemental Direct Testimony addressing certain matters and filings that have transpired since the Company submitted its 2011 Electric Resource Plan (ERP) in Docket No. 11A-869E on October 31, 2011.

2. Public Service explains in the Motion that certain events, when taken together, will increase the Company’s resource need during the Resource Acquisition Period.

Specifically, Public Service states that its resource need will increase from 59 MW to 93 MW in 2017 (34 MW increase) and from 292 MW to 345 MW (52 MW increase) in 2018.

3. Along with the Motion, Public Service filed two applications in two separate dockets related to these changes in its resource need. First, Public Service filed a Verified Application in Docket No. 12A-785E requesting to retire the Company's Arapahoe Unit No. 4 coal-fired plant (Arapahoe 4) by the end of 2013 and to enter into a multi-element transaction with Southwest Generation Operating Company, LLC (SW Generation) and its affiliates SWG Arapahoe, LLC, and SWG Fountain Valley Gas, LLC. Second, the Company filed a Verified Application in Docket No. 12A-782E seeking Commission approval to acquire Brush Power LLC's (Brush) Units 1, 3, and 4 in a transaction in which the Company purchases the corporate entities that currently own those generation assets. In its Motion, Public Service concludes that, because "these transactions were just completed," this was the earliest opportunity for the Company to file supplemental testimony describing these events.

4. In addition to the impacts related to the Arapahoe 4 and Brush units, Public Service addresses in the Motion two other events affecting the Company's resource needs. Public Service submits a new sales and peak demand forecast which increases the Company's resource needs. The Company also explains that an Energy Exchange Agreement with PacifiCorp, as approved with conditions in Decision No. C12-0707 issued on June 29, 2012 in Docket No. 12A-256E, also has an impact on its resource needs.

5. By Decision No. C12-0792-I, issued July 12, 2012 in Docket No. 11A-869E, the Commission required potential parties in Docket Nos. 12A-782E and 12A-785E to file requests for intervention on or before July 19, 2012. Eleven requests for intervention were filed in

Docket No. 12A-782E, and twelve requests for intervention were filed in Docket No. 12A-785E, as discussed below.

6. By Decision No. C12-0792-I, the Commission also requested parties to respond to the Motion and to comment on procedural concerns raised by the Motion, on or before July 24, 2012. Comments were timely filed by Colorado Independent Energy Association, Colorado Energy Consumers, and Thermo Power & Electric LLC (CIEA/CEC/Thermo); Colorado Office of Consumer Counsel (OCC); SolarReserve, LLC (SolarReserve); EnCana Oil & Gas USA Inc. and Noble Energy, Inc. (the Colorado Gas Producers); Interwest Energy Alliance (Interwest); C12 Energy Inc. (C12 Energy); Staff of the Colorado Public Utilities Commission (Staff); Public Service; Climax Molybdenum Company (Climax) and CF&I Steel, L.P., doing business as Evraz Rocky Mountain Steel (Evraz); Western Resource Advocates (WRA); and SW Generation.

7. Now being duly advised in these matters, we: deem the applications filed in Docket Nos. 12A-782E and 12A-785E complete; grant the requests for interventions in Docket Nos. 12A-782E and 12A-785E and acknowledge the interventions by right of Staff and the OCC; consolidate the three dockets with Docket No. 11A-869E as the primary docket; modify the schedule and discovery procedures for the consolidated proceedings; direct Public Service to file additional written testimony; and direct Public Service, Staff, and the OCC to file a joint status report concerning the proposed selection of an Independent Evaluator. As discussed below, we also address additional motions and procedural matters.

**B. Discussion and Findings**

**1. Completeness and Interventions in Docket No. 12A-782E (Brush)**

8. In Docket No. 12A-782E, requests for intervention were timely filed by WRA, SW Generation, the Colorado Gas Producers, Climax, Evraz, CIEA, CEC, Holy Cross Electric

Association Inc. (Holy Cross), and Intermountain Rural Electric Association (IREA). No responses were filed objecting to these requests. Each of these entities is also a party in Docket No. 11A-869E. Absent objections, we grant these requests for intervention. We further note that Staff and the OCC also timely filed their interventions by right.

9. In addition, we find good cause to deem the application complete pursuant to paragraph 1303(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 for purposes of determining the deadlines for a decision under § 40-6-109.5, C.R.S. Furthermore, we find it necessary to extend the deadline for our decision under that statute to 210 days to accommodate the procedural schedule discussed below.

