(Decision No. 91290)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION OF THE FUEL COST ADJUSTMENT CLAUSE TARIFF OF PUBLIC SERVICE COMPANY OF COLORADO.	))))	CASE NO. 5700

September 13, 1977

Appearances: Kelly, Stansfield and O'Donnell by Donald D. Cawelti, Esq., and James R. McCotter, Esq., Denver, Colorado, for Public Service Company of Colorado;

Gorsuch, Kirgis, Campbell, Walker & Grover by William H. McEwan, Esq., and Leonard M. Campbell, Esq., Denver, Colorado, for Climax Molybdenum Company, a Division of AMAX, Inc.;

Kenneth R. Fish, Esq., Denver, Colorado, for Ann Caldwell;

Tucker K. Trautman, Esq., and Eugene C. Cavaliere, Esq., Denver, Colorado, for the Commission.

STATEMENT

BY THE COMMISSION:

By Decision No. 89225, dated August 17, 1976, the Commission instituted this Case No. 5700 involving the investigation of the fuel cost adjustment clause tariff of the Public Service Company of Colorado. The fuel cost adjustment clause (hereinafter "FCA") tariff requires Public Service Company of Colorado (hereinafter "Public Service" or "Company") to file with the Commission, on a monthly basis, the current level of cost of fuel and consequent fuel cost adjustment. The FCA will vary with the change of fuel mix utilized to generate electricity, as well as the current cost of those fuels.

By Decision No. 89225, the Commission found that an investigation of Public Service's FCA tariff was necessary to re-evaluate its underlying assumptions, as well as its effectiveness under today's circumstances. In that decision, the Commission stated:

> ". . . The hearing will inquire into all facets of the FCA, including, but not necessarily limited to, such factors as the (1) impact of the FCA on the various consumers, (2) the administrative costs of utilizing an FCA, (3) the FCA's effect, if any, upon the ability of Public Service to raise capital, (4) the present and projected state of Public Service's supplies of electric generating fuels, and (5) the effect, if any, that the FCA had on Public Service's purchases of electric generating fuels."

By that same decision, the Commission set November 15, 1976, as the date to establish the procedures to be used during the course of the instant proceeding and set further hearing dates on the matter. All persons, firms, or corporations desiring to intervene as parties in the proceeding were ordered by the aforesaid decision to file appropriate pleadings on or before November 5, 1976. By a Commission notice, dated August 20, 1976, the aforesaid date of November 15, 1976, was vacated and the matter was reset for hearing to commence on December 1, 1976.

On September 10, 1976, Climax Molybdenum Company, a Division of AMAX, Inc. (hereinafter "AMAX"), by its attorney, Leonard M. Campbell, petitioned for leave to intervene in the within case, which was granted by Commission Decision No. 89373, dated September 21, 1976. Also, on November 15, 1976, Ann Caldwell, by her attorney, Kenneth R. Fish, petitioned for leave to intervene in the within case, which was granted by Commission Decision No. 89677, dated November 23, 1976. No other petitions for leave to intervene have been filed with the Commission.

After the hearing of December 1, 1976, by Decision No. 89827, dated December 14, 1976, the Commission established the following procedural schedule:

February 1, 1977	Filing of direct testimony by Public Service Company.
March 9, 1977	Public testimony.

March 9, 1977. The dates of March 10, 11 and 16, 1977 are reserved only if necessary.	Cross-examination of Public Service Company witnesses who have filed direct testimony.
April 1, 1977	Filing of direct testimony by Intervenors and Staff of the Commission.
April 27, 1977. The dates of April 28 and 29, 1977 are reserved only if necessary.	Cross-examination of Intervenors and Staff of the Commission witnesses who have filed direct testimony.
May 11, 1977. The date of May 12, 1977 is reserved only if necessary.	Oral rebuttal and cross-examination of rebuttal witnesses.

Pursuant to that schedule, Public Service filed written direct testimony of James H. Ranniger, James N. Bumpus, William S. Landers, Robert E. Kelly, and Irwin M. Stelzer. On March 9, 1977, the Commission heard testimony from public witnesses. Cross-examination of Public Service's witnesses who had filed direct testimony took place as scheduled, March 9, 1977, following the taking of the public testimony and continued on March 10 and 16. Also, Public Service presented oral testimony of Delwin D. Hock on March 16, 1977, who was immediately cross-examined. On April 1, 1977, Intervenor Ann Caldwell filed written direct testimony of Dr. Sidney R. Finkel; Intervenor AMAX filed written direct testimony of Jack D. Ruppe; and, the Staff of the Commission filed written direct testimony of George J. Parkins and James D. Grundy. The cross-examination of the witnesses for Intervenors, with the exception of Dr. Finkel, and the Staff of the Commission, who had filed written direct testimony took place on April 28, 1977. On May 11, 1977, cross-examination of Dr. Finkel took place and Public Service presented the following rebuttal witnesses: William S. Landers, Oscar R. Lee and James H. Ranniger. Cross-examination followed immediately thereafter, During the course of the proceeding, 49 exhibits were marked and introduced into evidence by the Commission and became part of the record of this case.

By bench order, the Commission ordered that statements of position be filed, on a voluntary basis, as follows: Public Service and Intervenors could file statements of position by May 31, 1977, and Public Service could file a reply statement of position by June 17, 1977. Pursuant to that schedule, Public Service filed initial and reply statements of position and Intervenors Ann Caldwell and AMAX filed statements of position.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS ON FINDINGS OF FACT

History of FCA

The FCA concept as utilized by Public Service had its origin as early as 1923. Its purpose, of course, is to allow a utility to pass on increases or decreases in the price of fuels used for the generation of electricity on a periodic basis without the necessity of a general rate proceeding. The historic justification for allowing such an adjustment clause for fuel as opposed to all other operating expenses of an electric utility is that: (1) Fuel expense makes up a significant portion of an electric utility's operating expense; (2) there is significant variation or volatility in those expense levels throughout the year because of the change in fuel mixes and more recently substantial price increases.

The fuel costs experienced by Public Service have increased dramatically in the last several years, although in the last year the rate of increase has declined. At the beginning of 1971, the fuel costs overall for Public Service were in the neighborhood of 20¢ per MMBTU. During the years 1971 and 1972, fuel costs grew at a rate of 1.414 mills per month to approximately 32¢ per MMBTU by the end of 1972. It is also significant to note that the fluctuation in costs from month-to-month during that period of time was relatively modest. In 1973, the rate of fuel cost increase jumped to 4.186 mills per month. At the end of 1973, there was an abrupt increase in monthly fuel costs that probably can be related to the Arab oil embargo. By the end of 1973, the overall fuel cost was at approximately 42¢ per MMBTU. In 1974, the rate of increase rose to 6.072 mills per month and the cost by the end of the year was at approximately 58¢ per MMBTU. It should be noted that in March 1974, the Commission authorized Public Service to apply FCA to all rate classifications, whereas prior to that time it only applied to industrial and certain commercial classes. During that period of time, the fluctuations in monthly fuel cost were becoming more pronounced than they were in the past. In 1975, the rate rose again to 6.424 mills per month and by the end of the year the cost was approximately 67¢ per MMBTU. Again, the fluctuations on a monthly basis of those fuel costs were increasing in amplitude. Finally, in 1976, the rate of fuel cost increase dropped to 3.712 mills per month, but once again the fluctuations were of significant amplitude.

