(Decision No. C91-1514)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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| IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AUTHORIZATION OF THE REPOWERING OF FORT ST. VRAIN, FOR ISSUANCE OF SUCH CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AS MAY BE NECESSARY TO ACCOMPLISH THE ABOVE PURPOSE, FOR MODIFICATION OF SUCH COMMISSION DECISIONS AS MAY BE NECESSARY TO ACCOMPLISH THE ABOVE PURPOSES, FOR AUTHORIZATION OF A RATE METHODOLOGY ASSOCIATED WITH THE REPOWERING, FOR GRANTING OF THE RELIEF SOUGHT ON AN ACCELERATED BASIS, AND FOR SUCH OTHER RELIEF AS MAY BE NECESSARY OR APPROPRIATE TO ACCOMPLISH THE ABOVE PURPOSES. | DOCKET NO. 91A-281E |

**COMMISSION ORDER APPROVING SUPPLEMENTAL SETTLEMENT AGREEMENT**

Mailing date: December 27, 1991
Adopted date: November 21, 1991

I. Summary.

This matter came before the Colorado Public Utilities Commission ("Commission") at a Special Open Meeting, held at 9:30 a.m. on Thursday, November 21, 1991. The Commission held the meeting to decide whether or not it should approve a proposed "Supplemental Settlement Agreement" to a 1986 Settlement

Agreement in this docket. See discussion infra at Part II for a history of the Fort St. Vrain nuclear plant.

The parties in this docket are the **Colorado Office of Consumer Counsel; the Concerned Citizens Congress of Northeast Denver; Public Service Company of Colorado**; the Staff of the Colorado Public Utilities Commission; the CF & I Steel Corporation; Cimmarron Chemical, Inc.; the City and County of Denver; the Colorado Independent Energy Association; Colorado Interstate Gas Company; Colorado-Ute Electric Association; the Land & Water Fund of the Rockies; the Office of Energy Conservation; and Western Gas Resources, Inc.

On November 1, 1991, the Office of Consumer Counsel, the Concerned Citizens Congress of Northeast Denver, and Public Service Company of Colorado (the parties listed in bold print above are the signatory parties) filed this settlement proposal with the Commission. The Supplemental Settlement Agreement would lead to the early dismantlement and decontamination of the Fort St. Vrain nuclear power plant. Previously, the Commission has held numerous hearings in this matter. The Commission held an all-day hearing to review the initial Settlement Agreement on October 11, 1991. On Thursday November 7, 1991, the Commission held another all-day hearing, this time an evidentiary hearing, to review the Supplemental Settlement Agreement.

The Commission has carefully reviewed the Application, the Supplemental Settlement Agreement (attached as Appendix "1" to this Decision), the evidence submitted at the hearings, and all other matters filed in this Docket. Our judgment is that the Supplemental Settlement Agreement is in the public interest. Therefore, we unanimously approve the Supplemental Settlement Agreement.

## II. History of Fort St. Vrain Nuclear Reactor and Procedural Background of Application by Public Service for Early Decommissioning of the Reactor.

Public Service Company of Colorado ("PSCo," "the Company," or "Public Service") filed this Application on April 24, 1991. The Application sought Commission approval for a method of recovery of expenses related to the early decommissioning of the Company's Fort St. Vrain nuclear generating station ("Fort St. Vrain").

In 1968, the Commission approved Public Service's application for a certificate of public convenience and necessity to construct and operate the Fort St. Vrain nuclear power plant. Commission approval, however, was subject to the condition that the Company assumed the risks, if the costs for Fort St. Vrain exceeded the costs for building a power generating plant of similar capacity powered by gas or coal. Decision No. 71104 (April 2, 1968). See Decision No. C86-1626 at 2 (November 25, 1986) (Order Approving 1986 Fort St. Vrain Settlement) (quoting relevant portion of 1968 decision which had the effect of disallowing excess costs, if nuclear power plant cost more than conventional power plant). When the Fort St. Vrain nuclear plant was finally placed into operation in January 1979, it never performed to commercial operational standards.