## **2. Completeness and Interventions in Docket No. 12A-785E (Arapahoe)**

10. Similarly, in Docket No. 12A-785E, requests for intervention were timely filed by WRA, SW Generation, the Colorado Gas Producers, Climax, Evraz, CIEA, CEC, Holy Cross, IREA, and Interwest. As each of these entities is also a party in Docket No. 11A-869E and absent objections, we also grant these requests for intervention. We further note that Staff and the OCC also timely filed their interventions by right.

11. We further find good cause to deem the application complete pursuant to the Commission's Rules of Practice and Procedure and find it necessary to extend the deadline for our decision under that statute to 210 days to accommodate the procedural schedule discussed below.

## **3. Motion for Extraordinary Protection in Docket No. 12A-782E (Brush)**

12. On July 24, 2012, Public Service filed a Motion for Extraordinary Protection. We shorten response time to this motion to August 3, 2012 so as to be able to consider the motion at a regularly scheduled Commissioners' Weekly Meeting.

**4. Joint Motion for Extraordinary Protection in Docket No. 12A-785E (Arapahoe)**

13. On July 5, 2012, Public Service and SW Generation filed a Joint Motion for Extraordinary Protection (Joint Motion). The companies seek an order pursuant to paragraph 1100(a)(III) of the Commission's Rules of Practice and Procedure, granting extraordinary protection of bid and pricing information.

14. Responses to the Joint Motion were filed by OCC and WRA. OCC requests that paragraph 1100(d) be applied as well as subparagraph 1100(a)(III). WRA states that it does not oppose the motion, since Public Service states that the information is to be provided to outside counsel and outside experts consistent with the provisions of paragraphs 3614(a) and (b) of the Commission's ERP Rules, 4 CCR 723-3-3600, *et seq.*

15. We agree with the OCC and WRA and grant the Joint Motion, consistent with both paragraphs 1100(a)(III) and 1100(d) of the Rules of Practice and Procedure and paragraphs 3614 (a) and (b) of the ERP Rules.

**5. Consolidation of Dockets**

16. By Decision No. C12-0792-I, the Commission requested that parties respond to the Motion and comment on procedural concerns raised by the Motion, on or before July 19, 2012. As listed above, comments were timely filed by CIEA/CEC/Thermo, OCC, SolarReserve, the Colorado Gas Producers, Interwest, C12 Energy, Staff, Public Service, Climax, and WRA. SW Generation also provided relevant comments in its requests for interventions in Docket Nos. 12A-782E and 12A-785E.

17. On July 24, 2012, Public Service filed a Motion for Leave to Respond to the replies to the Motion and requested a waiver of response time. In that motion, Public Service

disagrees with certain allegations made by Staff and OCC and further explains its interpretation of the Commission's ERP Rules. On July 25, 2012, Staff filed a response to the Company's Motion for Leave to Respond. Staff asserts that Public Service's filing is not consistent with the filing requirements in this docket and the Commission's rules. Public Service's filing was not helpful with respect to the comments filed by others. We thus deny the Motion for Leave to Respond.

18. With respect to the comments filed on or before July 19, 2012, the parties provide a full range of options. On one end of the spectrum, Public Service proposes that the Commission keep the Brush and Arapahoe applications separate, assuming these portions of the resource need will necessarily be carved out of ERP requirements in Docket No. 11A-869E. On the other end of the spectrum, Staff proposes that the Commission dismiss the Brush and Arapahoe applications without further consideration, arguing that these proposals are contrary to the Commission's ERP Rules. Staff suggests that the Commission's ERP process would, however, allow Public Service to include these proposals as competitive bids in the Phase II portion of the proceeding (*i.e.*, the proposed all-source solicitation). Other parties provide several other variations between these positions.

19. As explained below, we find that the proposed transactions addressed in Docket Nos. 12A-782E and 12A-785E should be considered pursuant to the ERP process set forth in the Commission rules. We are also convinced that the issues raised by the Brush and Arapahoe applications significantly overlap and affect the issues in Docket No. 11A-869E concerning the Company's ERP. In addition, we conclude that an extension of the hearing dates and other modifications to the procedural schedule in Docket No. 11A-869E would not be prohibitive. Further, we find that overall efficiency would be improved if we consider the Arapahoe and

Brush applications in the context of the Company's ERP proceeding. We therefore consolidate the three proceedings into the Company's ERP proceeding and designate Docket No. 11A-869E as the primary docket.

