

(Decision No. C91-918)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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RE: INVESTIGATION AND SUSPENSION OF )  
TARIFF SHEETS FILED BY THE PUBLIC )  
SERVICE COMPANY OF COLORADO WITH ) DOCKET NO. 91S-091EG  
ADVICE LETTER NO. 453-GAS AND ADVICE )  
LETTER NO. 1133-ELECTRIC. )  
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THE COLORADO OFFICE OF CONSUMER )  
COUNSEL, )  
 )  
Complainant, )  
 )  
v. ) DOCKET NO. 90F-226E  
 )  
THE PUBLIC SERVICE COMPANY OF )  
COLORADO, )  
 )  
Respondent. )  
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COMMISSION ORDER: (1) APPROVING SETTLEMENT,  
UPON CLARIFICATION; AND (2) CLOSING THESE DOCKETS.

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Mailing date: July 22, 1991  
Adopted date: July 17, 1991  
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BY THE COMMISSION:

I. Summary.

The Colorado Public Utilities Commission (the "Commission") approves, adopts and incorporates in its Order, the settlement agreement of several of the parties in these dockets. The Commission expects that the Agreement will benefit the people

of Colorado, and the Public Service Company of Colorado ("Public Service" or "PSCo"). The Settlement Agreement, which we approve and adopt as a Commission Order, is contained in three documents: the "Revised Settlement Agreement I"; the "Agreement Regarding Monitoring of Financial Performance under Revised Settlement Agreement I"; and the "Revised Settlement Agreement II" (collectively referred to as the "Agreement" and attached hereto as Exhibits A, B, and C respectively). The Agreement embodies: (1) a substantial refund to the customers of the Public Service Company of Colorado; (2) a roll-back of rates; and, (3) the building of a framework for responsible and sustainable energy planning for years to come. In all respects, the Agreement represents a potential turning point for how utilities may be regulated in Colorado. After the clarification of various points in the Agreement by the parties at the Hearing on July 3, 1991, the Commission approves the Agreement, and thereby closes these dockets.

The Agreement settles the 1991 Public Service General Rate Case, and lays the foundation for a new direction for utility regulation in Colorado. Four new dockets will be opened as a result of the Agreement. First, a new docket is to be created to address the issues of decoupling the revenues of the Public Service Company of Colorado from its sales, and regulatory incentives to encourage demand side management programs. This Incentives Docket was opened on July 15, 1991. It is anticipated that there will be a final Commission decision by March 1992. Second, the parties began a demand-side programs collaborative process on July 15, 1991. The parties will present the Commission with a detailed workplan for the Collaborative Process on October 1, 1991. The purpose of this docket is to analyze the potential for demand-side management investment, to design programs to implement the potential for all customer classes, and to implement such programs. "Demand-side management" programs are energy efficiency programs, which may replace the need

for investment in new sources of energy supply, thereby saving money and the environment without sacrificing living standards. Third, there will be an Integrated Resource Planning rulemaking docket. The docket will be opened on October 1, 1991; the parties will file an interim report to the Commission on January 2, 1992; and formal rulemaking will be initiated on April 1, 1992. "Integrated Resource Planning" takes into account all sources of energy demand and supply, as well as environmental externalities, in judging resource selection. Fourth, the Company will initiate a low-income energy assistance docket on December 1, 1991. The low-income energy assistance docket will examine various options relative to this customer classification, including costs, justified arrearage forgiveness plans and percentage of income plans, the eligibility of potential participants, the form of assisting participants, the method of funding assistance, and the relation of low-income assistance to all the other new dockets and to energy efficiency.

Because the resolution of the four new dockets will affect the rate design issues in Phase II of the present application (Docket No. 91-091EG), the Agreement cancels Phase II of the present rate case. Public Service will not file its next rate case application until after the conclusion of the four new dockets, November 1992.

## II. Discussion.

### A. Factual and procedural background.

On March 29, 1990, the Office of Consumer Counsel ("OCC") commenced these dockets when it filed a complaint case (Docket No. 90F-226E) with the Commission against Public Service, alleging that the company's electric rates were unjust and unreasonable. After procedural negotiations, Public Service, the Staff of the Commission, and the OCC agreed to resolve the complaint case, and a general electric and gas rate case which Public Service intended to file, on a consolidated basis. Public

Service filed a rate case on January 31, 1991 (Docket No. 91S-091EG); and it was consolidated, as agreed, with Docket No. 90F-266E. During the pendency of the case, certain events -- such as the Colorado-Ute bankruptcy, and the intervention in the case of new parties, not seen in previous rate cases, such as the Land and Water Fund of the Rockies and the Office of Energy Conservation -- distinguished this case from other rate cases previously pending before the Commission. Public Service and the OCC eventually commenced negotiations to resolve the case. The negotiations resulted in a settlement agreement between these two parties which was filed at the Commission on June 5, 1991, referred to as "Settlement Agreement I".

The Commission discussed Settlement Agreement I at its Open Meeting on June 12, 1991. At that Open Meeting, the Commissioners expressed reservations about Settlement Agreement I in the following areas: uncertainty concerning rate of return and other financial issues; absence of the Staff of the Commission as a party to Settlement Agreement I; and discomfort with the proposed manner of addressing the interests and concerns of the Land & Water Fund of the Rockies and the Office of Energy Conservation. The Commission did not render a formal decision at the June 12, 1991 Open Meeting. The parties, however, heard the Commission's concerns and filed a new settlement agreement, referred to as "Settlement Agreement II," on June 18, 1991.

Unlike Settlement Agreement I which was signed only by the OCC and PSCo, Settlement Agreement II was signed by four parties -- the Office of Energy Conservation, the Land & Water Fund of the Rockies, the OCC, and PSCo. Settlement Agreement II contained the proposal for opening four new dockets. The Commission discussed the Settlement Agreement I and II at its regular Open Meeting on June 19, 1991. The Commission scheduled a special hearing on the proposed settlement on Friday June 21, 1991 at 8 a.m. At the June 21, 1991 hearing, the

Commission heard testimony concerning the Settlement Agreement I and Settlement Agreement II. The Commission did not approve the settlement for various reasons, and suggested that the parties rework and redraft the settlement agreements. See Decision No. C91-853-I (released June 26, 1991) (setting new hearing date, and ordering parties to file by noon on July 1, 1991 a new agreement, which was to include certain commitments made to the commission during the hearing, ). The Commission set a new hearing date on the proposed settlement for Wednesday July 3, 1991 at 10 a.m.; cancelled its regular Open Meeting; and set a Special Open Meeting for 3 p.m. on July 3, 1991, for further discussion and possible decision on the parties' motions to approve settlement.

On July 1, 1991, in advance of the hearing set by Decision No. C91-853-I, Public Service filed three documents, (collectively the "Agreement"). Public Service submitted the originals of the documents at the July 3, 1991 Hearing, and we have attached them as Composite Exhibits A, B, and C to this Decision. The July 3, 1991 Hearing gave the parties the opportunity to explain revisions to the Agreement, and gave the Commission the opportunity to further examine and to seek clarification of issues embodied in the Agreement. Further, it gave parties to the proceeding, who were non-signatories to the Agreement, the opportunity to discuss and state their positions with respect to the Agreement. In written submissions, and in comments at the July 3, 1991 Hearing, parties unanimously urged the Commission to approve the Agreement, in its revised form.