In 1986, the Fort St. Vrain nuclear plant was taken out of rate base, pursuant to the 1986 Fort St. Vrain Settlement Agreement ("1986 Fort St. Vrain Settlement")[1],

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[1]. The 1986 Fort St. Vrain Settlement is attached to many documents in this Docket. For example, it is attached as "Appendix A" to the Supplemental Settlement Agreement (November 1, 1991). The 1986 Fort St. Vrain Settlement resolved no less than six pending legal actions, four at the Colorado Supreme Court, one at Denver District Court, and one at the Commission, concerning various aspects of the Fort St. Vrain morass. See Decision No. C86-1626 at 4 (Order Approving 1986 Fort St. Vrain Settlement) (table showing the six pending lawsuits, resolved as a result of the Settlement).

approved by the Commission in Decision No. C86-1625 (November 25, 1986). The shareholders of Public Service Company of Colorado have taken large losses, as a consequence of removing Fort St. Vrain from rate base, and the unexpected design and operational problems with the nuclear plant. Richard C. Kelly, Chief Financial Officer of Public Service, testified at the evidentiary hearing that PSCo stockholders "have recorded approximately $400 million worth of losses as a result of Fort St. Vrain." Transcript of November 7, 1991 Evidentiary Hearing at 45 (testimony of Richard C. Kelly).

According to the Application, the Company has two decommissioning options for Fort St. Vrain. First, the Company could choose the option of early dismantlement. Second, Public Service Company could choose the prolonged (up to 55 years) storage of the plant, followed by later decontamination and dismantlement.

Early dismantlement would involve removing the radioactive components from the Fort St. Vrain plant within the next 3 years. (Early dismantlement is sometimes referred to in the pleadings by the acronym DECON, standing for "decontamination.") The early dismantlement option would require an additional revenue stream of $13.9 million per year for twelve years to avoid recording a liability of $124 million in one quarter of business.[2] The amount of $124 million is the amount by which the Company's decommissioning reserves must be increased to accomplish early dismantlement. Later dismantlement is referred to in the pleadings by the acronym SAFSTOR, standing for "safe storage." See PSCo Fort St. Vrain Application at 4. The prolonged storage and later dismantlement SAFSTOR option is the current

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[2]. In essence, the trade-off proposed in this Supplemental Settlement Agreement is a financial arrangement similar to a loan, whereby the consumers "loan" the Company the money to pay for early dismantlement through the 12-year rate increase, and the Company repays the loan through foregoing three Regulatory Principles for twelve years.

program. The Company has made clear it will pursue SAFSTOR, if the DECON option is not made possible via this Commission's approval of the income stream required to implement early dismantlement. See, e.g., Public Service's Motion to Cancel September 13, 1991 Supplemental Direct Testimony Due Date (filed September 9, 1991).

According to the Company, the costs of early dismantlement are the same, in absolute dollars, as the costs of later dismantlement. Early dismantlement expenses, however, would be incurred sooner, requiring that the Company immediately increase its decommissioning reserves by $124 million. (Current decommissioning reserves are based on the assumption that Fort St. Vrain will be dismantled after the SAFSTOR period, perhaps 55 years from now. Therefore, current reserves are inadequate to pay for early dismantlement.) See PSCo Fort St. Vrain Application at 4. According to the Company, early dismantlement "is distinctly preferable for all concerned because, by ensuring the dismantlement and removal of radioactive components within the next 3 years, it eliminates a substantial amount of potential environmental, regulatory and financial uncertainty which will exist if these activities are postponed until the middle of the 21st century." Id. at 4.