#### **6. ERP Rule Clarification and Requirement for Additional Testimony**

20. In light of Public Service's Brush and Arapahoe applications and its Motion, we find it necessary to clarify the applicability of the requirements of Rule 3611 for alternative forms of resource acquisition or "carve-outs" in Phase I. We also conclude that Public Service has not fully complied with ERP Rule requirements concerning its proposed alternative method of resource acquisition.

21. As stated in paragraph 3611(a), it is the Commission's policy that an all-source competitive bidding process will normally be used to acquire new utility resources. As an exception to this policy, Rule 3611(b) allows the utility to propose as a part of its ERP filing, an alternative plan for acquiring resources. However, if the utility proposes such an alternative plan it must comply with specific requirements in paragraphs 3611(b), (c), (d), (e), and (h).

22. Paragraph 3611(b) requires the utility to specify the portion of the resource need that it intends to meet through an all-source competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition. That is, the utility must specify how much of the resource need it proposes to "carve out" in Phase I for the alternative method of resource acquisition and how much resource need will remain for competitive bidding in Phase II. Public Service may have complied with this requirement in its proposed Second Supplemental Direct Testimony, since the Company states the capacity of the proposed Brush and Arapahoe facilities.



23. More importantly, however, Paragraph 3611(c) requires the utility to explain why it is in the public interest for the Commission to grant the utility's proposed alternative method of resource acquisition. The utility must specifically show in Phase I why its proposed alternative method of resource acquisition is in the public interest based on an analysis of the costs and benefits as compared with the costs and benefits expected from the Phase II all-source solicitation. Here we find that Public Service's Second Supplemental Direct Testimony does not meet this requirement. Although Public Service provides some reasoning and justification within the pre-filed Direct Testimony in Docket Nos. 12A-782E and 12A-785E, the Second Supplemental Direct Testimony in Docket No. 11A-869E does not adequately provide the analysis contemplated by the ERP Rules. Further, despite the consolidation of the dockets, we conclude that the Direct Testimony in Docket Nos. 12A-782E and 12A-785E fails to address the issue of why the public interest is best served by "carving out" this resource need in Phase I rather than assessing the proposal vis-à-vis alternative bids in Phase II. In order to cure this deficiency, we order Public Service to file Third Supplemental Direct Testimony that directly addresses the public interest rationale for the alternative forms of resource acquisition proposed in the Brush and Arapahoe applications consistent with this discussion.

24. Paragraph 3611(d) requires the utility to provide the bid policies, requests for proposals, and model contracts necessary to satisfy the resource need exclusively through all-source competitive bidding in Phase II, even if the utility proposes to carve out a portion of the resource need in Phase I for the alternative method of resource acquisition. This rule thus requires the utility to be prepared to procure the entire resource need through the preferred all-source bid solicitation process in Phase II if the Commission ultimately denies the utility's proposed Phase I "carve-outs" for the alternative method of resource acquisition.

Put another way, it is necessary for the utility to set up its resource plan to accommodate both a grant or a denial of its proposed alternative method of resource acquisition, because the Phase II process should naturally proceed in either case. Public Service's initial ERP filing in Docket No. 11A-869E generally complies with this requirement, as it is intended to accommodate bidding for the Company's entire resource need. However, the Arapahoe and Brush applications indicate that this may no longer be the case. Therefore, we require Public Service to describe in the Third Supplemental Direct Testimony how it proposes for the Brush and Arapahoe facilities to be bid into the Phase II all-source solicitation, and how utility-owned rate-base assets will be compared to Independent Power Producer bids, should the Commission deny the proposed Phase I alternative method of resource acquisition.

25. Finally, Public Service's Motion states that, in reference to the Arapahoe and Brush application, "these transactions were just completed." This appears to indicate that the alternative resource acquisitions are not being proposed but are instead completed. We therefore direct Public Service to state in the Third Supplemental Direct Testimony whether the Company has completed the negotiations for the transactions discussed in Docket Nos. 12A-782E and 12A-785E and to explain how and to what degree the Company will alter these contracts if the Commission orders revisions to the terms and conditions.

26. Finally, we conclude that paragraphs 3611(e) and (h) apply to new construction and are not applicable to the acquisition and contracting set forth in the Brush and Arapahoe applications.

## **7. Procedural Schedule**

27. By Decision No. C12-0102, issued on January 31, 2012, the Commission established a procedural schedule for Docket No. 11A-869E. In light of the consolidation of

that proceeding with Docket Nos. 12A-782E and 12A-785E and the directives above for Public Service to file Third Supplemental Direct Testimony, we find it necessary to vacate the pre-hearing conference previously scheduled for August 16, 2012, the hearings scheduled to begin on August 20, 2012, and to reset the deadline for the filing of Statements of Position (SOPs).