B. Clarification of the Agreement - Settlement Agreement I and Financial Monitoring Agreement.

Regarding Revised Settlement Agreement I, the Commission asked Public Service to clarify the refund language, "Any amounts which are unclaimed or

unrefunded by April 1, 1992 will be the subject of a separate refund application." Revised Settlement Agreement I at 4, ¶ 3. Public Service estimated that the unclaimed refund amounts (from customers who cannot be located because they moved without leaving a forwarding address) would be less than five percent of the total refund. (Given that the refund will be \$22 million, the unrefunded amount could total \$1.1 million.) Formerly, all unclaimed refunds escheated to municipalities pursuant to Colorado Revised Statutes § 40-8-101 (1984 Rep. Vol.17), which created time delays, and other problems, according to Public Service. See Transcript of July 3, 1991 Hearing at 10 ("Transcript"). PSCo stated that the intent of the language quoted above was to expedite the process, and to allow the Commission to set aside up to 20 percent of the unclaimed refunds for the Colorado Energy Assistance Fund, pursuant to a 1990 statute setting up the low income energy assistance fund, Colorado Revised Statutes §§ 40-8.5-101 through 40-8.5-107 (1990 Cum.Supp. Vol.17), and amended Colorado Revised Statutes § 40-8-101(2) (1990 Cum.Supp. Vol.17). Lastly, regarding Revised Settlement Agreement I, Public Service stated that the major new change was the paragraph which incorporated the Financial Monitoring Agreement, setting forth Public Service's benchmark return on equity in the range of between 12.5 to 13.5 percent. Revised Settlement Agreement I at 5, ¶ 8. Transcript at 11.

The Financial Monitoring Agreement (Exhibit B to this Decision) substantially answers many of the Commission's initial financial concerns regarding Settlement Agreements I and II, raised at the June 12, 1991 and June 19, 1991 Open Meetings, and at the June 21, 1991 Hearing. In particular, the Agreement establishes a *de facto* authorized return on equity in the range of 12.5 to 13.5 percent. The Agreement uses criteria to establish an effective earned return on equity of approximately 12.61 percent for the 12 months ending December 31, 1990. The Commission finds that the results, and the methods used for arriving at those results, are reasonable for purposes of this

Decision approving the Agreement. In addition, the monitoring features of the revised Agreement, in the Financial Monitoring Agreement (attached as Exhibit B to this Decision), provide reasonable safeguards so that, if there are significant earnings in excess of a just and reasonable rate of return, the Commission will be able to detect overearnings on a timely basis.

C. Clarification of the Agreement - Settlement Agreement II.

Regarding Revised Settlement Agreement II, Public Service noted that the changes from Settlement Agreement II were the result of discussion among the four original signatories (Public Service, the OCC, the Office of Energy Conservation, and the Land and Water Fund of the Rockies) and the new fifth signatory, the Staff of the Commission. The substantive changes included Public Service's commitment to file an application, either individually or with any other party, to initiate the Decoupling and Demand Side Management incentive docket, by July 15, 1991, with a final Commission order hoped for by March 1992. Revised Settlement Agreement II at 3, ¶ 5. Transcript at 13-14. The Integrated Resource Planning rulemaking docket would proceed with the aim of commencing rulemaking by April 1, 1992, with two periods for negotiation (October 1991 through January 1992; January 1992 through April 1992). Transcript at 14-15. If the parties cannot agree to a joint rule, then separate proposals will be made. Transcript at 15. Revised Settlement Agreement II at 5, ¶ 7. Regarding the Demand-Side Management Programs Collaborative Process, the parties added a reference to striving to "develop DSM programs for all customer classes", Revised Settlement Agreement II at 6, ¶ 8(a), which had been inadvertently omitted from the initial Settlement Agreement II. Transcript at 16. The budget for the collaborative process is intended to be established in the first three months of the planning process, with \$20,000 intended solely for planning costs. A cap on consulting

fees will be determined in the planning phase. The cap will be approved by the Commission, which could later alter or modify the cap. Transcript at 16-17; Revised Settlement Agreement II at 8, ¶ 8(e).

Another substantive change from Settlement Agreement II contained in Revised Settlement Agreement II, is that PSCo obligated itself to initiate a low-income energy assistance docket. Transcript at 17. Revised Settlement Agreement II at 10-11, ¶ 14. Lastly, PSCo noted that it listed four "minimum issues" for the low-income assistance docket, Revised Settlement Agreement II at 10-11, ¶ 14, which were the product of commitments it made to the Commission at the June 21, 1991 Hearing. Transcript at 18.

After PSCo concluded its presentation of the substantive changes in Revised Settlement Agreement II, the Commission Chairman invited comments from the other parties. The Land and Water Fund ("LAW Fund") of the Rockies stated its strong endorsement of Revised Settlement Agreement II:

It is now a five-party agreement among people who are often at odds with one another, and it is an agreement which provides for informal negotiation and collaboration to a great extent, and avoiding some of the problems associated with full-blown litigation on these issues. And we are very pleased with the agreement and think it holds a great deal of promise. . . . I also think the agreement represents a recognition by the parties to it that there is a great deal of promise in energy efficiency; that this promise has yet to be realized; that we have to translate theory into practice, but that in theory this can benefit everyone. It benefits the environment, which is the first and foremost concern of the LAW Fund. It benefits ratepayers, and also the company. The three documents that we have proposed address in more or less good order the issues that need to be resolved in order for us to translate theory into practice. . . . And finally, I think that it's important and essential to the success of this process that the Commission continue to exercise close oversight of the process. And that we are very optimistic though that over the next year and a half Colorado can become a leader in this region in energy efficiency efforts.

Transcript at 20-21 (remarks of Frances M. Green of the LAW Fund).

After the remarks of PSCo and the LAW Fund, the Commissioners requested clarification of the sentence, "The parties agree to the schedule outlined below as the best means to achieve timely resolution of the issues discussed in paragraph 1 while being mindful of the limited resources of all concerned, including the Commission." Revised Settlement Agreement II at 2, ¶ 3 (emphasis added). The Commission was concerned that the statement might reflect a lack of commitment, a possible "escape hatch" or "trap door," and asked all the parties to tell the Commission what the phrase meant in terms of their commitment to the Agreement. Transcript at 22. All the parties emphasized their strong commitment to the Agreement. Public Service stated that the phrase was meant as an attempt not to impose anything on the Commission in terms of scheduling, as well as a recognition at the front end of the process that everyone's resources are limited. Transcript at 22-23. The Company emphasized that it wanted to work together with the other parties to achieve a successful conclusion. Transcript at 23.

The Staff of the Commission agreed with Public Service's interpretation of the phrase, and stated that it was not meant to indicate that the Staff is "reticent or hesitant in any way with respect to either the schedule or the sequencing set forth in the Revised Settlement II." Transcript at 24. The LAW Fund stated that the schedule allowed it to participate more adequately in each of the three dockets than if the dockets were crowded into a short period of time, and emphasized the advantages of the negotiation periods built into the schedule, allowing the parties to resolve as many issues as possible by negotiation, and narrowing the issues presented to the Commission. Transcript at 24-25. The Consumer Counsel agreed with the remarks by PSCo and Staff, and stated that the "limited resources" phrase was not entitled to much weight, other than reflecting that the parties had designed an "ambitious schedule," but a

schedule that the parties think that they can meet. Transcript at 25. The Office of Energy Conservation agreed with the assessment of the other parties, admitting that it would have liked to take up some issues sooner, but that the schedule was a fair compromise that "gives everybody an opportunity to prepare to address these issues". Transcript at 26. According to the Office of Energy Conservation, the "limited resources" phrase did not indicate anything less than the "full intent of the parties to proceed vigorously and with good faith in addressing these issues." Transcript at 26. Finally, CF& I Steel Corporation, which did not sign the agreements, indicated its support for the amended settlements, stating that the procedure made much more sense than the original proposal, and was more along the lines suggested by CF& I in its statement of position. Transcript at 26.