PSCo's April 24, 1991 Application proposed to pay for early dismantlement through the sale of electricity from a repowered Fort St. Vrain. The Company sought permission to repower the Fort St. Vrain generating station with natural gas, and a solar power facility. According to the Company, the rates for the power produced at a repowered (i.e., non-nuclear) Fort St. Vrain would be high enough to permit early dismantlement, and would be competitive with other alternatives. The Company requested expedited action on the Application because it needed to have Colorado PUC approval before the Company could finalize its request to the Nuclear Regulatory Commission to approve early dismantlement. See PSCo Fort St Vrain Application

at 6. The Company urged the Commission to approve the Application, because the Application was in the public interest:

> The Commission's favorable response to this Application will at once allow the early dismantlement of Fort St. Vrain's nuclear components and the renewed use of the plant in an environmentally beneficial and economical manner and which will, incidentally, avoid the waste of its still useful non-nuclear assets. Such response is consistent with, and required by, the public interest.
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> PSCo Fort St. Vrain Application at 6 (filed April 24, 1991).

But on June 21, 1991, the Concerned Citizens Congress of Northeast Denver, Vercenia Belcher, Emma Young Green, and Dorothy Starling ("Concerned Citizens Congress") (sometimes referred to as "Green et al." or "Belcher et al."; the Commission will use "Concerned Citizens Congress") filed a Motion to Dismiss the Application.

In the motion, the Concerned Citizens Congress argued that PSCo's 1991 Fort St. Vrain Application was an illegal attempt to breach the terms of the September 24, 1986 Fort St. Vrain Stipulation and Settlement Agreement.[3] The Concerned Citizens Congress argued that one of the essential features of the 1986 Fort St. Vrain Settlement was that the PSCo's stockholders would pay for all future decommissioning of Fort St. Vrain not allowed by the 1986 Settlement. Concerned Citizens Congress argued that it was only fair that the stockholders pay for the cost of decontaminating and dismantling Fort St. Vrain, given that the ratepayers had paid so much for the Fort St. Vrain nuclear power plant, which had never worked properly.

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[3]. See 1986 Fort St. Vrain Settlement ¶ 11 at 14 (Entitled "Obligation of Parties to Defend Stipulation and Settlement Agreement") ("Each of the parties agrees that it will take no action in regulatory or judicial proceedings or otherwise which will have the effect, directly or indirectly, of contravening the provisions or purposes of this Stipulation and Settlement Agreement.").

The Office of Consumer Counsel ("OCC") filed a response supporting the motion to dismiss filed by the Concerned Citizens Congress, agreeing with the position of the Concerned Citizens Congress that PSCo's 1991 Fort St. Vrain Application directly contravened the express terms and intent of the 1986 Fort St. Vrain Settlement. The OCC argued that the Commission "cannot materially alter the terms of this Agreement [1986 Fort St. Vrain Settlement] relating to decommissioning costs without the consent of all the parties to the Stipulation." OCC Response to Concerned Citizens Congress of Northeast Denver's Motion to Dismiss at 2 (filed June 28, 1991).

On July 2, 1991, the Commission held a Prehearing Conference, to hear argument on pending motions, and to set a procedural schedule in this docket. At the Prehearing Conference, the Commission heard argument on the motion to dismiss, and decided to deny the motion. In a later written decision, the Commission stated that it had the legal power to grant the Application, despite the 1986 Fort St. Vrain settlement. The Commission held it had the "legal power to change or modify the 1986 Fort St. Vrain settlement, if the company demonstrates [1] facts establishing 'changed circumstances' and that [2] a modification of the 1986 Settlement would be in the public interest." Decision No. C91-898 at 3 (July 12, 1991).

After the Commission announced orally at the prehearing conference its decision to deny the motion to dismiss, it invited the parties to confer on a procedural schedule. The parties requested, and were granted, additional time to develop and propose a schedule.[4] In the written decision issued following the prehearing

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[4]. James K. Tarpey, attorney for Public Service, put the proposed schedule in written form in two letters to the Commission dated July 8, 1991 and July 9, 1991. In the July 8, 1991 letter, Public Service proposed dividing the Commission's consideration of the Application into two "components" -- the first component involved hearings on the "financial" aspect of Fort St. Vrain, i.e. the choice between DECON and SAFSTOR, where the letter proposed hearings in March 1992; the second component relating to the

conference, the Commission adopted and set the schedule proposed in the July 9, 1991 letter. The schedule culminated in a full week of evidentiary hearings on the merits of the Application commencing April 6, 1992. See Decision No. C91-898 at 4-6 (July 12, 1991). Given that the repowering issue was taken out of the proceedings on the Application and deferred to an uncertain date in the future, many of the intervenors did not participate in the decommissioning and dismantlement portion of the Application.