The fluctuations experienced on a monthly basis of the fuel costs are largely traceable to the particular fuel mix utilized by Public Service during that period of time rather than the actual fluctuation in the cost of the fuels utilized. For example, during the winter months when little natural gas is available because it is being used for heating purposes, Public Service uses a very high percentage of coal for generation of electricity. As more gas becomes available as the heating season ends, Public Service has historically utilized that gas in place of coal for generation of electricity. As the evidence has shown in this proceeding, during the year 1975, Public Service utilized the following proportions of gas as a percent of its electric generation: January - 10%, February - 21%, March - 28%, April - 23%, May - 45%, June - 50%, July - 42%, August - 40%, September - 38%, October - 23%, November - 12%, and December - 14%. During those same months as the percent of gas utilized for purposes of generation increased during the summer months, the percent of coal utilized for purposes of generation decreased. Since the price of natural gas on a per-Btu basis exceeds the price of coal, the increased usage of gas during those summer months will automatically, without any price increases, increase the overall cost of fuel paid by the consumer.

The Commission in the last major rate proceeding involving Public Service (Investigation and Suspension Docket No. 935) considered the operation of the FCA, the imposition of various safeguards to avoid its abuse, and its overall efficiency as a rate-adjusting mechanism. As a result of that consideration, the Commission, in its Decision 87640, which was entered on October 21, 1975, instituted the procedure requiring Public Service to file any FCA tariff, together with supporting backup data, at least five working days before the proposed effective date of said tariff, in order to allow the Commission Staff the opportunity to verify the Company's cost figures. Verification is necessary to ensure that the heat efficiency formulas of the Company are accurate, the current generation mix is reflected in the base adjustment factor, and the costs unrelated to fuel are excluded. Also, Public Service is required, on an annual basis, to submit responses to the Commission's pass-on questionaire which extensively deals with the Company's efficiency. It should also be understood that the Staff of the Commission audits Public Service on a periodic basis for the purpose of verifying cost and other data that is submitted to the Commission. In other words, the Public Service FCA mechanism, as currently operative, is not an "automatic" pass-through of increased or decreased fuel costs. On the contrary, an application by Public Service to put into effect an FCA increase or decrease cannot become effective prior to review by the Commission Staff and positive action by the Commission on the application.

Regulatory Modification Concerning FCA

I. General.

The Commission believes that the FCA should be maintained for Public Service Company at this time for the following reasons: (1) Fuel expenses make up a significant portion of the Company's total expenses and show a significant volatility or variation throughout the year; (2) the rate of increase of the cost of fuel has been greater than the general inflation felt by the Company in its other expense levels;

(3) complete elimination of the FCA in light of the above two circumstances may have substantial adverse effects on the Company's ability to raise capital; and, (4) any potential abuses or inefficiencies can be adequately prevented through close regulatory scrutiny as hereinafter ordered. If any of these circumstances changes in the future, the Commission will, of course, re-evaluate the procedure. For example, the evidence has indicated that the price of fuel while increasing is increasing at a decreasing rate. If that trend continues, and if the rate of increase in the price of fuel should approach the general inflation rate for the economy as a whole, and if this trend appears to be a stable one, the Commission will re-evaluate the propriety of an FCA under those circumstances.

II. Effect of FCA on Company's Efficiency.

There has been much testimony and discussion in this proceeding concerning what effect, if any, the operation of the FCA has had upon the efficiency of Public Service in obtaining its fuel for generation at the lowest cost possible and upon its efficiency in terms of using least costly fuel for generation whenever possible. Public Service, unlike some eastern electric utilities, is fortunate in that a substantial proportion of its generation is done through the use of coal rather than more expensive fuel oil or natural gas. The Commission is concerned, however, that no matter what fuels are utilized and in what proportions, Public Service obtains those fuels at the lowest cost possible.

With respect to the natural gas utilized for the generation, Public Service obtains that gas from two sources: Colorado Interstate Gas Company (hereinafter "CIG") and its subsidiary, Western Slope Gas Company (hereinafter "Western Slope"). A very substantial portion of the gas obtained from CIG is regulated by the Federal Power Commission (FPC) and all of the gas obtained from its subsidiary, Western Slope, is subject to the regulation of this Commission. Moreover, even that portion that is not subject to regulatory review by either the FPC or this Commission is to a large extent influenced by the pricing policies at the federal level. Thus, the price paid by Public Service for gas utilized in generation is largely beyond the control of the Company.

With respect to fuel oil, Public Service is supplied from two general sources: Independent refineries and its subsidiary, Fuel Resources Development Company (hereinafter "Fuelco"). With respect to the independent refineries, Public Service purchases that fuel oil at the posted refinery price and there is no indication that the Company has not paid the lowest possible price available. With respect to the Fuelco purchases, again, there is no indication on this record that Public Service has paid its subsidiary any more for fuels of like quality than it has its independent suppliers. Some misunderstanding developed during the course of the proceeding concerning the relative prices paid by Public Service for fuel oil to its subsidiary compared with those paid its independent suppliers. While the overall average price per gallon paid to Fuelco was greater than that paid to nonaffiliates, Public Service purchased mostly No. 2 oil from Fuelco, which is relatively more expensive than No. 6 oil purchased from its nonaffiliates. When a comparison is made for prices paid for No. 2 and No. 6 oils separately between Fuelco and nonaffiliates, there is no indication of any impropriety. However, the Commission is well aware of the potential conflict of interest that may arise when a utility is being supplied by an affiliate, such as Fuelco, and will, accordingly, deal with that potential conflict in the revisions of the FCA hereinafter discussed.

Finally, with respect to Public Service's purchases of coal, there appears to be more room for negotiation by the Company with its coal suppliers than other fuel suppliers. Given the large quantities of coal burned by Public Service for generation of electricity, the potential impact on the consumer of inefficient purchasing could be extremely significant. Although there is no indication of imprudent management by Public Service on this record, because of the potentially immense impact upon the consumer, this area bears continuous close scrutiny as hereinafter will be discussed.

The other major issue raised concerning the FCA's effect on the Company's efficiency centered on its fuel mix. Staff witness, Dr. Parkins, testified that Public Service was burning in some of its larger generating units natural gas, which is more costly, when it could burn lower priced coal instead. As previously discussed, that gas is, for the most part, burned during the summer months when it is available. There is no question from an economic point of view that a management faced with the choice may choose the higher priced gas, rather than coal, since all of those gas costs are recoverable through the FCA. Burning coal, on the other hand, even though the commodity itself is less costly, involves costs of coal handling and air pollution control equipment, which are not recoverable through the FCA. The Commission is concerned that these economic factors, created because, with an FCA, certain costs are more quickly recoverable than others, are resulting in excessive charges to the consumer.