Next, the Commission asked the parties -- and particularly non-signatory intervenors such as the Multiple Intervenor Group (several large corporations represented by the law firm of Holland & Hart), Unocal Corporation, and Climax Molybdenum -- if the notice and opportunity to participate was adequate. Transcript at 28. See Revised Settlement Agreement II at 4, ¶ 7. These non-signatory participants stated that they were satisfied with the commitments of the other parties for an "open door" process. Transcript at 28-29. PSCo stated that it would cooperate with the Commission to assure that notice of the new dockets would be issued as far and wide as possible. Transcript at 30.

Regarding the low-income efficiency programs, the Commission expressed concerns that low-income programs might fall through the cracks. The Commission was concerned that the language that the Collaborative Process would "strive to" develop demand side management programs for all customer classes, Revised Settlement Agreement II at 6, ¶ 8(a), was a trap door. The Commission was also concerned with the language "if any" in the sentence concerning issue four in the four

minimum issues in the low-income assistance docket, "The relation, if any, of low income assistance and energy efficiency." Revised Settlement Agreement II at 11, ¶ 14 (emphasis added). PSCo assured the Commission that the "if any" language did not foreshadow a latent position or predetermination by PSCo that these two issues were unrelated. Public Service Company explained that the "if any" language was really a recognition that the low income docket might also address demand side management issues, in addition to the demand side management docket itself, and that the "low income assistance issues" might be brought before the Commission repeatedly during the next 18 months, not just in the low income assistance docket, but in all the dockets. Transcript at 35. The Company also stated that it did not foreclose the possibility of consolidating the low income assistance docket into other dockets. Transcript at 36. The Company stated that it intended to work with the utilities task force and other entities to generate a low-income assistance application which would be broad and all-inclusive. Transcript at 37.

The Commission asked the parties how they intended to resolve disputes, if the planned negotiations on various parts of the Agreement break down. With respect to the Integrated Resource Planning rulemaking, PSCo stated that the parties recognized that they may not be able to agree on everything, which is why the process allowed the parties to bring a consensus Integrated Resource Planning rule to the Commission, or propose separate rules, with the promise that the Office of Energy Conservation and the LAW Fund would initiate rulemaking by April 1, 1992. Transcript at 39-41. See Revised Settlement Agreement II at 4-5, ¶ 7. PSCo explained that the parties would come before the Commission, and request a Commission hearing, if the parties came to a stalemate or standstill during the negotiation process in the various dockets. Transcript at 41. The LAW Fund, the OCC, the Office of Energy Conservation, and the Staff agreed with Public Service, that if negotiation progress was not made, the

parties would break the log-jam by proposing an Integrated Resource Planning rule directly to the Commission. Transcript at 42-43. The parties also agreed to keep the Commission informed, through Open Meetings, hearings, reports, or some other mechanism. Transcript at 46, 47, & 49; See also Transcript at 52 (remarks of Commissioner Alvarez, concerning the desirability of Commission hearings, scheduled after written quarterly progress reports). The Commissioners emphasized the importance of including Tri-State Generation & Transmission Association, Inc., and other Colorado PUC certificate of public necessity and convenience holders, or federally certificated utilities operating in Colorado, in these dockets, included in a valid integrated resource planning process. Transcript at 49, 68.

The Commissioners requested clarification of the Integrated Resource Planning docket, Revised Settlement Agreement II, Point III, at 4-6, ¶ 7. Although the Agreement talks about "resource planning" in broad terms, it did not specifically state that it included gas and electric issues. PSCo stated that the language was meant to be all-inclusive. Transcript at 51.

Concerning the cap on consultant fees for the collaborative process and the role of the Commission, see Revised Settlement Agreement II at 8, ¶ 8, the Commission wanted more specificity that it was the role of the Commission to determine the appropriateness of consultant fees. Transcript at 53. The Staff of the Commission clarified the passage on page 8 by going back to the previous page, and stating that the language on page 8 "assumes by definition that the Commission will be the decider." Transcript at 53. The parties were unable to estimate the total consulting fees for the entire year-long collaborative process in advance. Public Service stated that the consultant question would be discussed in the three-month planning process, and that it would take the risk of advancing consultant fees and other costs for the collaborative process, "based on the good faith of the parties and the Commission's oversight of the

process." Transcript at 54. The Office of Consumer Counsel agreed that the Commission should review all consultant fees and costs. Transcript at 55. The Commission asked the parties whether they would consider engaging a paid, independent, third party facilitator, to direct the collaborative process. PSCo stated that they recognized that there might be a need for a third party facilitator "to keep things moving along and keep us on track." Transcript at 56. The Land & Water Fund of the Rockies agreed that the question of a third-party facilitator should be discussed again in the three-month planning process, as did the Office of Consumer Counsel. Transcript at 57.

The Commission asked for clarification on the date for the proposed completion of the Demand Side Management Collaborative Process. "The parties also agree that the workplan will contain a schedule requiring the completion of the work of the Collaborative Process by October 1, 1992 [.]" Revised Settlement Agreement II at 9, ¶ 11. The Commission expressed its concern that the October 1, 1992 date might be viewed as an absolute cut-off date, and that the collaborative process might need to continue beyond that date. Public Service clarified that the parties chose the dates in order to have a "defined time frame" for the docket, Transcript at 58, and that the "parties can certainly agree to continue or extend the process if we are still making progress at that time." Transcript at 60. All parties agreed to clarify the sentence "The parties agree that, during the year October 1, 1991 to October 1, 1992, the parties shall submit to the Commission quarterly progress reports for the Collaborative Process." Revised Settlement Agreement II at 9, ¶ 12. The sentence is clarified to add "no less than quarterly progress reports," to allow the parties to file monthly reports, if desired, or to file reports whenever significant developments warranted a report. See Transcript at 60 (remarks by Chairman Cook); Transcript at 61 (assent of the parties).

The Revised Settlement Agreement I at 6, ¶ 12 stated that the settlement was an "integrated" agreement, and the Revised Settlement Agreement II at 11, ¶ 17, the parties stated, "This Settlement Agreement is an integrated agreement. Should the Commission not approve any portion of this settlement, each party reserves the right to withdraw." The Commission was concerned that the term "integrated" agreement might mean that the parties would have to resubmit new settlement documents as a result of the clarifications made during the Hearing. Transcript at 63. Public Service clarified the language as meaning that the parties would have to start over only if "major portions" of the Agreement were stricken, and stated that nothing which had occurred in the clarification process at Hearing would cause any problems as to the validity of the Agreement. Transcript at 64. The Land & Water Fund agreed, "nothing that has occurred this morning causes us any problem." Transcript at 64.