On September 9, 1991, Public Service Company filed a "Motion to Cancel September 13, 1991 Supplemental Direct Testimony Due Date." The motion was unusual in that the Applicant sought to cancel, not delay, its Supplemental Direct Testimony, with the apparent intention to withdraw the Application. In the motion, the Company stated that unless Intervenors agreed to the DECON option, the Company simply intended to drop the DECON option and proceed with SAFSTOR. The Commission denied the motion to cancel. See Decision No. C91-1285 (September 23, 1991). The parties engaged in prolonged settlement negotiations during September 1991, which resulted in the proposed settlement agreement, filed on October 9, 1991. See Supplemental Settlement Agreement, Part I "Background", ¶ 12 at 5 ("A series of negotiation was held throughout the month of September 1991.").

On October 9, 1991, three parties[5] -- the Office of Consumer Counsel, the Concerned Citizens Congress, and Public Service Company of Colorado -- filed the

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repowering of Fort St. Vrain, with no dates set. In the July 9, 1991 letter, Public Service proposed moving the hearings on the first component to April 1992.

[5]. The 1991 Settlement Agreement was signed by three of the four signatories to the 1986 Fort St. Vrain Settlement. The fourth signatory of the 1986 Agreement was the Colorado Public Utilities Commission, signed by then-Commission Chairman Ronald L. Lehr, and Commissioners Edythe S. Miller and Andra Schmidt. See 1986 Fort St. Vrain Settlement at 14 (signature page showing names of signatories for the four parties to the agreement).

initial Settlement Agreement. The settlement, on its face, was novel because the consumer advocates, who normally are vigorously opposed rate increases, urged the Commission to approve a $124 million rate increase with carrying costs over 12 years as a funding mechanism to institute the early dismantlement of Fort St. Vrain.

On October 11, 1991, the Commission conducted an all-day hearing to hear testimony regarding the proposed agreement.[6] Del Hock, Chairman, President, and Chief Executive Officer of Public Service Company of Colorado, stated that the Fort St. Vrain matter was "the most important and critical decision that the Public Service Company of Colorado has ever made." Transcript of October 11, 1991 Settlement Hearing at 14. Mr. Hock urged the Commission to approve the Settlement Agreement, stating that the early dismantlement of the Fort St. Vrain nuclear reactor was in everyone's best interest, and that the sole issue was a financial one -- how to generate a revenue stream specifically dedicated to Fort St. Vrain to allow early dismantlement of Fort St. Vrain, without damaging the Company's bond ratings and stock prices. Transcript of October 11, 1991 Settlement Hearing at 15. The proposed settlement agreement solved this problem by creating a "regulatory asset" (the $13.9 million a year rate increase over a 12-year period, the amount needed to recover the additional cost of DECON and the associated carrying costs). Mr. Hock urged the Commission to promptly approve the Settlement Agreement, stating that the Company could not afford the costs of continuing to hold open both the DECON and SAFSTOR options, that the Company needed quick action in Colorado to obtain Nuclear Regulatory

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[6]. The agreement and the hearing concerned solely the choice between the DECON and the SAFSTOR options for dismantling the nuclear reactor at Fort St. Vrain. The repowering issue is now completely separate from this Application. The Commission's approval today of the Supplemental Settlement Agreement means that this docket is closed. Should the Company wish to repower Fort St. Vrain, it must file a new application.

Commission approval of DECON, and that the Company's ability to suspend work under a fixed-price DECON contract with Westinghouse Corporation would expire soon. See Transcript of October 11, 1991 Settlement Hearing at 23.