28. We further find it necessary to adopt the following procedural schedule:
- Public Service shall file the Third Supplemental Direct Testimony as described above on or before August 7, 2012.
  - Supplemental Answer Testimony responsive to the Direct Testimony filed in Docket Nos. 12A-782E and 12A-785E as well as to the Second and Third Supplemental Direct Testimony filed in Docket No. 11A-869E shall be due on or before September 14, 2012.
  - Supplemental Rebuttal and Cross Answer Testimony responsive to the Supplemental Answer Testimony described above shall be due on or before October 5, 2012.
  - All corrected testimony,<sup>1</sup> prehearing motions, settlements, and stipulations should be filed on or before October 17, 2012.
  - Public Service shall also coordinate with the parties and file a proposed order of witnesses with estimated cross-examination times for the hearings on or before October 17, 2012.<sup>2</sup>
  - Responses to prehearing motions are due October 23, 2012 at 12:00 noon, unless the Commission's standard 14-day response time to the motion will end on or before October 22, 2012, in which case the standard response time shall apply.
  - The Commission will convene a pre-hearing conference on October 24, 2012 at 2:00 p.m.
  - Hearings will be held October 29, 2012 through November 9, 2012, excluding Wednesdays (eight hearing days) beginning at 9:00 a.m. and concluding at 5:00 p.m.

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<sup>1</sup> Parties are instructed to file corrected testimony electronically such that the entire testimony is re-submitted with corrected pages indicated on the cover page as well as on each corrected page. This will allow for electronic copies of testimony to be referenced during the cross-examination of witnesses at the hearings.

<sup>2</sup> Public Service and the parties should develop the schedule of witnesses assuming 8 days of hearings, each with 6 hours of time available for witness cross-examination, for a total of 48 available hours.

- SOPs shall be due on or before November 26, 2012.

### **8. Discovery Procedures**

29. Responses to the discovery issued regarding the testimony described in the procedural schedule outlined above (*i.e.*, Direct in Docket Nos. 12A-782E and 12A-785E, Second Supplemental Direct, Third Supplemental Direct, Supplemental Answer, Supplemental Rebuttal, and Supplemental Cross-Answer) shall be due in five calendar days.

30. The cut-off date for discovery requests is October 19, 2012.

31. All other procedures governing discovery shall be the same as already established by previous decisions in Docket No. 11A-869E.

### **9. Other Issues**

32. Supplemental Answer Testimony shall generally be limited to the new issues raised by Public Service in its Direct Testimony in Docket Nos. 12A-782E and 12A-785E and its Second and Third Supplemental Direct Testimony in Docket No. 11A-869E. However, for good cause shown, parties may address issues raised in previous testimony.

33. We note that both Staff and Public Service make mention of the Independent Evaluator (IE) in their pre-filed testimonies. However, no IE has been proposed to the Commission pursuant to the ERP Rules. Therefore, we direct Staff, the OCC, and Public Service to file a joint status report on or before August 9, 2012 concerning the selection of an IE with a proposed timeline to secure the IE when appropriate.

34. The Motion and Statement of Colorado Independent Energy Association and Thermo Power & Electric LLC Seeking Expedited Relief Under Commission Rule 1211(d) Regarding Technical Difficulties With Commission's E-filing System, filed on July 17, 2012 requesting that, due to technical difficulties, the Commission accept for filing the Cross-Answer

Testimony of William Monsen with a corrected deemed filing date as of July 16, 2012, is granted.

**II. ORDER**

**A. The Commission Orders That:**

1. The Verified Application for Acquisition of the Brush Generating Facilities filed in Docket No. 12A-782E by Public Service Company of Colorado (Public Service) on July 5, 2012, is deemed complete.

2. The Verified Application to Retire Arapahoe Unit No. 4 and Enter into a Transaction with Southwest Generation Operating Company, LLC filed in Docket No. 12A-785E by Public Service on July 5, 2012, is deemed complete.

3. The petition for intervention in Docket No. 12A-782E filed on July 9, 2012 by Holy Cross Electric Association Inc. is granted, consistent with the above discussion.

4. The Notice of Intervention of Right in Docket No. 12A-782E filed on July 18, 2012 by the Colorado Office of Consumer Counsel (OCC) is acknowledged, consistent with the above discussion.