Finally, the Commission noted that the phrase "all cost-effective DSM" appeared in several places in the Agreement. E.g. Revised Settlement Agreement II at 3, ¶ 5(c) and at 6, ¶ 8(a). The term was not defined, and the Commission wished to inform the parties that it will be interested in how the parties define the term "cost-effective DSM," Transcript at 65, and that such determination might well be necessary in the Incentives Docket.

The Commission intends to exercise all of its authority to require the parties to live up to both the letter and the spirit of the commitments contained in these Agreements. We assume that the highest levels of leadership at Public Service Company, and the other regulated utilities as they become involved in the four new dockets, are aware that the Agreements represent a significant change in direction for the companies; and that this new direction may well require the direct involvement of the highest levels of company leadership to ensure the success of this ambitious undertaking. See Transcript at 67-68 (remarks of Commissioner Nakarado).

### III. Conclusion.

The Commission will approve the Settlement Agreements. Pursuant to the Commission's duty to approve, disapprove, or recommend modification as a condition for approval of written stipulations, under Rule 83(a) of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1, the Commission approves the written stipulations in Revised Settlement Agreement I; the Agreement Regarding Monitoring of Financial Performance under Revised Settlement Agreement I; and Revised Settlement Agreement II. Given the clarification of the parties at the Hearing, and with the clarifications enunciated herein, the stipulations are approved. The Commission finds that the Agreements are fair and reasonable, and will result in the establishment of "just and reasonable" rates as mandated by Colorado Revised Statutes § 40-3-101 (1984 Repl. Vol. 17) and the Commission's duty in Colorado Revised Statutes § 40-3-102 (1984 Rep. Vol. 17) to prevent abuses. The Agreement Regarding Monitoring of Financial Performance under Revised Settlement Agreement I (Exhibit B to this Decision), is a fair and reasonable way to assure that the rates of the Public Service Company of Colorado remain just and reasonable during the period of time covered by the Agreement, and the benchmark range of 12.5 percent to 13.5 percent return on equity, and the effective earned return on equity for 1990 of 12.61 percent, as set forth in the Agreement, are fair and reasonable. The Commission will close these dockets (Docket No. 91S-091EG and Docket No. 90F-226E). Further, we closed the Generic Demand Side Management Docket, Docket No. 90I-227EG, in a separate Order, see Decision No. C91-919 (released July 19, 1991), because that docket has been superseded by the new dockets which will be created by the Agreement.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Commission hereby approves, and adopts as a Commission Order, the Agreements filed on July 1, 1991, entitled "Revised Settlement Agreement I" (Attached as composite Exhibit A to this Decision); the "Agreement Regarding Monitoring of Financial Performance under Revised Settlement Agreement I" (Attached as composite Exhibit B to this Decision); and "Revised Settlement Agreement II" (Attached as composite Exhibit C to this Decision).

2. The Commission's approval is on the specific condition that any question of interpretation or construction, of any term or provision of any of the Agreement mentioned in Ordering Paragraph 1 above, shall include and be done in light of the clarifications made by the parties during the hearing on July 3, 1991, and described in this Decision.

3. These dockets, Docket No. 91S-091EG and Docket No. 90F-226E, are hereby closed. All hearings previously scheduled are cancelled, and all other procedural deadlines are hereby vacated.

4. Further, Docket No. 90I-227EG was also closed, by separate Order, Decision No. C91-919 (released July 19, 1991).

5. The twenty-day time period provided in Colorado Revised Statutes § 40-6-114(1) (1990 Cum.Supp. Vol.17) to file an application with the Commission for rehearing, reargument, or reconsideration of this Decision, begins on the day after the release date (mailing date) of this Decision.

6. This Order is effective on the date of its release (mailing date).

ADOPTED IN OPEN MEETING ON July 17, 1991.

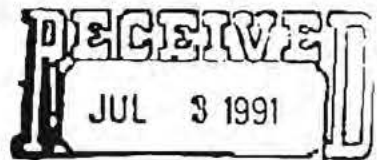
THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

*Arnold H. Cook*

*Larry J. Nakarado*

*Christine E.M. Moran*

Commissioners



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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|-----------------------------------|---|----------------------|
| RE: THE INVESTIGATION AND         | ) |                      |
| SUSPENSION OF TARIFF SHEETS FILED | ) |                      |
| BY PUBLIC SERVICE COMPANY OF      | ) | DOCKET NO. 91S-091EG |
| COLORADO WITH ADVICE LETTER NO.   | ) |                      |
| 453-GAS AND ADVICE LETTER NO.     | ) |                      |
| 1133-ELECTRIC                     | ) |                      |

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|---------------------------------|---|---------------------|
| THE COLORADO OFFICE OF CONSUMER | ) |                     |
| COUNSEL,                        | ) |                     |
|                                 | ) |                     |
| Complainant,                    | ) |                     |
|                                 | ) |                     |
| v.                              | ) | DOCKET NO. 90F-226E |
|                                 | ) |                     |
| THE PUBLIC SERVICE COMPANY OF   | ) |                     |
| COLORADO,                       | ) |                     |
|                                 | ) |                     |
| Respondent                      | ) |                     |

REVISED SETTLEMENT AGREEMENT I

Public Service Company of Colorado ("Public Service") and the Office of Consumer Counsel ("OCC") hereby enter into the following Settlement Agreement.

I. BACKGROUND

1. On March 29, 1990, OCC filed a complaint with the Colorado Public Utilities Commission ("Commission"), alleging that Public Service's electric rates were unjust and unreasonable (Docket No. 90F-226E).

2. On April 19, 1990, Public Service filed a motion to dismiss the complaint and as part of that filing committed to filing a new rate case.

3. On July 13, 1990, Public Service, the OCC and the Staff filed a Joint Stipulation resolving procedural issues, which provided that the complaint case and the rate case would proceed on a consolidated basis and that Public Service would make a voluntary adjustment to its rates for the period of November 27, 1990 through a date which ultimately became September 30, 1991. The adjustment would recognize the difference between the rates that were in effect during that period and the rates that would have been in effect had the rates to be established as a result of the complaint case been in effect during that period. The Commission approved the Joint Stipulation in Decision No. C90-951.

4. On January 31, 1991, Public Service filed its Phase I rate case (Docket No. 91S-091EG). Public Service, OCC and Intervenors in the two dockets have filed various rounds of testimony and exhibits setting forth their respective positions regarding possible refunds and appropriate revenue levels for Public Service.

5. Public Service and OCC have been engaged in negotiations designed to settle these two dockets and have agreed on a settlement which was set forth in a Settlement Agreement dated June 5, 1991 and executed by the OCC and Public Service.

6. The June 5 Agreement was the subject of a hearing before the Commission on June 21, 1991. As a result of that hearing, the OCC and Public Service desire to make certain changes to the June 5 Agreement, which are incorporated in the instant Revised

Settlement Agreement I. The instant Revised Settlement Agreement I supersedes the June 5 Agreement.

## II. SETTLEMENT AGREEMENT

1. Public Service shall file a new Phase I rate case on November 2, 1992. The expected effective date of a Commission decision setting rates in this new rate case will be July 1, 1993. The actual effective date of rates which the Commission orders pursuant to this new rate case filing shall be called the "Effective Date."