In return for the revenue stream of $13.9 million a year needed to finance early dismantlement, the Company agreed not to assert three Regulatory Principles for twelve years, which it asserted would reduce rates by a minimum of $13.9 million a year, or at create an estimated higher level of savings of $50.7 million a year. In addition, the Company committed, in the Settlement Agreement, to a 13-year program of shareholder-paid contributions to the Colorado Energy Assistance Foundation (the "Foundation")[7]. During the 13 years, the Company's shareholders were obligated by the Settlement Agreement to donate a minimum of $13 million, and a maximum of $32 million to the Foundation. See Transcript of October 11, 1991 Settlement Hearing at 18..

Kathleen Mullen, attorney for the Concerned Citizens Congress, urged the Commission to approve the Settlement Agreement, but not for the reasons advocated by the Company. Ms. Mullen reviewed the long history of the fight against the Company's Fort St. Vrain nuclear reactor, and stated that the ratepayers had paid hundreds of millions of dollars for service from Fort St. Vrain -- service which they never received. She argued that the Settlement Agreement was a fair compromise, because the value of the three foregone regulatory principles exceeded the rate increase. Also, she argued that the Supplemental Settlement Agreement was fair because it

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[7]. The Colorado Energy Assistance Foundation was created by the Legislature in Colorado Revised Statutes § 40-8.5-104 (1991 Cum.Supp. Vol.17). The Foundation helps low-income people, the elderly, and the handicapped, who do not otherwise have the financial resources to meet their heating and other energy needs. See Colorado Revised Statutes § 40-8.5-101 (1991 Cum.Supp. Vol.17) (legislative declaration of purpose).

provided for a minimum of $13 million in shareholder-funded contributions to the Colorado Energy Assistance Foundation. This money to low-income consumers, Ms. Mullen argued, reflected the fact that low-income people had led the fight against Fort St. Vrain, and therefore should receive some of the benefits from the settlement. See Transcript of October 11, 1991 Settlement Hearing at 29-30.

Ronald J. Binz, Director of the Office of Consumer Counsel, admitted that the Settlement Agreement "is an outcome which I thought would never happen." Transcript of October 11, 1991 Settlement Hearing at 35. Mr. Binz emphasized that the OCC, and the Concerned Citizens Congress, began to realize during negotiations after the Commission denied the motion to dismiss, that a legal challenge to Commission approval of the Application[8] would mean that the Company would abandon the DECON option, and default to the SAFSTOR option for decommissioning Fort St. Vrain. Id. Upon review, the OCC decided that it preferred the DECON option. Id. at 38. Mr. Binz stated that he felt the rate increases ($124 million plus carrying costs over 12 years) were more than offset by the value of the three foregone Regulatory Principles, and the Company's charitable contributions to the Colorado Energy Assistance Foundation. Id. at 40. Binz stated that he understood the Company's earnestness to put Fort St. Vrain behind it. He concluded that the Settlement Agreement accomplished this purpose, in a manner which also afforded benefits to the ratepayers. Id. at 43. Binz urged the Commissioners to sign the 1991 Fort St. Vrain Settlement Agreement, as the members of the 1986 Commission had signed the 1986 Fort St. Vrain Settlement. Id. at 43.

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[8]. A court battle through judicial review of the Commission's decision, if the Commission eventually approved the Application and made the finding of "changed circumstances" and that the Application was in the "public interest", would go to state district court, then to the state supreme court, and could mean several years of litigation.

The three Commissioners, after hearing a full day of testimony concerning the Settlement Agreement, all stated that they were unwilling to sign the Settlement Agreement.[9] Chairman Cook noted that the Commissioners, unlike the Commissioners who signed the 1986 Fort St. Vrain Settlement, were not parties to the negotiations leading to the proposed Settlement Agreement. See Transcript of October 11, 1991 Settlement Hearing at 171. Commissioner Nakarado noted that the Commissioners "haven't had an opportunity, other than here, to know anything about what is going on" concerning the Fort St. Vrain negotiations, and that he would not lightly sign an agreement as being in the "public interest" without further evidence. