

(Decision No. C87-1690)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE:	THE APPLICATION OF THE)	APPLICATION NO. 38680
	PUBLIC SERVICE COMPANY OF COLORADO)	
	FOR A MORATORIUM REGARDING INDE-)	INITIAL DECISION OF
	PENDENT POWER PRODUCTION FACILITIES)	THE COMMISSION

December 16, 1987

Appearances: Kenneth V. Reif, Esq., Denver, Colorado,
Kelly, Stansfield & O'Donnell
for Public Service Company of Colorado;

Paula M. Connelly, Esq., Joseph B. Wilson, Esq.,
Denver, Colorado, Gorsuch, Kirgis, Campbell,
Walker, and Grover
for Thermo Carbonic, Inc.;

Tucker K. Trautman, Esq., Denver, Colorado,
Ireland, Stapleton, Pryor & Pascoe, P.C.
for Ptarmigan Resources, Energy Inc., the City
of Boulder and Mitex, Inc.;

Francis J. Sailer, Esq., Charles E. Schwenck,
Esq., Washington D.C., Pillsbury, Madison & Sutro
for Dominion Energy Systems;

Joel W. Cantrick, Esq., Denver, Colorado,
Cantrick and Rees, P.C.,
for Cogen Technology, Inc.;

Spencer T. Denison, Esq., Denver, Colorado,
Holme, Roberts & Owen
for Bonneville Pacific Corporation;

Zach C. Miller, Esq., Denver, Colorado,
Davis, Graham & Stubbs,
for Northern Colorado Water Conservancy
District;

John R. McNeill, Esq., Montrose, Colorado
for Colorado-Ute Electric Association, Inc.;

Richard L. Fanyo, Esq., Randall J. Feuerstein,
Esq., Denver, Colorado,
Welborn, Dufford, Brown & Tooley,
for CF&I Steel Corporation;

Oscar Goldberg, Esq., Denver, Colorado,
for the City and County of Denver;

Sue E. Weiske, Assistant Attorney General,
Denver, Colorado,
for Office of Consumer Counsel;

Maxwell Aley, Esq., Aspen, Colorado,
for FTB Geothermal and;

Peter J. Stapp, Assistant Attorney General,
Denver, Colorado,
for the Staff of the Commission.

STATEMENT

Public Service Company of Colorado (Public Service or PSCo) filed this application on November 4, 1987, requesting this Commission to issue an order imposing a moratorium relieving it of the obligation to execute additional contracts with any independent power production facility (IPPF), and requiring it to file within 60 days of the effective date of the order a comprehensive plan to address the problems alleged to exist in the application. Public Service mailed copies of the application to a number of individuals and entities, as shown in an affidavit attached to the application.

The Commission issued Decision No. C87-1555 on November 10, 1987, which gave notice of the filing of the application and set the application for a hearing in on November 23, 1987, at 8:00 a.m. in a Commission hearing room in Denver, Colorado. That decision also ordered that interested persons, firms, or corporations could file petitions or other pleadings to intervene no later than November 22, 1987, and stated that the issuance of a temporary moratorium would be considered on November 13, 1987. Decision No. C87-1565 was issued on November 13, 1987. It stated that the request for an immediate moratorium should not be granted, and ordered Public Service to prefile exhibits and its list of witnesses by November 18, 1987. The decision also granted petitions to intervene filed on November 9, 1987, by Thermo Carbonic, Inc., Ptarmigan Resources, and Energy Inc., and on November 10, 1987, by Enervest Corporation.

CF&I Steel Corporation filed its petition to intervene on November 18, 1987. On November 19, 1987, the following petitions to intervene were filed: Sunlaw Energy Corporation; Bonneville Pacific Corporation; Waste Management of Colorado, Inc.; and The City of Boulder. On November 20, 1987, the following petitions to intervene were filed: City and County of Denver; Energy Ingenuity Company; Dominion Energy Systems; Mitex, Inc.; Colorado Interstate Gas Company; and FTB Geothermal. Colorado Ute Electric Association, Inc., filed its intervention pleading on November 23, 1987, and the Northern Colorado Water Conservancy District filed its intervention pleading on

November 24, 1987. All of the pleadings listed in this paragraph were considered as preliminary matters at the hearing on November 23, 1987, and all were granted. The Northern Colorado Water Conservancy District had not yet filed its pleading at that time, and was granted permission to file it later.

The hearing began on November 23, 1987, at 8 a.m. as ordered in Decision No. C87-1555, and continued on November 24 and 25, 1987. The hearing was conducted by Hearings Examiner Robert E. Temmer. The Commissioners attended most of the hearing. The petitions and pleadings to intervene listed above were considered as preliminary matters to the hearing. Additional preliminary matters considered were the Renewed Motion for Expedited Response To Discovery filed By Thermo Carbonic on November 16, 1987, a Motion Requesting The Commission to Make Initial Decision filed by PSCo on November 18, 1987, and a motion to amend the application by PSCo. Thermo Carbonic withdrew its motion, and stated that the situation had been resolved to its satisfaction with Public Service. Public Service's motion requesting the Commission to make the initial decision was argued and was temporarily taken under advisement pending receipt of evidence during the hearing. At the close of the hearing on November 25, the examiner announced that the motion would be granted and made the finding on the record that due and timely execution of the Commission's functions imperatively and unavoidably require the omission of the recommended decision, and that the initial decision be entered by the Commission because of the possible effects on ratepayers and intervenors in this proceeding. The motion by Public Service to restrict its application so that the moratorium would not apply to IPPF projects which fall within categories 1, 2, and 3 of the Public Service tariffs (25 megawatts or less) and which had executed the Public Service standard letter agreement prior to November 4, 1987, was granted. The Office of Consumer Counsel (OCC) was also granted intervenor status.

During the hearing, testimony and statements were taken from several members of the public prior to the parties making their presentations. Thirteen witnesses were presented by the parties. Exhibits 1 through 51 were marked for identification, and all were admitted into evidence. At the conclusion of the presentation of evidence on November 25, 1987, Public Service orally moved for the imposition of an immediate moratorium. The motion was denied, and it was announced that an expedited schedule would be used for the entry of a decision in this application. A briefing schedule was established which allowed the parties to file briefs or statements of position on or before December 2, 1987, and to file replies by the close of business December 3, 1987.

Statements of position were filed by: Public Service; Thermo Carbonic Inc.; Mitex Inc.; Dominion Energy Systems; Cogen Technology Inc.; Bonnevillie Pacific Corporation; Waste Management of Colorado, Inc.; Northern Colorado Water Conservancy District; Colorado-Ute Electric Association; Office of Consumer Counsel; and the Staff of the Commission. Replies were filed by: Public Service; Thermo Carbonic Inc.; Dominion Energy Systems; and Cogen Technology Inc. Colorado-Ute

untimely filed its reply on December 7, 1987, with a request that the filing be allowed. The Commission granted the request at its open meeting on December 8, 1987.

The Commission has received statements from the public. Those statements, letters, and petitions have been considered. A file has been established containing memoranda, letters, and petitions concerning the issues in this application. That file is included in the record of this proceeding. A transcript of the hearing has been prepared, which consists of five volumes.

Colorado-Ute filed a motion on November 25, 1987, after the close of the hearing, requesting the immediate imposition of a moratorium or in the alternative that the proceeding be reopened and set for further hearing so customers could provide evidence. Colorado Ute's motion was considered by the Commission at an open meeting on December 2, 1987. It was decided that there was no reason to change the ruling announced at the close of the hearing.

Thermo Carbonic filed a motion to reopen the record on December 10, 1987. Letters were filed by Thermo Carbonic on December 8, 1987, and Dominion Energy Systems on December 9, 1987.

The Commission considered this application at a Special Open Meeting on December 8, 1987, and at open meetings on December 9, and 10, 1987, and enters this decision pursuant to the Colorado Sunshine Act, § 24-6-401, C.R.S. at an open meeting on December 16, 1987. The Commission finds that due and timely execution of its functions imperatively and unavoidably requires the omission of the recommended decision, and that it enter the initial decision.

FINDINGS OF FACT

THE PARTIES

1. Public Service is, among other things, an electric utility subject to the jurisdiction of this Commission. It generates, transmits and distributes electric energy in various parts of this state. It has tariffs on file with this Commission which, among other things, deal with purchases from IPPFs.