2. Public Service shall not file a request to increase base electric or gas rates before November 2, 1992 nor seek an increase to base gas or electric rates to be effective prior to July 1, 1993. OCC will not seek a gas or electric base rate reduction to become effective prior to July 1, 1993. However, the revenue offsetting negative Electric Rider, currently 1.41%, and the revenue offsetting positive Gas Rider of 2.77% approved by the Commission in the gas search docket (Docket No. 90A-743EG, Decision No. C91-292) shall remain in effect until the Effective Date.

3. Public Service shall make a \$22 million refund to its electric customers during the August 1991 billing cycle. The refund shall be on a base rate revenue basis for base rate revenue billed during the twelve months ending with the June 1991 billing cycle. Those customers who remain on the system in August of 1991 will receive credits on their electric bill during the August 1991

billing cycle. Eligible customers who have left the system prior to the August 1991 billing cycle will receive a cash refund through checks issued during August 1991, provided that any such individual refund is more than \$1.00. Any amounts which are unclaimed or unrefunded by April 1, 1992 will be the subject of a separate refund application.

4. Effective January 1, 1992 Public Service shall reduce its electric rates through a negative electric rider in the amount of 3.38%. This negative Electric Rider is determined by dividing \$36 million by the PUC jurisdictional electric base rate revenues for the 12 months ending April 1991. The negative Electric Rider shall be in effect until the Effective Date or until July 1, 1993, whichever is later.

5. Effective January 1, 1992, Public Service shall base its ECA calculation on a new ECA Base Energy Cost of 23 mills per KWH which increases base rates 8.32%. This roll-in will be offset by a corresponding decrease in the monthly electric cost adjustment charge.

6. Public Service shall continue to record the cost of Postretirement Benefits Other Than Pensions (OPEB) on a "pay-as-you-go" basis. This method will be used through the Effective Date. Beginning January 1, 1993 (the date the Company is presently required to adopt certain provisions of Statement of Financial Accounts Standards [SFAS] No. 106), or the later effective date of SFAS No. 106 should the Financial Accounting Standards Board

subsequently elect to defer the required adoption of the accounting standard, the Company shall defer any OPEB costs required to be recorded under the provisions of SFAS No. 106 in excess of those which would be recorded using the "pay-as-you-go" basis. Such deferred costs shall either be recovered on a "pay-as-you-go" basis or shall be accrued as a part of cost of service as ordered by the Commission in the rate case filed by Public Service on November 2, 1992.

7. This Settlement Agreement is not intended to resolve any specific regulatory issue raised in either this complaint case or the rate case, including the future regulatory treatment of OPEB.

8. In recognition of the monitoring requirements of the PUC, the parties agree that for monitoring purposes it is appropriate for the Commission to use the principles of I&S 1640 and a rate of return on equity range of 12.5% to 13.5% as a benchmark against which the Company's future financial performance may be measured. A separate agreement, describing in more detail the monitoring process, has been prepared for execution by the OCC, Public Service and the Staff of the Colorado Public Utilities Commission.

9. An additional agreement ("Revised Settlement Agreement II") has been prepared for execution by the OCC, Public Service, the Colorado Office of Energy Conservation, the Land and Water Fund of the Rockies and the Staff of the Commission.

10. The instant Revised Settlement Agreement I as well as the agreements referenced above in paragraphs nos. 8 and 9 shall be

presented to the Commission at the hearing scheduled on July 3, 1991.

11. This Agreement shall be effective upon approval by the Commission of the three Settlement Agreements and dismissal of the instant dockets. Upon such approval, Public Service shall file compliance advice letters within ten days of such approval, to become effective as set forth in the attached Statement of Applicable Riders. This Statement of Applicable Riders shows currently effective Riders, a change in the Fort St. Vrain Rider previously authorized to become effective 10/1/91, and Rider changes established by this Settlement Agreement to become effective 1/1/92. The "Revenue Offsetting" Rider shown on the Statement of Applicable Riders and its companion Gas Rider of +2.77% will be filed to terminate on the Effective Date per the compliance filing referenced above.

12. This Settlement Agreement is an integrated agreement and each party reserves the right to withdraw should the Commission not approve any portion of this settlement. Public Service and OCC agree to take all reasonable steps to support and defend this Settlement Agreement before the Commission.

13. The parties agree that the Settlement Agreement represents a compromise of disputed claims. As such, evidence of conduct or statements made in negotiations and discussions in connection with the Agreement shall not be admissible. The parties agree that nothing contained in the Agreement, unless otherwise

expressly provided therein, shall constitute any precedent, admission, concession, acknowledgement or agreement which may be used by or against any of the parties in any subsequent proceeding before the Commission or otherwise.

DATE: June 30, 1991

PUBLIC SERVICE COMPANY OF  
COLORADO

By: James H. Ranniger  
James H. Ranniger  
Vice President  
Regulation & Distribution  
Operations  
P.O. Box 840  
Denver, CO 80201

DATE: June 28, 1991

OFFICE OF CONSUMER COUNSEL

By: Ronald J. Binz  
Ronald J. Binz, Director  
1580 Logan St., Room 700  
Denver, CO 80203

DATE: June 27, 1991

KELLY, STANSFIELD & O'DONNELL

James K. Tarpey  
James K. Tarpey, #1705  
Kenneth V. Reif, #10666  
Mark A. Davidson, #10364  
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Telephone: 303/825-3534

DATE: June 28, 1991

OFFICE OF CONSUMER COUNSEL

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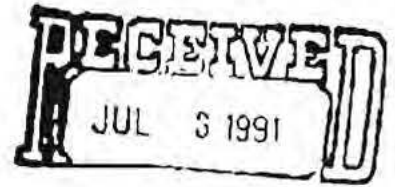
STATEMENT OF APPLICABLE RIDERS

Public Service Company  
Colo. PUC No. 6 Electric  
Tariff

Home Light & Power Co.  
Colo. PUC No. 10 Electric  
Tariff

| Effective Date:    | Currently<br>Effective | 10/1/91       | 1/1/92        | Currently<br>Effective | 1/1/92        | 1/1/92                 |
|--------------------|------------------------|---------------|---------------|------------------------|---------------|------------------------|
| <b>RIDER</b>       |                        |               |               |                        |               |                        |
| St. Vrain          | -3.15%                 | -3.78%        | -3.78%        |                        |               |                        |
| Revenue Offsetting | -1.41%                 | -1.41%        | -1.41%        | -1.41%                 | -1.56%        |                        |
| Roll-in            |                        |               | +8.32%*       |                        | +8.32%*       | -5.62 mills/KWH        |
| 1991 Settlement    |                        |               | -3.38%        |                        | -3.38%        |                        |
| <b>TOTAL</b>       | <b>-4.56%</b>          | <b>-5.19%</b> | <b>-0.25%</b> | <b>-1.41%</b>          | <b>+3.38%</b> | <b>-5.62 mills/KWH</b> |

Offset by a corresponding decrease in the monthly Electric Cost Adjustment charge.



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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|                                   |   |                      |
|-----------------------------------|---|----------------------|
| RE: THE INVESTIGATION AND         | ) |                      |
| SUSPENSION OF TARIFF SHEETS FILED | ) |                      |
| BY PUBLIC SERVICE COMPANY OF      | ) | DOCKET NO. 91S-091EG |
| COLORADO WITH ADVICE LETTER NO.   | ) |                      |
| 453-GAS AND ADVICE LETTER NO.     | ) |                      |
| 1133-ELECTRIC                     | ) |                      |

|                                 |   |                     |
|---------------------------------|---|---------------------|
| THE COLORADO OFFICE OF CONSUMER | ) |                     |
| COUNSEL,                        | ) |                     |
|                                 | ) |                     |
| Complainant,                    | ) |                     |
|                                 | ) |                     |
| v.                              | ) | DOCKET NO. 90F-226E |
|                                 | ) |                     |
| THE PUBLIC SERVICE COMPANY OF   | ) |                     |
| COLORADO,                       | ) |                     |
|                                 | ) |                     |
| Respondent                      | ) |                     |

AGREEMENT REGARDING MONITORING OF FINANCIAL PERFORMANCE  
UNDER REVISED SETTLEMENT AGREEMENT I

Public Service Company of Colorado ("Public Service"), the Colorado Office of Consumer Counsel ("OCC") and the Staff of the Colorado Public Utilities Commission ("Staff") hereby enter into the instant Agreement Regarding Monitoring of Financial Performance Under Revised Settlement Agreement I.

1. A Revised Settlement Agreement I is being submitted contemporaneously herewith to the Public Utilities Commission.

2. At Staff's election, Staff is not a party to said Revised Settlement Agreement I. However, the Staff, in furtherance of its responsibilities, and the OCC and Public Service, wish to establish

the appropriate procedures with respect to monitoring Public Service's financial performance in the future.

3. The parties agree that for monitoring purposes it is appropriate for the Commission to use the principles of I&S 1640 and a rate of return on equity range of 12.5% to 13.5% as a benchmark against which the Company's future financial performance may be measured. More specifically, the Attachment hereto reflects how the calculations would be made for monitoring purposes using the twelve months ended December 1990.

Lines 1-7 are taken from Public Service's Appendix A filing for 1990. The calculations in that filing were made in accordance with the principles established in I&S 1640. The net operating earnings amount on line 3 reflects the difference between pro forma base rate revenues and pro forma expenses.

Lines 12-27 reflect the pro forma base rate revenues and the adjustments which are necessary for purposes of monitoring. The Reduction Rider Revenue on line 14, which was in effect during 1990, is eliminated since it is not relevant for monitoring purposes.

Also, there are two other adjustments which are reflected on lines 22-24. The first reflects the negative rider of 3.38% which has been agreed upon in the Revised Settlement Agreement I. The second adjustment assumes for purposes of this Agreement that the \$22 million refund addressed in Revised Settlement Agreement I applies, on a pro forma basis, to the period from January 1, 1992

through June 30, 1993 and, therefore, reflects that portion which is attributable to a 12 month period.

The bottom portion of the page is similar to the top portion; the difference is that the amounts on lines 35-41 reflect the adjustments contained on lines 12-27. As a result of those calculations, the effective earned return on equity for monitoring purposes for the year 1990 is 12.61%.

For comparisons in the future, any particular 12 month period being reviewed which includes a portion of 1990 will be adjusted to exclude the Reduction Rider Revenue in effect during 1990. As for the two settlement adjustments, they will be reflected in future filings until new regulatory principles are established in Public Service's next rate case.

4. The parties agree for monitoring of earnings of the combined jurisdictional utility operations for energy cost adjustments and in general, a reasonable range for the effective earned return on equity (as calculated above to be 12.61%) is 12.5% to 13.5%. The Staff shall not contest the effective earned return on equity so long as it remains within the range and the OCC shall not contest the effective earned return on equity in accordance with the provisions of Section II, paragraph 2, of Revised Settlement Agreement I.

5. This Agreement shall be in effect until new rates become effective pursuant to the rate case to be filed by Public Service in accordance with Revised Settlement Agreement I.

DATE: June 30, 1991

PUBLIC SERVICE COMPANY OF  
COLORADO

By: James H. Ranniger  
James H. Ranniger  
Vice President  
Regulation & Distribution  
Operations  
P.O. Box 840  
Denver, CO 80202  
303/571-7205

DATE: June 27, 1991

KELLY, STANSFIELD & O'DONNELL

James K. Tarpey  
James K. Tarpey, #1705  
Kenneth V. Reif, #10666  
Mark A. Davidson, #10364  
550 15th Street, Suite 900  
Denver, CO 80202  
303-825-3534

DATE: June 20, 1991

OFFICE OF CONSUMER COUNSEL

By: Ronald J. Birz  
Ronald J. Birz, Director  
1580 Logan Street, Room 700  
Denver, CO 80203  
303-894-2121

DATE: June 28, 1991

OFFICE OF CONSUMER COUNSEL

Neil L. Thilquist  
Neil L. Thilquist, #10725  
1580 Logan, OL7  
Denver, CO 80203  
303-894-2121

DATE: June 28, 1991

STAFF, PUBLIC UTILITIES  
COMMISSION

James A. Richards  
James A. Richards  
Chief of Fixed Utilities  
1580 Logan, OL2  
Denver, CO 80203  
303/894-2121

DATE: June 28, 1991  
APPROVED AS TO FORM:

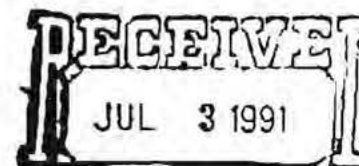
OFFICE OF THE ATTORNEY GENERAL

Carol Smith-Rising  
Carol Smith-Rising, #11025  
Mana L. Jennings-Fader, #15773  
Regulatory Law Section  
110 16th Street, 10th Floor  
Denver, CO 80202  
303/620-4159

ATTACHMENT

PUBLIC SERVICE COMPANY OF COLORADO  
DERIVATION OF MONITORING BENCHMARK  
12 MONTHS ENDED DECEMBER 31, 1990

| LINE<br>NO. | APPENDIX A                                  | TOTAL<br>COLORADO<br>JURISDICTION |
|-------------|---------------------------------------------|-----------------------------------|
| 1           | NET ORIGINAL COST RATE BASE                 | \$2,131,133,996                   |
| 2           |                                             |                                   |
| 3           | NET OPERATING EARNINGS                      | \$202,241,075                     |
| 4           |                                             |                                   |
| 5           | EARNED RETURN ON RATE BASE                  | 9.49%                             |
| 6           |                                             |                                   |
| 7           | EARNED RETURN ON EQUITY                     | 14.54%                            |
| 8           |                                             |                                   |
| 9           |                                             |                                   |
| 10          | -----                                       |                                   |
| 11          |                                             |                                   |
| 12          | TOTAL PRO FORMA BASE REVENUE PER APPENDIX A | \$1,028,111,757                   |
| 13          |                                             |                                   |
| 14          | ELIMINATE REDUCTION RIDER REVENUE           | 24,745,515                        |
| 15          |                                             |                                   |
| 16          |                                             |                                   |
| 17          | PRO FORMA BASE REVENUE BEFORE SETTLEMENT    | \$1,052,857,272                   |
| 18          |                                             |                                   |
| 19          |                                             |                                   |
| 20          | ADJUSTMENT FOR FINANCIAL SETTLEMENT:        |                                   |
| 21          | -----                                       |                                   |
| 22          | (3.38%) * PUC BASE REVENUE                  | (35,577,983)                      |
| 23          |                                             |                                   |
| 24          | \$ (22,000,000) * 12/18                     | (14,666,667)                      |
| 25          |                                             |                                   |
| 26          |                                             |                                   |
| 27          | PRO FORMA BASE REVENUE WITH SETTLEMENT      | \$1,002,612,622                   |
| 28          |                                             |                                   |
| 29          |                                             |                                   |
| 30          | -----                                       |                                   |
| 31          |                                             |                                   |
| 32          | PER SETTLEMENT                              |                                   |
| 33          | -----                                       |                                   |
| 34          |                                             |                                   |
| 35          | NET ORIGINAL COST RATE BASE                 | \$2,132,206,103                   |
| 36          |                                             |                                   |
| 37          | NET OPERATING EARNINGS                      | \$187,526,962                     |
| 38          |                                             |                                   |
| 39          | EARNED RETURN ON RATE BASE                  | 8.79%                             |
| 40          |                                             |                                   |
| 41          | EARNED RETURN ON EQUITY                     | 12.61%                            |
|             |                                             | =====                             |



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\*\*\*

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| RE: THE INVESTIGATION AND         | ) |                      |
| SUSPENSION OF TARIFF SHEETS FILED | ) |                      |
| BY PUBLIC SERVICE COMPANY OF      | ) | DOCKET NO. 91S-091EG |
| COLORADO WITH ADVICE LETTER NO.   | ) |                      |
| 453-GAS AND ADVICE LETTER NO.     | ) |                      |
| 1133-ELECTRIC                     | ) |                      |

|                                 |   |                     |
|---------------------------------|---|---------------------|
| THE COLORADO OFFICE OF CONSUMER | ) |                     |
| COUNSEL,                        | ) |                     |
|                                 | ) |                     |
| Complainant,                    | ) |                     |
|                                 | ) |                     |
| v.                              | ) | DOCKET NO. 90F-226E |
|                                 | ) |                     |
| THE PUBLIC SERVICE COMPANY OF   | ) |                     |
| COLORADO,                       | ) |                     |
|                                 | ) |                     |
| Respondent                      | ) |                     |

REVISED SETTLEMENT AGREEMENT II

Public Service Company of Colorado ("Public Service"), the Colorado Office of Consumer Counsel ("OCC"), the Colorado Office of Energy Conservation ("OEC"), the Land and Water Fund of the Rockies ("LAW Fund") and the Staff of the Public Utilities Commission of the State of Colorado ("Staff"), "the parties", hereby enter into this Revised Settlement Agreement II ("Agreement") with respect to the Revised Settlement Agreement I ("Settlement I") proposed by Public Service and the OCC on July 1, 1991, to provide for resolution of certain issues raised in the above-captioned dockets and to dismiss these dockets. By entering into this Agreement, Staff takes no position with respect to Revised Settlement

Agreement I. As grounds for the settlement, the parties state as follows:

### I. Introduction

1. On June 5, 1991, in the above-captioned dockets, Public Service and the OCC filed a Joint Motion to Approve Settlement Agreement and to Dismiss Dockets. The OEC and the LAW Fund had planned to oppose the June 5 Settlement Agreement because it does not seek formal proceedings which provide an opportunity for the Commission to address issues such as decoupling of Public Service's profits from its sales, incentive regulation, and certain Demand-Side Management ("DSM") and other issues.

2. On June 18, 1991 Public Service, the OCC, the OEC and the LAW Fund executed the Settlement Agreement to Resolve Certain Issues and to Dismiss Dockets ("Settlement II"). In Settlement II, the OEC and LAW Fund agreed not to oppose Settlement I. Settlement II was the subject of substantial discussion before the Commission at a hearing held June 21, 1991. As a result of that hearing, the parties to the original Settlement II, as well as the Staff, have executed this Agreement.

3. The parties agree to the schedule outlined below as the best means to achieve timely resolution of the issues discussed in paragraph 1 while being mindful of the limited resources of all concerned, including the Commission. In agreeing to the schedules outlined below and in recommending the creation of certain dockets,

the parties to this Agreement contemplate appropriate notice to the public, and the participation of other interested parties in those dockets.

## II. Decoupling and DSM and Other Incentives

4. The parties agree that a new docket should be created to address the decoupling of Public Service's revenues from its sales and to review and establish regulatory incentives to encourage Public Service to implement DSM programs.

5. The parties agree that Public Service, either individually or jointly with any other party, will file an application requesting that the Commission render decisions on at least the following issues:

a. Should Public Service Company's revenues be decoupled from electricity sales and, if so, in what manner?

b. What incentives affecting implementation of DSM programs are inherent in the Electric Cost Adjustment and what, if any, steps should the Commission take to address these incentives?

c. What is the most efficient and fair method by which Public Service can be given regulatory incentives to acquire all cost-effective DSM at the minimum cost?

d. Are there other incentive programs not solely related to DSM which should be implemented for Public Service?

In light of the importance of these issues, the parties jointly request that the Commissioners hear and decide the issues presented in this new docket and issue an order that would contain a schedule for implementation of its decisions.

6. The parties jointly agree that this application will be filed on or about July 15, 1991, with appropriate notice issued by the Commission and with the intent of having closure of the record of the docket for submission to the Commission by December 31, 1991. It is the hope of the parties that a final Commission order can be issued by March 1, 1992.

### III. Integrated Resource Planning

7. The parties agree that certain issues in resource planning and selection should be addressed and resolved by the Commission in a rulemaking. To initiate the rulemaking process, the parties agree to jointly petition the Commission to open a General Investigation into Integrated Resource Planning ("IRP") on or about October 1, 1991. The opening of the docket will entail notice to the public and the opportunity to participate in the informal negotiations. The parties agree to attempt to informally negotiate a jointly stipulated proposed rule within the context of the General Investigation docket. Between the October 1, 1991 initiation of the IRP docket and the April 1, 1992 date of the petition(s) to initiate a formal rulemaking on IRP, the parties

agree to file an interim report with the Commission on or about January 2, 1992, containing at least the following information:

- The names of the parties participating in the informal negotiations.
- The issues that have been addressed.
- The level of agreement, if any, on the issues addressed.

By April 1, 1992, either the parties will petition the Commission jointly, or the LAW Fund and OEC will petition the Commission separately, to initiate a formal rulemaking on IRP. When such petition(s) is/are filed, the parties agree to assist the Commission to make a final determination on the issuance of the rule sought by the petition(s) by October 1, 1992. The parties expect to ask the Commission to resolve at least the following issues in the rulemaking:

- The integration of DSM into resource planning.
- The evaluation of environmental externalities and whether and how they are taken into account in resource selection.
- The use of the societal test, or other tests, in determining the cost effectiveness of resources.
- The procedures, if any, to be used for the review of Public Service's planning assumptions, forecasts, and methodologies.

- The appropriate methodology for determination of avoided costs of supply side resources and appropriate discount rates.
- The objectives of IRP.
- Methods to address the uncertainty of demand forecasts (for example, planning flexibility to best accommodate loads that are higher or lower than expected).