Public Service argued that the actual quantity of gas burned in the last several years was necessary for various reasons. First, the Commission does not question the use of gas in the Company's turbine generation units since the alternative, fuel oil, is substantially more expensive than gas. Comanche units No. 1 and No. 2 are relatively new plants which have been designed to burn only coal and thus are not of concern to the Commission on this issue. The focus of the Commission's concern is the use of gas in Public Service's larger generating units which have the capacity to burn gas and coal. Presently, the following Public Service units have that capability: Arapahoe units No. 1 through 4 (236 MW net capability); Cherokee units No. 1 through 4 (706 MW net capability); and Cameo unit No. 2 (52 MW net capability). Those units represent about fifty percent of Public Service's net generating capacity. Second, the Commission does not question the use in these plants of the small amount of gas for pilot and flame stabilization purposes when firing with coal.

The principal question to be addressed involves the amount of gas utilized in these plants to facilitate maintenance of coal handling equipment and air quality control equipment. For example, in 1976, Public Service used approximately 7,900 MMcf of gas in the Arapahoe and Cherokee units for those purposes. According to the Company, about half of that amount was necessitated by an unusually great amount of maintenance on those facilities, most of which was nonrecurring. However, Public Service projected that it will continue to utilize between 4300 and 4900 MMcf of gas to facilitate such maintenance over the next five years. The Commission believes that Public Service can, in fact, carry on that maintenance with little or no gas usage. The performance of scheduled maintenance can take place in many situations without shutting down the entire unit or it can be scheduled for nonpeak periods. There are, of course, occasions when breakdowns do take place thereby requiring unanticipated or unscheduled maintenance. However, even in those situations, the Company can often delay that maintenance until off-peak periods when other capacity is available or, as a matter of last resort, the Company can draw from various power pools of which it is a member. Perhaps the best proof of the Company's ability to perfrom such maintenance without utilizing natural gas is the operation of the two Comanche units, which, as mentioned, cannot even burn gas.

Accordingly, in order to monitor this situation, the Commission will condition any approval of FCA filings upon Public Service justifying the use of any gas in Arapahoe and Cherokee units and Cameo unit except for pilot and flame stabilization purposes in the quarterly hearing as hereinafter discussed.

III. Procedural Safeguards.

As previously mentioned, the Commission, in Decision No. 87640 (Investigation and Suspension Docket No. 935, the 1975 Public Service rate proceeding), established certain procedural safeguards. While the Commission believes that those procedures have worked well in the past, further safeguards should be provided.

Public Service shall continue to make the monthly reports as it has done in the past and the Commission will continue through its Staff to check the underlying data prior to entering its order putting the FCA into effect. However, on a quarterly basis, Public Service shall file a more detailed report with the Commission setting forth, by generating facility and by fuel, the quantities burned, the prices for those fuels, and the relative fuel mixes for each of the last three months. The Commission may, from time to time, require submission of additional data on a quarterly basis by Public Service. The Staff of the Commission will also perform an audit of Public Service's FCA on a quarterly basis. Those audits may include not only financial verification of the amounts included in the FCA, but also investigation of managerial decisions concerning price of fuel, mix utilized, or other areas of management discretion affecting the FCA. It should be emphasized that each such audit will not include verification of all facets of its FCA but will focus on selected items of particular concern. It is envisioned that with four audits per year, the Commission can cover substantially all of the issues of major concern and continue that monitoring thereafter.

Within 20 days of the close of each quarter, the Commission will hold a public hearing for the purpose of having Public Service officials appear and answer questions from the Commission relevant to any or all of the reports filed by the Company concerning FCA. Any FCA charges approved in the previous three months will be conditioned subject to refund if any inaccuracies or improprieties are discovered in the quarterly audit and hearing procedure. For example, if the FCA for the previous three months includes charges for gas burned in Arapahoe, Cherokee and Cameo above the amounts determined necessary by the Commission, and if Public Service fails to justify such use, the Company will be required to refund with interest that portion of the FCA attributable thereto by crediting the customer's bill in a subsequent filing. It is the Commission's hope that said hearings will not be adversary in nature, but instead provide an informal forum for the Commission to explore on periodic basis continuing areas of concern identified above. Also, while the Commission does not consider these hearings adversary in nature, it does feel that parties other than the Commission and Public Service should be allowed to participate in an orderly fashion. In that regard, the Commission will provide an opportunity during those hearings for the taking of public testimony. Also, any citizen, or citizen group, may participate in those hearings by filing with the Commission a petition to intervene, stating the issues of interest and the extent of participation, at least 10 days prior to the scheduled quarterly hearing.

The increased reporting requirements, the quarterly audits and the quarterly public hearings should provide the Commission and the public an opportunity to continually monitor whether the Company is doing everything within its power to keep fuel costs at a minimum. Hopefully, this procedure will go a long way toward enhancing the effectiveness of the Commission's regulation of the FCA and the public's confidence in that regulation.

In addition, it became quite clear during this proceeding that not only was there a lack of confidence in the regulatory procedures involved in the FCA, but that many customers, understandably, did not understand its purpose or its operation. The Commission believes that the appearance of only the phrase "fuel cost adjustment," with the five-place decimal figure, and finally the dollar amount related thereto does not give the customer sufficient information about what the FCA is and how it operates. The Commission believes that there should be some explanation of the FCA, perhaps on the back of the bill, so that the customers will be better informed as to the concept. Accordingly, the Commission hereinafter will order Public Service to submit a proposal to the Commission providing an explanation of the FCA within its billing procedure.

IV. Calculation of FCA.

In general, the Commission will adhere to the method currently used by Public Service for calculation of FCA. However, some improvements and modifications, based on the evidence presented in this proceeding, should be made.

Because of the potential for abuse in terms of purchases of fuel oil by Public Service from its affiliate, Fuelco, a safeguard must be built in. Accordingly, fuel oil purchased by Public Service from its affiliate, Fuelco, may be included in the fuel clause at the actual cost shown on the Company's books; provided, however, in no event shall such cost exceed the average price of the same type and quality of fuel purchased under contracts from all nonaffiliated sources during the same period. The Commission may grant relief from that provision only if the Company can show substantial grounds therefor.

The Commission feels strongly that an adjustment clause, such as the FCA, should only be utilized as a regulatory device in very limited and extraordinary circumstances. As we have previously discussed, there is no question at this point in time that fuel expense is extraordinary in terms of its magnitude, its rate of increase in the recent past, and its volatility throughout the year. Accordingly, the Company may include in the calculation of the FCA the amounts included in Account No. 501 (steam power generation - fuel) and Account No. 547 (other power generation - fuel) as recorded in the Company's book of account. However, the Company should continue to exclude for purposes of calculating FCA all costs associated with unloading, handling of stockpiles, fuel treatment and ash disposal. Those costs clearly do not have the characteristics of the pure fuel cost as described above. And, finally, all transportation costs from the mine or other point of origin to the plant should be excluded for purposes of calculating FCA. The record is not clear that fuel transportation costs are a significant portion of the Company's total expenses. Moreover, the record is clear that transportation costs have not increased at a rate in excess of the general rate of inflation, and they do not exhibit the volatility or variation of fuel costs.

V. Miscellaneous Proposals.

Intervenor AMAX proposed that the FCA be converted to a zero-based regulatory mechanism. The present FCA only represents revenues attributable to fuel costs either above or below the cost of fuel included in the base rates established during a general rate proceeding. The zero-based concept would dictate that the base rates include no revenues attributable to fuel costs, which instead would be reflected in the FCA in their entirety. Theoretically, this concept, if understood, would allow the customer to identify that portion of his bill attributable to fuel costs and perhaps assist in promoting conservation. However, as discussed above, there is a widespread misunderstanding of the current FCA, let alone a zero-based FCA concept. A zero-based FCA would increase that portion of the customer's bill substantially. The Commission believes that the present FCA mechanism should be maintained for the present at least until consumer understanding is increased.

Public Service has recommended a franchise tax adjustment to be included in calculating the FCA to account for additional franchise taxes that the Company pays on fuel cost adjustment revenue. The present clause includes no such factor. In light of the fact that the franchise tax amount is a direct function of the FCA revenues, it, of course, exhibits the same volatility that the fuel costs do. Accordingly, the Commission will allow the proposed franchise tax adjustment. It should be noted that the Commission is concerned with the fact that such taxes will be paid by all customers, whether they live in a franchised area or not. That issue should be investigated in Phase II of the current Public Service Company general rate proceeding (Investigation and Suspension Docket No. 1116) and a determination made therein.

Finally, Public Service recommends that the FCA be modified by reflecting current heat rate and system loss parameters by delivery level. The current FCA is designed on the basis of the primary delivery level and does not include separate factors for the various distribution levels. The proposed change for calculation based on the primary level to separate calculations by distribution level would result in greater revenue impact on residential customers and a lesser impact on other customer classifications. In light of that potential impact, the Commission will not make the modification recommended by Public Service.

Use of FCA to Fund Exploration and Development Joint Venture

I. General.

One of the central issues raised in this Case No. 5700 has been the alleged propriety and/or legality of Public Service's use of the FCA as a means of funding Fuelco's obligations under an exploration and development joint venture with Pasco, Inc. (hereinafter referred to as "Pasco"), Energetics, Inc. (hereinafter referred to as "Energetics"), Pacific Power & Light Company (hereinafter referred to as "PP&L"), and Minnesota Mining and Manufacturing Company (hereinafter referred to as "3M").

The issue is comprised of four separate aspects: (1) a joint venture agreement, dated October 23, 1973, effective October 1, 1973, among Fuelco, Pasco, Energetics and PP&L for the exploration and development of crude oil and sale of refined petroleum products. The 3M company joined the joint venture by separate agreement, dated February 20, 1974, effective as of January 1, 1974. On May 11, 1976, a supplemental agreement was entered into among all the parties; (2) a guaranty executed by Public Service on October 23, 1973, guaranteeing Fuelco's monetary obligations under the joint venture agreement; (3) a purchase and sales agreement, dated October 24, 1973, effective October 1, 1973, between Public Service and Fuelco for the sale by Fuelco to Public Service of the refined petroleum products to which Fuelco was entitled under the joint venture agreement; and, (4) use by Public Service of FCA provisions in its filed tariffs to fund Fuelco's monetary obligations under the joint venture agreement.

II. Joint Venture Agreement.

A. Parties.

As stated above, the parties to the original agreement were Fuelco, Pasco, Energetics and PP&L.

Fuelco is a wholly owned subsidiary of Public Service Company of Colorado, with offices in Denver, Colorado. Public Service is the sole stockholder of the 30,000 shares of issued and outstanding common stock of Fuelco. Fuelco was incorporated in December 1970 and commenced operations January 1, 1971. Fuelco was formed primarily to search for and obtain natural gas to augment Public Service's sources of natural gas. Fuelco functions in the joint venture as one of three financing partners, the other two being PP&L and 3M. All three financing partners are also purchasers of the refined petroleum products produced under the joint venture.

Pasco was originally incorporated in 1947 as Pan American Sulphur Company to develop sulphur and other minerals in Central America. In 1972, it changed its name to Pasco, Inc., and entered the petroleum business by purchasing assets from Atlantic Richfield Company that were formerly owned by Sinclair Oil Corporation. Among the assets acquired from Atlantic Richfield Company was a refinery located in Sinclair, Wyoming. Prior to execution of the joint venture agreement, Pasco had increased the capacity of its Sinclair refinery by 20,000 barrels per day and was looking for both additional crude, and a market for the additional refined products. Pasco functions in the joint venture as the purchaser and refiner of the crude oil.

Energetics is a wholly owned and operating subsidiary of Industrial Energy Corporation, which acquired the assets of Energetics in 1974. Energetics was incorporated in March 1971 as a Colorado corporation with offices in Englewood, Colorado. Energetics was formed as an oil and gas exploration and development company. Energetics functions in the joint venture as the operator and exploration company.

PP&L is a public utility similar to Public Service, with offices in Portland, Oregon. PP&L is one of the three financing partners and purchaser of refined products under the agreement.

B. Synopsis of Salient Terms.

The term of the joint venture agreement is five and one-quarter years, commencing October 1, 1973, and terminating December 31, 1978, except that the agreement may be sooner terminated, as provided therein. Thus, at the time of the writing of this decision the agreement has a little more than 15 months to run. As stated above, Fuelco and PP&L (and 3M as of January 1, 1974) function as the financing owners of the properties and wells to be developed under the agreement. Under the agreement, Fuelco agreed to commit $20,624,063 to the joint venture, or 75.1251% of the funds. The agreement contains a schedule of the amounts of "committed funds" to be made available for expenditure under the terms of the agreement. For the period from October 1, 1973, through December 31, 1974, Fuelco agreed to commit funds totaling $3,067,783 to the exploration and development venture; for the calendar year 1975, $4,357,728; for the calendar year 1976, $4,357,728; for the calendar year 1977, $4,420,412; and, for the calendar year 1978, $4,420,412. A schedule of committed funds from PP&L is also contained in the agreement. The total "committed funds" to be provided by PP&L is $3,119,823, or 11.3766% of the total amount. The balance, not to exceed $5.1 million, is to be provided by 3M.

Generally, under the agreement, all interest in real and personal property, including oil and gas leases and leasehold interests, are to be beneficially owned in their entirety by Fuelco, PP&L (referred to in the agreement as "owners"), and 3M by virtue of the February 20, 1974, agreement, each to own an undivided interest in the properties in the ratios set forth in the agreement, subject to any interest in producing leases that Pasco and Energetics acquire under the agreement, to the call on oil by Pasco, and the call on gas by Fuelco. Likewise, each exploratory well and all production therefrom is to be owned entirely and forever by the owners in the ratios set forth in the agreement, subject only to existing royalties, overrides, and the overriding royalty of Energetics described in the agreement, to Pasco's call on the crude oil produced, and Fuelco's call on natural gas, as provided in the agreement.

Energetics acquired a gross overriding royalty of no more than 2% of 100%, which is to burden all oil and gas leases acquired as exploratory prospects.

Under the agreement, Pasco was granted by the owners and Energetics a call on all crude oil produced from exploratory or development wells, and also from leases producing at the time of their acquisition. The price for all crude oil purchased pursuant to the call granted to Pasco is to be at a price per barrel which is at least as favorable to the owners and Energetics as the highest posted price in the area generally offered for similar crude by responsible crude oil purchasers. Pasco, on its part, agreed to purchase all of the oil for which it was granted a call under the agreement for the duration of production, subject only to the refinery capacity of its Sinclair, Wyoming, plant and any other plants that it may own. Oil not purchased by Pasco can be sold to other purchasers.

Fuelco under the agreement was granted a call upon all natural gas produced under the terms of the agreement from exploratory or development oils, and to the extent of Energetics' right to make such grant, from producing leases acquired under the agreement. The purchase price of the gas and the terms and conditions of the gas purchased under the agreement are to be at least as favorable to Energetics, PP&L and 3M as the most favorable gas purchase agreement currently existing in the area for substantial sales for resale of similar gas produced under similar conditions.

Under the agreement, Pasco agreed to make available to the owners refined petroleum products in the amounts set forth in the agreement.

With respect to Fuelco, Pasco committed to deliver certain amounts of refined petroleum products without regard to whether or not any oil was produced or acquired under the joint venture agreement. Under this commitment, by an amendment, dated December 1, 1975, to the original agreement, Pasco is to make available to Fuelco No. 2 fuel oil in the following amounts: 28,515,000 gallons during the period October 1, 1973, through December 31, 1974; 44,978,000 gallons during the calendar year 1975; 39,978,000 gallons during the calendar year 1976; 40,778,000 gallons during the calendar year 1977; and 40,778,000 gallons during the calendar year 1978, for a total of 192,027,000 gallons. In addition, Pasco is to make available to Fuelco during this period of time 71,182,300 gallons of No. 6 fuel oil. The volumes of refined products that Fuelco is entitled to take under the agreement from Pasco could be increased depending upon the availability of crude subject to the call by Pasco. In addition, following termination of the joint venture agreement on December 31, 1978, Pasco agrees to make available to the owners during any calendar quarter, refined petroleum products in an amount equal to one barrel of refined products for every two barrels of crude oil Pasco is assured of having available for purchase during that calendar quarter pursuant to its call on oil.

Public Service offered testimony in this proceeding describing the events leading up to Fuelco's joining the joint venture. Further explanation appears in Exhibit 11. As early as 1970, Public Service became seriously concerned about its long-term fuel supplies due to declining long-term availability of natural gas for use as boiler fuel to generate electricity and for resale to customers using natural gas for space heating. In 1972, CIG filed tariffs with the FPC seeking authority to limit to the 1972 level its annual sales volumes of natural gas to its resale customers, such as Public Service. The annual sales volume limitation of approximately 430 Bcf established in 1972 is still effective. In December 1972, CIG also informed Public Service that it intended to terminate as of January 1, 1975, a direct sale contract for firm gas between the companies for natural gas used as boiler fuel at Public Service's Zuni plant to generate electricity and to produce steam to heat downtown Denver buildings. As a result of this notification, Public Service converted the Zuni plant to dual-fuel burning capability in order to burn both natural gas, on an interruptible basis, and fuel oil. Coal was not chosen as the alternate fuel because of a lack of space to install necessary air quality control equipment required under the Environmental Protection Act. In August 1973, CIG filed tariffs to also limit its peak-day deliverability to its resale customers. To compound matters, Colorado experienced a severely cold 1972-1973 winter. During the 1972-1973 winter, Public Service interrupted all of its interruptible natural gas customers, which included a number of school systems. To compound matters further, fuel oil had been in scarce supply during the winter of 1972-1973. As a result, many schools remained closed after the Christmas holiday recess because of low supplies of fuel oil. Thus, when Pasco approached Fuelco in August 1973 with the joint venture proposal, Fuelco accepted, since it was exactly what Fuelco had been attempting to put together itself. Fuelco, by this time, was itself deeply involved in purchasing leases and exploring for natural gas and oil. One of the terms of the joint venture agreement would permit Public Service to sell fuel oil to its interruptible customers under conditions that existed during the 1972-1973 winter; i.e., where the winter is unusually cold, the customer to which the sale of fuel oil is made has been interrupted, and there is a shortage of fuel oil in the area for heating purposes.

Placing the joint venture agreement in the context of the time in which it was executed, the management of Public Service acted properly in attempting to secure, as a minimum, a five-year guaranteed supply of fuel oil for both itself and its customers.

III. Guaranty.

On October 23, 1973, the same day that Fuelco entered into the joint venture agreement, Public Service executed a guaranty, guaranteeing to and for the benefit of Energetics and Pasco the financial obligations of Fuelco under the joint venture agreement.

Intervenor Ann Caldwell, during cross-examination of Public Service witness Robert E. Kelly, challenged the legality of the guaranty. Intervenor Caldwell contended that the guaranty comes within the purview of C.R.S. 1973, 40-1-104, and since Public Service never applied to the Commission for an order authorizing the issuance of the guaranty, the guaranty is void.

Subsection 40-1-104(1) defines "security" to include "other evidence of debt." By terms of the joint venture, Fuelco is obligated to make available for expenditure under the agreement $20,642,063 in "committed funds" over the five-and-one-quarter-year term of the agreement. It is conceivable that a court of law, in interpreting the joint venture agreement, could find the joint venture agreement is an evidence of debt of Fuelco within the meaning of the statute. In that event, Public Service's guaranty of Fuelco's obligations under the joint venture agreement would be void under Section 40-1-104. This, however, would not of necessity void the joint venture agreement, or for that matter, the sales agreement between Public Service and Fuelco. In any event, declaration of the guaranty as void under Section 40-1-104 would constitute, in the opinion of the Commission, a denial of due process, inasmuch as no notice was given to Public Service when this case was commenced that the validity of the guaranty was under challenge by the Commission. See Public Utilities Commission v. Colorado Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968), and Earl F. Buckingham v. Public Utilities Commission, 180 Colo. 267, 504 P.2d 677 (1972).

IV. Refined Products Sales Agreement.

As stated above, on the day following the execution of the joint venture agreement, Fuelco entered into a sales agreement with Public Service for the sale of the refined petroleum products to which Fuelco was entitled under the terms of the joint venture agreement. The type and quantity of refined petroleum products to be sold by Fuelco to Public Service is that to which Fuelco is entitled under the joint venture agreement.

The "base price" per gallon for each type of refined petroleum product to be sold by Fuelco to Public Service is stated as the price to Fuelco at Pasco's Sinclair, Wyoming, refinery, or at any other refinery from which Fuelco secures the refined petroleum products under the joint venture agreement. The purchase price to be paid by Public Service includes the base price plus (a) all transportation costs incurred by Fuelco in delivering the refined petroleum products to the delivery point designated by Public Service, (b) all taxes and any other costs or expenses Fuelco is required to bear in connection with the acquisition, transportation or delivery of the refined petroleum products, (c) 8.0756¢ per gallon for the first 180,000 gallons of scheduled refined petroleum products delivered in any month, and 7.8356¢ for each additional gallon of scheduled refined petroleum products delivered in any one month (hereinafter sometimes referred to as "premium increment"), and (d) .24¢ per gallon for unscheduled refined petroleum products delivered in any month. It was the premium increment that led to the investigation by the Federal Energy Administration of the sales of refined petroleum products from Fuelco to Public Service.

Under the sales agreement, if in any calendar quarter Public Service desires not to purchase all or any part of the refined petroleum products scheduled for delivery in that quarter, or in the event that Fuelco cannot make available for delivery to Public Service all or part of the scheduled refined petroleum products during that calendar quarter, Public Service still is obligated to pay Fuelco the premium increment of the scheduled refined products not delivered.

By a letter amendment dated December 30, 1975, Fuelco agreed to repay Public Service from net profits, if any, an amount equal to 125% of the total amount of all payments made by Public Service pursuant to the 8.0756¢-per-gallon and 7.8356¢-per-gallon provisions of the agreement and agreed to use the moneys so received to fund its obligations under the joint venture agreement. The premium increment in the purchase price paid by Public Service to Fuelco has been included in Public Service's calculations for fuel costs and collected from its electric ratepayers through both the base cost of fuel and fuel cost adjustment provisions of its filed tariffs. The inclusion of the premium increment in the fuel cost adjustment calculation has been approved by this Commission on a monthly basis at the time Public Service has filed its monthly application to either increase or decrease the FCA as a result of the prior month's cost of fuel for generating electric power.

V. Public Service Payments to Fuelco Through FCA.

As stated above, Fuelco by the terms of the joint venture agreement has "committed funds" totaling $20,642,063 to the exploration and development program, to be paid over a five-and-one-quarter-year period, commencing October 1, 1973, and terminating December 31, 1978. All of the moneys used to date of this decision to meet Fuelco's financial obligations have been advanced by Public Service. The mechanism initially used to transfer the moneys from Public Service to Fuelco was the 8.0756¢-per-gallon and 7.8356¢-per-gallon premium increment added to the base price of the refined petroleum products sold by Fuelco to Public Service under the October 24, 1973, sales agreement between the parties.

Although the sales agreement states otherwise, Public Service has argued to the Federal Energy Administration in its "Statement of Explanation, Re: Refined Petroleum Products Pricing" (Exhibit 11) that the premium increment is not part of the price of refined petroleum products sold by Fuelco to Public Service. According to Public Service in its Statement to the FEA, although some of the invoices submitted by Fuelco to Public Service for refined petroleum products indicated a billing price approximately 8¢ higher than the price Fuelco paid Pasco, the price covers two separate billing amounts. The joint invoicing of the gallonage delivered and the separate exploration fund was nothing more than a convenient accounting procedure selected by Public Service for money management purposes. Public Service has argued that the premium increment is not part of the price of the refined product because it has no relationship to gallons purchased. This is so because Public Service is obligated to pay the stated premium increment amount to Fuelco whether or not it receives all, none, less or more than the stated scheduled gallons of refined product, which, in fact, has actually occurred. In this proceeding, Public Service has stated that it has changed its method of calculating its payments to Fuelco to fund Fuelco's financial obligations under the joint venture agreement. Public Service now takes the annual amount of "committed funds" owed by Fuelco under the joint venture agreement, divides the amount by 12, and pays over that amount monthly to Fuelco. Presently, that amount is $400,000 a month. For purposes of this case, the Commission will accept Public Service's position that the premium increment is not part of the sales price of the refined products purchased from Fuelco under the sales agreement and joint venture agreement.

The Commission in the past has approved FCA tariff filings that included expenses under a broad definition of "fuel costs," such as transportation costs of coal from the mine to Public Service's electric generating plants, and costs of the exploration and development joint venture to secure supplies of refined petroleum products for use in electric generating plants. As a result of the hearings held in this proceeding, the Commission has determined to narrow the definition of "fuel costs" it will use with respect to calculations of the FCA subsequent to the issuance of the within decision. As discussed above, only the cost of fuel itself and directly related costs that are as volatile, such as franchise taxes which rise and fall with the FCA, will be included in fuel costs for FCA purposes in the future. As mentioned previously, fuel transportation costs will be excluded. In addition, the premium increment used to fund Fuelco's financial obligations under the joint venture agreement will also be excluded from calculation of the monthly FCA, effective November 1, 1977. This should not be construed to mean this Commission has concluded that prior inclusion in the FCA of the premium increment was improper or unlawful under the Public Utilities Law. On the contrary, the opposite should be inferred. The premium increment is being excluded because it is admittedly not part of the purchase price of fuel oil and does not fit the criteria for inclusion as a directly related fuel cost.

<u>VI. Return of Consumer-Supplied Capital</u>.

Much testimony was elicited during the hearings held herein concerning the pay-back provisions of the October 24, 1973, agreement, as amended December 30, 1975, between Public Service and Fuelco. As stated previously, Fuelco has agreed to pay Public Service up to 125% of the total amount advanced by Public Service to Fuelco to fund Fuelco's financial obligations under the joint venture agreement. Fuelco's obligation to repay occurs <u>only</u> if Fuelco realizes net profits from the joint venture. Public Service has testified in this proceeding that any net profits in excess of 125% will be plowed back into exploration and development for natural gas and oil supplies to augment Public Service's present supplies, although there is no such provision in the agreement. It should be remembered that the pay-back provision involves only Fuelco and Public Service, not Fuelco and the electric customers of Public Service or Public Service and its electric customers. Whether the 125% pay-back provision is a "good" deal or a "bad" deal for Public Service is a matter between Public Service and Fuelco. Frankly, in the Commission's opinion, it is not beneficial to Public Service because of the extremely low rate of "interest" earned on the money advanced and on the contingency conditioning its pay-back. To date, no moneys have been repaid to Public Service, since Fuelco has experienced no net profits from the joint venture. Public Service, however, has explained that the early years of any exploration program are taken up with purchasing leases and exploration, and only later after producing wells have been successfully drilled, are revenues realized to offset earlier expenditures.

Regardless of whether Fuelco ever realizes net profits equal to 125% of the moneys advanced by Public Service and pays such amount to Public Service, the Commission has determined to order Public Service to return to its electric customers the consumer-supplied capital provided by them, with interest. Interest shall be at rates Public Service would have had to pay had it issued long-term, first-mortgage bonds to finance the amounts advanced to Fuelco. For example, the $3,067,783 collected through the FCA during the period October 1, 1973, to December 31, 1974, shall be at the average rate for utility bonds rated Aa by Moody's Investors Service, Inc., and AA by Standard & Poor's Corporation (hereinafter referred to as "Aa" and "AA") issued on or about October 1, 1973. The amount collected through the FCA during 1975 shall be at the average interest rate for Aa and AA utility bonds issued on or about January 1, 1975; the amount collected during 1976 shall be at the average interest rate for Aa and AA utility bonds issued on or about January 1, 1976; and the amount collected during 1977 shall be at the average interest rate for Aa and AA utility bonds issued on or about January 1, 1977. The average interest rate for Aa and AA rated utility bonds has been chosen because during the period involved, Public Service's bonds were rated Aa by Moody's and AA by Standard & Poor's. Return of consumer-supplied capital collected during 1973 and 1974 shall be credited to the FCA with interest during 1979, beginning January 1, 1979. The annual amount to be credited shall be divided by 12 and the resulting quotient credited to the FCA on a monthly basis. Consumer-supplied capital advanced during 1975 shall be credited with interest during 1980, etc., through 1982. The Commission has chosen to treat the moneys collected under the FCA as debt rather than equity. Inasmuch as the exploration and development for oil and gas is a very speculative business, it would not be prudent to assume that Public Service's customers voluntarily would have chosen to invest some $20,624,063 in the joint venture without some assurance that the moneys advanced would be returned. One way to guarantee return is to treat it as debt. This the Commission has chosen to do herein.

Lest one interprets this decision as being contrary to Decision No. 91158 entered by this Commission on August 16, 1977, in Alexia J. Rupp, et al., v. Public Service Company of Colorado, Case No. 5707-Amended, the following discussion has been included. In Rupp v. Public Service Company, the Complainants alleged in general terms that Public Service's collection of moneys from its customers with which to pay Fuelco under its agreement (1) was contrary to C.R.S. 1973, 40-1-101, and to certain unspecified rules and regulations of the Commission; and (2) constituted unjust and unreasonable rates or charges; therefore, Public Service was liable to Complainants and other ratepayers; and (3) that Public Service has received a credit from Fuelco and therefore under rules and regulations of the Commission, Public Service should refund the amount credited to its customers. In order to grant the prayer for relief in the complaint in Rupp v. Public Service Company, the Commission would have to find that the inclusion by Public Service of the premium increment in the FCA resulted in an unjust, unreasonable and unlawful tariff charge under the

Public Utilities Law. This, the Commission cannot so find. First of all, all of the moneys collected by Public Service under the FCA have been collected pursuant to Commission-approved tariffs filed pursuant to properly entered decisions of this Commission upon application by Public Service. Furthermore, no allegations are contained in the complaint that Public Service collected moneys in excess of its filed tariffs. Finally, all decisions of the Commission approving the monthly FCA application filings by Public Service have become final and not subject to attack in a collateral proceeding. See C.R.S. 1973, 40-6-112(2). In addition to the above, even if the monthly FCA tariff revisions had become effective as 30-day-notice tariff filings without formal Commissional approval, and the Commission, upon complaint and after hearing pursuant to C.R.S. 1973, 40-3-111, found the rates and charges therein to be unjust, and unreasonable, the Commission could only establish new rates and charges "to be thereafter observed and in force." Section 40-3-111 would not permit the Commission to act retroactively to undo actions taken by Public Service in reliance upon said tariffs. The situation is analogous to a legislature enacting a statute and then after several years either amending or repealing that statute. The legislature may not then undo retroactively any actions taken which were consistent with the statute while it was in effect. The actions of the legislature may operate only prospectively. The same applies to the Commission in regulating utility rates, which regulation repeatedly has been called a legislative function by our Supreme Court.

This does not mean, however, that the Commission is without power to act prospectively to insure that those who ultimately supplied the capital are treated in a manner no less favorable than any other investor of Public Service. The Commission to date has never ruled upon the terms and conditions governing Public Service's obligations to its electric customers from whom it has received the capital used to pay Fuelco under its agreement with Fuelco. Had Fuelco subsequent to termination of the joint venture agreement realized net profits from the joint venture in excess of

125% of its committed funds and had paid Public Service all moneys theretofor paid by Public Service to Fuelco, plus 25%, and Public Service had applied to the Commission for an order passing-on the moneys to its electric customers, this Commission, as presently constituted, would have rejected the application on the grounds that the 25% was insufficient return on consumer-supplied capital. There is no reason to assume that consumers would demand a return less than any other investor of Public Service. Rather than waiting for such event, if it were ever to occur, the Commission has chosen this proceeding to inform both Public Service and its electric customers of the terms and conditions governing the consumer-supplied capital.

Inasmuch as we are directing the return of consumer-supplied capital to the consumers by means of a credit accomplished through the FCA mechanism, commencing January 1, 1979, profits, if any, which may hereafter accrue to Public Service or Fuelco as a result of the joint venture agreement may be retained by Public Service or Fuelco. By the same token, those companies, and not Public Service ratepayers, must bear any losses. And finally, any payments by Public Service to Fuelco, subsequent to November 1, 1977, under the refined production agreement, shall not be included as an "above-the-line" item in any future rate proceeding.

Attorney's and Expert Witness Fees

On May 31, 1977, Intervenor Ann Caldwell, by her attorney, Kenneth R. Fish, of the Legal Aid Society of Metropolitan Denver, filed a motion for reimbursement in the amount of $7,253.07 for attorney's fees, expert witness fees and other costs of participation in this proceeding. Intervenor Caldwell broke down those expenses as follows:

Attorney's fees -- 127.5 hours at $40.00 per hour	= $5,100.00
Presentation of the expert Dr. Sidney R. Finkel	- $2,048.70
Out-of-pocket costs for preparation and service of pleadings, testimony and exhibits	- $104.37

Attached to Intervenor Caldwell's motion was an affidavit verifying said amounts. In various past decisions, including Decisions Nos. 85817, 85724, 85804, 86542, 87701, 86103, and 88111, the Commission has set forth requirements that must be met before it will order a utility to reimburse a Protestant-Intervenor for costs incurred. Specifically, the criteria set forth are as follows:

> 1. The representation of the Protestant-Intervenor and expenses incurred must relate to general consumer interests and not to a specific rate or preferential treatment of a particular class of ratepayers;
>
> 2. The testimony, evidence and exhibits introduced in this proceeding by the Protestant-Intervenor are exceptional and have or will materially assist the Commission in fulfilling its statutory duty to determine the just and reasonable rates that the utility shall be permitted to charge its customers;
>
> 3. The fees and costs incurred by the Protestant-Intervenor for which reimbursement is sought are reasonable charges for the services rendered on behalf of the general consumer interests.

Based upon the criteria set forth above, the Commission finds that the participation of Intervenor Caldwell materially assisted the Commission in fulfilling its statutory duty to investigate the regulatory concepts of the FCA at issue herein. The testimony of Dr. Sidney R. Finkel was particularly helpful in that regard. Accordingly, the Commission will hereinafter order Public Service to pay the Legal Aid Society of Metropolitan Denver a sum of $2,653.07, consisting of the following:

a.	Attorney's fees	$500.00
b.	Attorney's costs	$104.37
c.	Expert witness fees	$2,048.70

O R D E R

THE COMMISSION ORDERS THAT:

1. The Public Service Company of Colorado be, and hereby is, ordered to file a fuel cost adjustment clause tariff applicable to all of its retail electric customers implementing this decision and order and to be effective no later than November 1, 1977.