2. The intervenors in this proceeding, with the exception of Colorado-Ute, CF&I, Colorado Interstate Gas, The Office of Consumer Counsel, and The Staff of the Commission, are developers of IPPFs that might be affected by this proceeding. Intervenors that presented evidence during the hearing were: Thermo Carbonic, the developer of a natural-gas fired, combined cycle project to be located near Ft. Lupton, Colorado; Mitex, Inc., the developer of a hydro-electric project to be located near Montrose, Colorado; Dominion Energy Systems, the developer of a coal-fired, fluidized-bed project to be located in the Greeley area; Cogen Technology, Inc., the developer of a gas fired project to be located near Wray, Colorado; Bonneville Pacific Corporation, the

developer of a woodchip-woodwaste-fired project to be located near Saratoga, Wyoming; and Waste Management of Colorado, Inc., the developer of a methane (landfill) gas-fired facility located in the Denver area. Other intervenors have described their projects in their pleadings or briefs.

3. The Office of Consumer Counsel participated in the proceeding pursuant to its statutory right.

4. The Staff of this Commission participated in the hearing pursuant to the Rules of Practice and Procedure of this Commission.

5. Colorado Ute states that it is a customer of Public Service and may be affected by rates paid to IPPFs in the rates it pays to Public Service. CF&I also states that it is a customer of Public Service and that it may be affected.

6. Public testimony presented at the hearing raised certain concerns, which included the concern that cogeneration projects should be encouraged. The concerns raised in the public comment file, which is included in the record of this proceeding, also include that concern, and support is shown for various projects.

THE CLAIMS

7. Public Service claims that it has been contacted by a large number of IPPF projects in the recent past, and that if they were all to come on line as proposed, that it will have an excess of capacity. PSCo also claims that if a moratorium on entering into contracts for those projects is not established, its ratepayers will suffer because the cost for this excess capacity will be passed onto them. Public Service proposes that a moratorium be instituted and that a requirement be placed upon it to file a comprehensive plan within 60 days of the imposition of the moratorium to deal with the claimed problem. PSCo also proposes that the Commission deal with that plan on an expedited basis.

8. The intervenors in opposition to the application claim that Public Service has overstated the magnitude of the problem, that there will not be excess capacity, that IPPF projects will be required to make up capacity deficiencies in the future, and that the proposed IPPF projects will not be a detriment to the ratepayers. Further, some of the intervenors in opposition claim that if any moratorium is imposed that their particular projects should be exempted from the moratorium or "grandfathered" on various grounds.

9. The OCC claims that although there is a capacity problem, a different type of moratorium should be imposed from the type recommended by Public Service.

10. The Staff claims that the current situation warrants a moratorium.

THE EVIDENCE

11. Public Service updated its Electric Demand And Supply Plan (Gold Book), as of February of 1987. At that time, PSCo projected that for the period from 1987 through 1996 that approximately 490 megawatts of summer season capacity from IPPFs would be added to its system. This projection was based on capacity contracted for, capacity for which letters of agreement had been signed and estimated additions of 25 megawatts a year beginning in 1992. That plan showed approximately 365 megawatts from IPPFs in 1991, approximately 390 megawatts in 1992 and approximately 415 megawatts in 1993.

12. Public Service has been contacted by additional developers of IPPFs since the Gold Book of February 1987 was prepared, and by IPPFs that had previously contacted Public Service and had not been included in the planning figures. Based on this additional information, Public Service estimates that 1,149 megawatts of capacity in the summer season could come on line from IPPFs by 1991. This estimate was based on the total known contacts that have been made by IPPFs with Public Service.

13. Public Service has reviewed the information it gathered, and has developed what it contends is the most probable scenario. On that basis, PSCo contends if a moratorium is not imposed, that 795 megawatts of capacity from IPPFs will be on its system for the years 1991, 1992, and 1993. This estimate was based on judgment applied by Public Service, taking into account knowledge about the projects obtained by personnel of Public Service. Of the 795 megawatts, Public Service has signed contracts for approximately 226 megawatts, and had executed letters of agreement for approximately 275 megawatts. Inquiries accounted for approximately 295 megawatts. During the fourth quarter of 1986, projects accounting for 82 megawatts contacted Public Service. During the second quarter of 1987 projects accounting for 132 megawatts of capacity contacted Public Service. During the third quarter of 1987 projects accounting for 154 megawatts contacted Public Service, and for that portion of the fourth quarter of 1987 up to November 4, projects accounting for 254 megawatts contacted Public Service. It is this sudden rush that Public Service contends warrants the imposition of a moratorium.

14. Public Service has established minimum reserve criteria of 14.7 percent of firm net maximum hour for 1991, 1992, and 1993. Public Service, using its most probable data for IPPFs showing the addition of 795 megawatts IPPFs in 1991 through 1993, projected its reserve in 1991 would be 27.9 percent, in 1992 25.3 percent, and in 1993 23.1 percent. Public Service calculates that the difference between the most probable scenario involving 795 megawatts of capacity and the Gold Book scenario involving 365 megawatts of capacity will result in extra costs to the ratepayers of approximately \$69.3 million in 1991, \$75.7 million in 1992, and \$68.9 million in 1993, for a total of about \$214 million for that three-year period unless a moratorium is granted. A customer using 500 kilowatt hours a month would face extra annual costs of approximately \$22 in 1991, \$23 in 1992, and \$21 in 1993.

15. Intervenor presented evidence contesting the accuracy and reliability of the forecasts and projections of Public Service on several grounds. Among the grounds contended were that Public Service made errors in connection with its projections relating to Pawnee II, the next generating unit Public Service projects it will need to build; that it was improper to include the Fort St. Vrain generating station as a firm purchase; that it was improper to include "banking" arrangements with Colorado Ute under firm purchases; that contingent purchases should not be included under firm purchases; that certain purchase agreements, including the Platte River Authority Rawhide I contract, were not handled properly; that Public Service had not properly accounted for retirement of generating units; that Public Service has improperly calculated the payments that would be made to IPPFs because of discounts in capacity payments for different categories of IPPFs, and because of capacity factors used in connection with hydro-projects; that the amount of capacity projected from IPPFs is incorrect; that the amount of installed capacity should be downrated; and that demand estimates used by PSCO may have been too conservative. Evidence was also presented to show that there have only been two periods in history when there has been an effective tariff for Public Service concerning purchases from IPPFs in Colorado. Those periods were from approximately May of 1984 to February of 1986 and from February of 1987 to the time of the hearing in this docket. This Commission previously granted a moratorium for certain IPPF projects in February of 1986. That moratorium was lifted in February of 1987, when the tariffs that are currently applicable were established. Intervenor suggest that the amount of inquiries Public Service has received are as a result of a backlog of requests built up during the moratorium.

16. Intervenor contend that their evidence shows that the addition of the IPPFs will not cause excess capacity, and that the ratepayers will not bear the burden of paying for unneeded capacity. They contend that the capacity is needed and will provide benefits not only to the ratepayers, but also, through increased jobs, to the communities where they will be located.

17. Thermo Carbonic proposes a category 4 gas-fired facility that would provide about 214 megawatts of capacity and also produce food-grade carbon dioxide and a district hot-water heating loop for a proposed industrial park near Ft. Lupton, Colorado. Land has been optioned, and negotiations with gas suppliers and financiers have been conducted; engineering work has been done; and negotiations with Public Service have begun. Thermo Carbonic submitted a proposed contract for the facility to Public Service on September 28, 1987. This project would provide significant contributions to the economies of Fort Lupton and Weld County, and there is substantial community support for the project. Thermo Carbonic contends it had spent approximately \$560,000 on the development work done as of the date of hearing.

18. Mitex Inc., is developing a category 4 hydro-electric project near Montrose, Colorado, using water flows on existing irrigation canals. It is being developed in connection with the Uncompahgre Valley Water Users Association. Mitex has been working on the project since

1981 and has negotiated with Public Service. The two parts of the project together would provide slightly more than 50 megawatts of capacity. The project has encountered difficulties with licensing that essentially have been resolved. The developers contend they have spent approximately \$2.5 million on the project. It would provide substantial benefits for the area.

19. The Dominion Energy facility is proposed to be a category 4 facility of approximately 120 megawatt of capacity. It will be a coal-fired, circulating fluidized bed project which would provide steam to a Monfort meat packing plant near Greeley, Colorado, and also consume waste from the meat packing plant. It is proposed to be built to utility standards, and it will provide benefits to the area in which it will be located. A proposed contract for the project was submitted to Public Service with a cover letter dated November 2, 1987.

20. Cogen Technology proposes the American Atlas No. 3 project. It will be a category 4 gas-fired, combined-cycle facility to be located near Wray, Colorado. It will have approximately 80 megawatts capacity. It would be connected with an environmentally controlled farming operation, and will provide substantial benefits to the area where it is proposed to be located. The developers of this project have conducted substantial negotiations with Public Service. They have relocated the project several times because of Public Service's transmission limitations, and have exchanged copies of draft contracts with Public Service. They have obtained an option to purchase an existing plant from Tri-State Generation and Transmission Association, which will be converted for use in the project.

21. Bonneville Pacific Corporation is developing its Saratoga Project near Saratoga, Wyoming. It would be category 3 facility, fueled with wood waste from a saw mill. The 7.5 megawatt project would also produce steam for use in the saw milling operation. The project would provide substantial benefits to the area, and would solve some air quality problems. Negotiations have been conducted with Public Service Company, and arrangements have been made for transmitting the energy to the Public Service system.

22. Waste Management of Colorado, Inc., is developing a category 3 facility which will burn landfill gas at the Denver-Arapahoe Disposal site. It will have a capacity of approximately 2.6 megawatts. Waste Management had discussed this facility with Public Service prior to the time this application was filed.

23. The Northern Colorado Water Conservancy district is developing a hydro-electric project on the St. Vrain Supply Canal or "Lyons Chute".

24. The "Letter of Agreement" that Public Service uses in connection with negotiations concerning IPPFs is a two-page agreement that requires a developer to reimburse Public Service for costs Public Service incurs doing work in connection with proposed IPPFs. Public Service has no firm criteria requiring a letter of agreement from developers. Some

developers have been requested by Public Service to execute one and some have not. The distinction has been based on whether or not Public Service felt the developer was serious, and whether or not it was felt that Public Service would be required to do some work on the project. IPPF developers have not all been treated alike by Public Service in regard to the letter of agreement. Public Service did not tell developers of IPPF projects about the letter of agreement on any consistent basis and did not disclose that it would be a requirement for exclusion from the effects of a moratorium.

25. Staff analyzed the evidence submitted by Public Service and the experts sponsored by the intervenors in opposition to the moratorium. The Staff analysis showed that even though there are some problems or flaws in the projections of Public Service, they are not of sufficient magnitude to change the conclusion that there will be significant amounts of excess capacity on the system which will result in a significant amount of excess cost being passed onto the ratepayers unless a moratorium is imposed.

DISCUSSION

26. The claims that Public Service has overstated the costs associated with IPPF capacity are based upon the fact that Public Service did not account in its figures for discounts contained in the tariff for different categories of IPPFs, and assumed that all facilities would obtain full capacity payments. The tariff contains a provision that category 4b facilities will have a five percent discount for capacity payments, that category 4c facilities will have a 10 percent discount for capacity payments, and that category 3 facilities get a full capacity payment only if they achieve a certain capacity factor. Public Service also overstated hydro-projects' capacity payments by not using adverse hydro conditions. To that extent there are errors in the capacity costs for IPPFs used by Public Service, although the evidence does not delineate the exact magnitude of these errors. Even if the costs were overstated by 100 percent, there would still be a potential rate impact on the ratepayers during the three-year period of in excess of \$100 million.

27. The contention that Public Service's treatment of Pawnee II in this case is improper does not really change the ultimate conclusion in this case. Pawnee II is projected by Public Service to come on line in 1996, and is not projected to come on in the three-year period critical to Public Service's argument that a moratorium is required. The questions about Pawnee II are important, and should be considered in the future in the proceeding to consider the comprehensive plan to be filed by Public Service.

28. The claims that "banking" and contingent purchases should not be included under the category firm purchases are not valid. This Commission has encouraged electric utilities to use such arrangements, and there are valid reasons to include these items.

29. The claim that Fort St. Vrain should not be included as a firm purchase is based on the fact that historically it has not been a reliable source. Fort St. Vrain is treated as a firm purchase as a result of a settlement agreement, of which the Commission takes official notice, entered into between this Commission, Public Service, and the OCC. Public Service has included Fort St. Vrain in a manner that is consistent with that settlement agreement. It gives Public Service the right to purchase the energy from Fort St. Vrain if it desires. Additionally, since Fort St. Vrain drops out of the plan after 1990, it is not included in the critical years of 1991, 1992, and 1993.

30. The claims that Public Service has failed to take into account normal plant retirements, deratings, and capacity unavailability in its capacity calculations are of little merit. Public Service is studying a program to extend the life of its generating units and is not planning any retirements. The position of Public Service on these issues is essentially correct. No adjustment to its figures on these grounds are warranted.

31. The claim that PSCo's reserve margin is too low, which would indicate that PSCo's excess capacity claim is overstated, is based on reserve margins that are normal in the electric utility industry. The reserve margin used by Public Service (14.7 percent) has been established based on the unique circumstances of Public Service and, even though it may be at the low end of acceptable industry standards, there is not a sufficient basis in this record to find that a higher reserve margin should be established.

32. The claims that Public Service has failed to analyze savings to ratepayers and other values to ratepayers provided by IPPFs are important; however the evidence in this record does not firmly establish that those factors would offset the projected costs as contended. There are flaws in the projections of the intervenors, and those projections are insufficient to show that there will not be excess costs for the ratepayers. These issues, including the issue of whether or not IPPF power is competitive with firm purchases from other utilities, should be examined in a proceeding that will examine all issues concerning IPPFs.

THE MORATORIUM

33. Intervenors also claim that a moratorium would be so disruptive to the planning process for the orderly introduction of IPPFs that it should not be granted. The evidence shows that there have been two relatively short periods of time since the passage of PURPA where there were effective tariffs of Public Service on file so that cogeneration facilities could come on line. Those periods were separated by a moratorium issued by this Commission. The intervenors contend that the narrow windows of opportunity account for the rush of proposed IPPF projects previously referred to, and that granting another moratorium would simply result in another rush of projects trying to get on line after the moratorium is raised. The Commission agrees that a moratorium will have an affect upon the planning process, but we find, nevertheless,

that a moratorium is in the public interest and is required by the circumstances now existing. The intent of the Commission is to design a process for the future which will be as smooth and certain as possible. The Commission is committed to require timeliness in the process to avoid delays in planning, and to resolve the issues. The Order to be entered will require the checklist process to begin within 10 days.

34. Certain intervenors have claimed that this Commission is without legal authority to impose a moratorium. The evidence establishes that this Commission in the past has ordered a moratorium, and that other states have imposed moratoriums. The Public Utilities Law provides this Commission with general powers to do all things necessary to prevent unjust rates, § 40-3-102, C.R.S., and declares that unreasonable or unjust rates are unlawful, § 40-3-101, C.R.S. Rule 4.503 of this Commission's Rules Regulating Rates and Service of Cogenerators and Small Power Producers, which implement sections 201 and 210 of the Public Utilities Regulatory Policy Act (PURPA), provides that utilities may apply to this Commission for a moratorium if proposed interconnections present a capacity problem. PURPA and this Commission's own rules (3.5011) also require that the rates for purchases shall be just and reasonable to the electric consumers of the utility. This Commission has authority to implement PURPA. No case has been cited to this Commission holding that this Commission is without authority to impose a moratorium. All of the authorities discussed here establish this Commission has the authority to impose a moratorium if warranted by the evidence presented.

35. In this case, the evidence establishes that approximately 795 megawatts of IPPF capacity may come onto Public Service's system and be available during the period 1991 through 1993, and that Public Service, during that period of time, would be in a situation where it had capacity in excess of its minimum reserve criteria. This could result in costs being passed on to the ratepayers approaching \$200 million for that three-year period for capacity that would not be needed during that period of time. This result would be unjust and unreasonable to the ratepayers of Public Service, and therefore the imposition of a moratorium by this Commission is warranted. Even if the evidence was viewed in a light least favorable to granting a moratorium, it is found that it is sufficiently probable that additional costs will be imposed on the ratepayers of Public Service and therefore the imposition of a moratorium is warranted.

GRANDPARENTING AND EXEMPTIONS

36. A number of intervenors have suggested that a "grandfathering" should occur so that they would not be subject to the moratorium. A number of different proposals has been suggested. There are also claims that the proposed Letter-of-Agreement standard proposed by Public Service should not be used.

37. The evidence establishes that the use of the letter-of-agreement has been uneven by Public Service. This Commission should not in the definition of any moratorium use any standards that would be totally

subject to the control of the utility, and should not use a standard that has not been fairly applied. Therefore, the letter-of-agreement standard will not be used. All categories 1, 2, or 3 facilities that had contacted Public Service prior to the filing of this application will not be included in the moratorium. Public Service shall negotiate with those facilities in good faith, using the current process. That process will be subject to change in connection with the proceeding to consider the comprehensive plan to be filed by Public Service.

38. The various suggested methods for determining who might be excluded from the moratorium include: projects which use renewable fuels, such as water or waste products; all who have contacted Public Service prior to the application for the moratorium; those projects that are significantly along the development process; those found to be in serious negotiations; number of megawatts; or that a case-by-case method should be used. The Commission finds that none of the requests for exclusion of pending category 4 facilities should be granted. Public Service will be required to continue negotiating in good faith with the developers of those IPPF category 4 projects that have contacted it prior to the November 4, 1987, filing of this application. Public Service may enter into contracts subject to the approval of this Commission with those developers whose projects do not cause the excess capacity and cost problems which have required the granting of this moratorium. The Commission will review any such contracts critically, and approve them if they do not cause the excess capacity and cost problems found to exist in this Decision. Any such contract approved by the Commission will be exempt from the moratorium to be established by this Decision. The Commission will require that Public Service file in 10 days a check list setting forth necessary documents, steps to be taken, check points, and all other requirements for use in connection with negotiating IPPF contracts, and to furnish that list to all developers (categories 1, 2, 3 and 4) that have contacted it in order that they will know the process used by Public Service in negotiations. Public Service will be required to negotiate fairly, expeditiously and in good faith.

39. The Commission also states that, as a part of the comprehensive plan to be filed by Public Service, that consideration should be given to what should be done concerning those IPPF projects that have contacted Public Service prior to November 4, 1987, and which will be affected by the moratorium to be established by this Decision. That plan should also include: consideration of: ways to make sure that Public Service will be able to deal expeditiously with IPPF projects when the moratorium ends; fuel source projects; economics of the projects and competing sources; ways to match capacity needs and projects on price, reliability, dispatchability and other criteria; bidding systems; location of facilities; and other relevant considerations.

LENGTH OF MORATORIUM AND FILING OF COMPREHENSIVE PLAN

40. Public Service has requested that it be allowed 60 days from the final order granting the moratorium to file a comprehensive plan, and that the consideration and resolution of the plan be carried out on an

expedited basis. PSCo proposes that the moratorium remain in effect until that has been completed. Shorter time periods have been suggested. The Commission finds that a moratorium should be granted that will allow Public Service time to file its comprehensive plan. This should be done in an application to be filed with this Commission no later than January 15, 1988. Public Service should give broad notice of the filing of that application. The Commission will also give notice, and will provide an intervention and notice period of 20 days. The Commission will hold a prehearing conference on February 18, 1988, to establish a procedural schedule for the consideration of the comprehensive plan. Continuation of the moratorium will also be considered on that date. Public Service should file with the application, a proposed procedural schedule that would allow for the completion of the proceeding within a period of 180 days from the date of filing. This schedule should anticipate: 20 days notice for the application; the prehearing conference mentioned above; a hearing beginning within 60 days of the close of the notice period; a briefing schedule after the close of the hearing so that an initial decision can be rendered within 30 days of the close of the hearing and the remaining time to be used for statutory review procedures. Public Service should be prepared to take the lead in the processing of the application and to work with all intervenors towards arriving at a speedy resolution of the problems to be addressed including settlements and stipulations. PSCo shall file on February 15, 1988, a statement detailing any stipulations regarding the procedural schedule and other matters in the proceeding. If it appears on February 18, 1988, that substantial progress has been made towards the goal of getting the comprehensive plan proceeding concluded within the time frame specified, the Commission may continue the moratorium.

CONCLUSION

The Commission concludes that the evidence presented in this application and the findings of fact contained in this decision warrant the imposition of a moratorium as set forth in the order to follow, and that Public Service should be ordered to file a comprehensive plan to deal with all of the issues relating to independent power production facilities, including the schedule and considerations set forth above. The Commission further concludes that the pending requests for exclusions from the moratorium should be denied, but that Public Service will be required to continue to negotiate as set forth above and in the Order to follow.

THEREFORE THE COMMISSION ORDERS THAT:

1. Application No. 38680 entitled "Re: The Application Of The Public Service Company of Colorado for a Moratorium Regarding Independent Power Production Facilities" is granted insofar as it is consistent with this Order and otherwise it is denied.

2. A moratorium is established which relieves Public Service Company of Colorado from the obligation of executing any additional contracts with Independent Power Production Facilities. This moratorium shall not apply to any category 1, 2, or 3 facility for which the developer had contacted Public Service Company of Colorado before November 4, 1987. Public Service shall continue to negotiate in good faith with the developer of any category 4 facility, for which the developer had contacted Public Service prior to November 4, 1987. Any contract for a category 4 facility executed during this moratorium will be subject to the approval of this Commission before it is effective, and any such contract shall be submitted by motion in this proceeding for approval and possible exemption from the moratorium as set forth in the findings above.

3. Public Service Company of Colorado shall within 10 days of the date of this Order file in this application, and provide to every developer of IPPF projects that have contacted it prior to November 4, 1987, a check list as set forth in the Findings of Fact above.

4. Public Service Company of Colorado shall file its proposed Comprehensive Plan discussed in this application on or before January 15, 1988. It should be in the form of an application for which Public Service gives notice, and it shall be accompanied by a procedural proposal as discussed above in the findings. The Commission will hold a prehearing conference in that proceeding on February 18, 1988, at 10 a.m. in a Hearing Room of the Commission, 1580 Logan Street, OL-2, Logan Tower, Denver, Colorado. Public Service Company of Colorado shall endeavor to obtain a stipulation on the procedural schedule with all intervenors in that proceeding by February 15, 1988, and file on that date the statement referred to above.

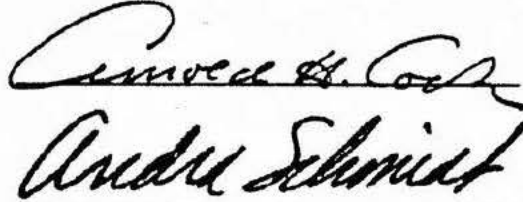
5. The moratorium granted by this Order shall continue until February 18, 1988, and may be continued to coincide with the processing of the application required to be filed by this Order, if it appears the application can be completed as set forth above.

6. All pending requests for exclusion from the moratorium are denied, and the motion to reopen the record filed on December 10, 1987, is also denied. The request in the letters filed on December 8 and 9, 1987, are also denied.

7. This Order shall be the initial Commission Decision, and it shall be effective immediately.

DONE IN OPEN MEETING the 16th day of December 1987.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

COMMISSIONER RONALD L. LEHR
SPECIALLY CONCURRING

COMMISSIONER RONALD L. LEHR SPECIALLY CONCURRING:

I agree with the decision entered today by the Commission. However, I would have used the criteria very briefly mentioned on pages 11 and 12 of the decision to distinguish among projects to which the moratorium applies. These issues were extensively litigated by the parties. I would have recognized the distinctions between the projects in Category 4, and exempted from the moratorium the Mite 52 megawatt hydro retrofit to an existing impoundment in Montrose County, Colorado. I would have made this distinction on the basis of the size of the project, as well as on the basis of its fuel source.

With this single exception, I agree with the decision of the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Commissioner

2515P