#### IV. Demand-Side Programs Collaborative Process

8. In order to reach agreement on the design and implementation of optimal DSM programs, the parties agree to undertake and complete a Collaborative Process according to the time schedule set forth below and based upon consideration of the following mutual commitments:

a. The purposes of the Collaborative Process are to analyze the potential for direct investment by the Company in DSM resources; to design programs that will realize that potential; to develop a joint submission to the Commission, for expeditious approval and implementation, of a set of demand-side programs for the residential, commercial and industrial sectors; and to generally facilitate the acquisition of all cost-effective DSM. The Collaborative Process will strive to develop DSM programs for all customer classes, will recommend the DSM opportunities available in the new

construction market and will recommend methods to monitor the performance of DSM resources.

b. The parties agree that the Collaborative Process will be a joint effort to develop a detailed DSM plan including the proper role of pilot projects for Public Service to implement. Agreements and recommendations of the Collaborative Process shall be developed with the consensus of all participants in the Collaborative Process. The parties agree that the Collaborative Process is intended to identify and result in implementation of optimal demand-side programs.

c. The parties agree that selection and implementation of demand-side programs that are cost-effective will not be limited by Public Service's current or planned budget for DSM. Public Service agrees that it will implement all demand-side programs selected by this Collaborative Process and approved by the Commission.

d. The parties agree that Public Service's existing DSM programs may be analyzed within the Collaborative Process. However, unless agreed to by the parties to the Collaborative Process and approved by the Commission, existing programs which have been implemented may not be changed as a result of the Collaborative Process.

e. The parties agree to request the Commission to allow all reasonable costs of consultants, to be paid by Public Service, contingent upon Public Service being

reimbursed by its customers for such costs. For purposes of the planning process, there shall be a cap of \$20,000 on consultant fees reimbursed by Public Service's customers. For purposes of the Collaborative Process, there shall be a cap on consultant fees reimbursed by Public Service's customers, to be determined as part of the planning process. If the cap on consultant fees needs to be modified, the parties agree to request such modification as is necessary from the Commission.

9. It is understood and agreed that any party to this Agreement remains free to use its collaborative consultants as expert witnesses in any proceeding. However, in order to promote the spirit of cooperation and compromise intended by this Agreement, the parties further understand and agree that the Collaborative Process provided for by this Agreement is in the nature of settlement discussions and, therefore, that any communications of a party, in the course of the Collaborative Process, any communications between or among consultants in the course of the Collaborative Process, any communications of a party with any consultant in the course of the Collaborative Process and any documents, reports or other materials prepared by the parties or their consultants in the course of the Collaborative Process, shall not be either admissible or discoverable in any proceeding, except that evidence disclosed during the Collaborative Process may be discoverable in any proceeding.

10. The parties jointly request that the Commission, by order, initiate a DSM Collaborative Process Docket on or about July 15, 1991, within which the Collaborative Process described in the preceding paragraphs will take place.

11. The parties agree that, on or before July 15, 1991, they will begin planning for the Collaborative Process. The parties agree that by October 1, 1991, they will have developed a detailed workplan for the Collaborative Process, including an organizational structure, a plan for recovery of the planning and Collaborative Process expenses, a budget and a detailed statement of objectives and milestones for achieving these objectives. The parties agree to submit this workplan to the Commission on or before October 1, 1991, for its review and approval. The parties also agree that the workplan will contain a schedule requiring the completion of the work of the Collaborative Process by October 1, 1992, and, to the degree that agreement among the parties has been reached, submission to the Commission by such date of a set of jointly agreed-to demand-side programs for Public Service to implement. To the extent that agreement is not reached by the parties, each of the parties shall be free to submit separate DSM program proposals to the Commission for approval.

12. The parties agree that, during the year October 1, 1991, to October 1, 1992, the parties shall submit to the Commission quarterly progress reports for the Collaborative Process. Such reports shall include any DSM programs to which the Collaborative

participants may have agreed by the time of filing of any such report.

#### V. Phase II of the Pending Rate Case

13. Public Service agrees not to initiate a Phase II proceeding for the above-captioned rate application. The parties believe it is a better allocation of the scarce technical and legal resources of the parties and the Commission to resolve the issues raised in Sections II-IV before undertaking to address typical Phase II issues such as cost of service allocation and rate design. In addition, the parties agree that resolution of the issues addressed in Sections II-IV may affect the manner in which the Commission addresses such Phase II issues. The parties also acknowledge that some Phase II issues may affect issues in Sections II-IV. On balance, however, the parties believe that consideration of Phase II issues should await attention in conjunction with the next rate application agreed to be filed by Public Service in November, 1992.

#### VI. Low-Income Assistance Docket

14. Public Service agrees to file an application addressing low-income assistance issues on or before December 1, 1991. Public Service proposes to address at least the following issues in this application:

- Eligibility of potential participants.

- The form of assistance for participants.
- The method of funding the low income assistance.
- The relation, if any, of low income assistance and energy efficiency.

#### VII. General Provisions

15. A separate agreement ("Revised Settlement Agreement I") has been prepared for execution by the OCC and Public Service.

16. This entire Settlement Agreement is subject to review and approval by the Commission and does not become effective until the Commission orders that it be implemented.

17. This Settlement Agreement is an integrated agreement. Should the Commission not approve any portion of this settlement, each party reserves the right to withdraw. The disapproval shall be deemed to be a disapproval of this entire Settlement Agreement. The parties agree to take all reasonable steps to support and defend this Settlement Agreement before the Commission.

18. The parties agree that this Settlement Agreement represents a compromise of disputed claims. As such, evidence of conduct or statements made in negotiations and discussions in connection with the Agreement shall not be admissible. The parties agree that nothing contained in this Agreement, unless otherwise expressly provided therein, shall constitute any precedent, admission, concession, acknowledgement or agreement, which may be

used by or against any of the parties in any subsequent proceeding before the Commission or otherwise.

19. The parties agree that they will not object to the above dockets and schedules on procedural grounds. Any motions to alter the agreed-upon schedules must be filed jointly.

20. The instant Revised Settlement Agreement II, as well as the Agreement referred to in paragraph No. 15, shall be presented to the Commission at the hearing scheduled on July 3, 1991.

DATE: June 30, 1991

PUBLIC SERVICE COMPANY OF

DATE: June 28, 1991

OFFICE OF CONSUMER COUNSEL COLORADO

By: James H. Ranniger  
James H. Ranniger  
Vice President  
Regulation & Distribution  
Operations

By: Ronald J. Binz  
Ronald J. Binz, Director  
1580 Logan Street, Room 100  
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303-894-2121

DATE: June 28, 1991

KELLY, STANSFIELD & O'DONNELL

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303-825-3534

DATE: June 28, 1991

OFFICE OF CONSUMER COUNSEL

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303-894-2121

DATE: June 28, 1991

COLORADO OFFICE OF ENERGY  
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Denver, Colorado 80203  
303-894-2144

DATE: June 28, 1991

COLORADO OFFICE OF ENERGY  
CONSERVATION

Jerry W. Goad, #11284  
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303-620-4716

DATE: June 28, 1991

LAND AND WATER FUND OF THE  
ROCKIES

Bruce Driver  
Bruce Driver, #15462  
Counsel to the Energy Project  
1405 Arapahoe Avenue, #200  
Boulder, CO 80302  
303-440-8505

DATE: June 28, 1991

LAND AND WATER FUND OF THE  
ROCKIES

Bruce Driver for  
Frances M. Green, #13157  
1405 Arapahoe Avenue, #200  
Boulder, CO 80302  
303-444-1188

DATE: 28 June 91

APPROVED AS TO FORM:

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Mana Jennings, Fader, #15773  
Assistant Attorney General  
Regulatory Law Section  
110 16th Street, 10th Floor  
Denver, Colorado 80202  
(303) 620-4161

DATE: June 28, 1991

FOR THE STAFF OF THE COMMISSION:

Gary Schmitz  
Gary Schmitz  
Senior Economist  
Public Utilities Commission  
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