5. The petitions for intervention in Docket No. 12A-782E filed on July 19, 2012 by Western Resource Advocates; Southwest Generation Operating Company, LLC, (SW Generation); EnCana Oil & Gas USA Inc. and Noble Energy, Inc.; Climax Molybdenum Company; CF&I Steel, L.P., doing business as Evraz Rocky Mountain Steel; Colorado Independent Energy Association; Colorado Energy Consumers; and Intermountain Rural Electric Association are granted, consistent with the above discussion.

6. The Notice of Intervention of Right in Docket No. 12A-782E filed on July 19, 2012 by the Staff of the Colorado Public Utilities Commission (Staff) is acknowledged, consistent with the above discussion.

7. The petition for intervention in Docket No. 12A-785E filed on July 9, 2012 by Holy Cross Electric Association Inc. is granted, consistent with the above discussion.

8. The Notice of Intervention of Right in Docket No. 12A-785E filed on July 18, 2012 by the OCC is acknowledged, consistent with the above discussion.

9. The petitions for intervention in Docket No. 12A-785E filed on July 19, 2012 by Western Resource Advocates; Southwest Generation; Encana Oil & Gas USA Inc. and Noble Energy, Inc.; Climax Molybdenum Company; CF&I Steel, L.P., doing business as Evraz Rocky Mountain Steel; Colorado Independent Energy Association, Colorado Energy Consumers, and Thermo Power & Electric LLC; Colorado Energy Consumers; Intermountain Rural Electric Association; and Interwest Energy Alliance are granted, consistent with the above discussion.

10. The Notice of Intervention of Right in Docket No. 12A-785E filed on July 19, 2012 by Staff is acknowledged, consistent with the above discussion.

11. Response time to the Motion for Extraordinary Protection filed in Docket No. 12A-782E by Public Service on July 24, 2012 is shortened to August 3, 2012.

12. The Joint Motion for Extraordinary Protection filed on July 5, 2012 in Docket No. 12A-785E by Public Service and SW Generation is granted, consistent with the above discussion.

13. The Motion for Leave to Respond filed by Public Service on July 24, 2012, is denied.

14. Docket Nos. 12A-782E and 12A-785E are consolidated with Docket No. 11A-869E, consistent with the above discussion.

15. Public Service shall file a Third Supplemental Direct Testimony, consistent with the above discussion.

16. The pre-hearing conference, the hearings, and the remaining filing deadlines established by Decision No. C12-0102 are vacated, consistent with the above discussion.

17. We adopt the following procedural schedule:

|  |                     |
|--|---------------------|
| Public Service Third Supplemental Direct Testimony ..... | August 7, 2012.     |
| Supplemental Answer Testimony .....                      | September 14, 2012. |
| Supplemental Rebuttal and Cross Answer Testimony .....   | October 5, 2012.    |
| Prehearing Motions .....                                 | October 17, 2012.   |
| Settlements and Corrected Testimony .....                | October 17, 2012.   |
| Witness List with Estimated Cross-Examination.....       | October 17, 2012.   |
| Responses to October 17, 2012 Filings .....              | October 23, 2012    |
| .....  | at 12:00 noon.      |
| Statements of Position.....                              | November 26, 2012.  |

18. A prehearing conference in this proceeding is scheduled for:

DATE:           October 24, 2012

TIME:           2:00 p.m.

PLACE:          Commission Hearing Room  
                    1560 Broadway, Suite 250  
                    Denver, Colorado

19. An evidentiary hearing in this proceeding is scheduled for:

DATES:           October 29 and 30, 2012  
                  November 1 and 2, 2012  
                  November 5 and 6, 2012  
                  November 8 and 9, 2012

TIME:            9:00 a.m. to 5 p.m.

PLACE:           Commission Hearing Room  
                  1560 Broadway, Suite 250  
                  Denver, Colorado

20. Discovery procedures are set pursuant to the above discussion.

21. On or before August 9, 2012, Staff, OCC, and Public Service shall file a joint status report on the Independent Evaluator, consistent with the above discussion.

22. The Motion and Statement of Colorado Independent Energy Association and Thermo Power & Electric LLC Seeking Expedited Relief Under Commission Rule 1211(d) Regarding Technical Difficulties With Commission's E-filing System, filed on July 17, 2012, is granted.

23. This Order is effective upon its Mailed Date.

**B.   ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
      July 26, 2012.**



(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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JAMES K. TARPEY

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PAMELA J. PATTON

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Commissioners