2. The Public Service Company of Colorado be, and hereby is, ordered to calculate its fuel cost adjustment clause in accordance with its tariff currently on file with the Commission and may include therein the amounts recorded on the Company's books of account in Account No. 501 (steam power generation - fuel) and Account No. 547 (other power generation - fuel) of the Federal Power Commission Uniform System of Accounts with the following exceptions:

(a) All costs associated with unloading, handling of stockpiles, fuel treatment and ash disposal shall be excluded from the calculation;

(b) All fuel transportation costs from the mine or other point of origin to the plant shall be excluded from the calculation;

(c) All amounts associated with exploration and development for gas and fuel oil by Fuel Development Resources Company, an affiliate of Public Service Company of Colorado, under a certain agreement, as amended, dated October 23, 1973, with Pasco, Inc., Energetics, Inc., Pacific Power & Light Company and Minnesota Mining and Manufacturing Company, and a certain agreement, as amended, dated October 24, 1973, with The Public Service Company of Colorado, shall be excluded from the calculation;

(d) Cost of fuel oil purchased by Public Service Company of Colorado from its affiliate, Fuel Development Resources Company, to the extent that the cost exceeds the average price of the same type and quality of fuel oil purchased under contracts from non-affiliated sources during the same period, shall be excluded from the calculation unless Public Service Company of Colorado presents substantial grounds to exempt it from that provision.

Public Service Company of Colorado may include a factor in the calculation to account for the increased franchise tax obligation incurred by the Company as the result of the fuel cost adjustment. Any approval of FCA filings will be conditioned upon Public Service Company of Colorado justifying use of any boiler gas in Arapahoe, Cherokee or Cameo plants.

3. The Public Service Company of Colorado be, and hereby is, ordered to follow the following procedures to implement its fuel cost adjustment clause:

(a) Public Service Company of Colorado shall file its application setting forth its fuel cost adjustment, the monthly fuel cost levels, and all other supporting and underlying data at least five working days prior to the open meeting before its effective date;

(b) Said application shall be accompanied by responses to the Commission's "pass-on questionnaire" if more than one year has elapsed since:

(1) The issuance of a Commission decision in a ratemaking procedure involving Public Service Company of Colorado; or

(2) The effective date of a revised fuel cost adjustment clause which was

accompanied by responses by Public
Service Company of Colorado to the
Commission's "pass-on questionnaire";

(c) Within five days of the close of each quarter, Public Service Company of Colorado shall file a detailed report with the Commission setting forth, by generating facility and by fuel, the quantities burned, the prices for those fuels, and the relative fuel mixes for each which underlie the fuel cost adjustment filings for the last three months, as well as such additional data as the Commission may require from time to time;

(d) The Staff of the Commission will perform an audit of Public Service Company of Colorado's fuel cost adjustment on a quarterly basis as discussed in the above decision;

(e) Within 20 days of the close of each quarter, the Commission will hold a public hearing for the purpose of having Public Service Company of Colorado officials appear and answer questions from the Commission or other interested parties relevant to issues affecting the fuel cost adjustment clause as explained in the above decision;

(f) Any fuel cost adjustment charges approved in the previous three months will be conditioned subject to refund if any inaccuracies or improprieties are discovered in the quarterly audit and hearing procedures as described in the above decision;

(g) By January 1, 1978, Public Service Company of Colorado shall submit a proposal to the Commission for explanation of the fuel cost adjustment clause within its billing procedure.

4. The Public Service Company of Colorado be, and hereby is, ordered to credit against the fuel cost adjustment the following amounts:

(a) All moneys paid to Fuel Development Resources Company during the period October 1, 1973, to December 31, 1974, under a certain agreement between the companies, dated October 24, 1973, as amended, hereinbefore described, plus interest;

(b) All moneys paid to Fuel Development Resources Company during the period January 1, 1975, to December 31, 1975, under the above-mentioned agreement, with interest;

(c) All moneys paid to Fuel Development Resources Company during the period January 1, 1976, to December 31, 1976, under the above-mentioned agreement, with interest; and

(d) All moneys paid to Fuel Development Resources Company during the period January 1, 1977, to November 1, 1977, under the above-mentioned agreement, with interest.

5. The amounts ordered in Paragraph 4 above to be credited against the fuel cost adjustment shall be credited during the following periods:

(a) The total amount ordered to be credited in Paragraph 4(a) above shall be divided by twelve and the resulting quotient credited monthly during 1979, commencing with the January 1979 fuel cost adjustment application filing;

(b) The total amount ordered to be credited in Paragraph 4(b) above shall be divided by twelve and the resulting quotient credited monthly during 1980, commencing with the January 1980 fuel cost adjustment application filing;

(c) The total amount ordered to be credited in Paragraph 4(c) above shall be divided by twelve and the resulting quotient credited monthly during 1981, commencing with the January 1981 fuel cost adjustment application filing; and

(d) The total amount ordered to be credited in Paragraph 4(d) above shall be divided by twelve and the resulting quotient credited monthly during 1982, commencing with the January 1982 fuel cost adjustment application filing.

6. Interest on the amounts ordered to be credited in Paragraph 4 of this Order shall be calculated as follows:

(a) Interest on the amount to be credited under Paragraph 4(a) above shall be at a rate equal to the average interest rate for long-term, first-mortgage utility bonds rated Aa by Moody's Investors Service, Inc., and AA by Standard & Poor's Corporation on or about October 1, 1973;

(b) Interest on the amount to be credited under Paragraph 4(b) above shall be at a rate equal to the average interest rate for long-term, first-mortgage utility bonds rated Aa by Moody's Investors Service, Inc., and AA by Standard & Poor's Corporation on or about January 1, 1975;

(c) Interest on the amount to be credited under Paragraph 4(c) above shall be at a rate equal to the average interest rate for long-term, first-mortgage utility bonds rated Aa by Moody's Investors Service, Inc., and AA by Standard & Poor's Corporation on or about January 1, 1976; and

(d) Interest on the amount to be credited under Paragraph 4(d) above shall be at a rate equal to the average interest rate for long-term, first-mortgage utility bonds rated Aa by Moody's Investors Service, Inc., and AA by Standard & Poor's Corporation on or about January 1, 1977.

7. The Public Service Company of Colorado be, and hereby is, ordered to pay to the Legal Aid Society of Metropolitan Denver the sum of $604.37, as attorney's fees and costs, and the sum of $2,048.70, as reimbursement of expert witness fees, both to be charged as an operating expense of Public Service Company of Colorado.

8. Any motions presently pending and not disposed of otherwise be, and hereby are, denied.

9. Case No. 5700 be, and hereby is, closed.

This Order shall be effective twenty-one (21) days from the date of this decision.

DONE IN OPEN MEETING the 13th day of September, 1977.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Commissioners

jp
vjr
ma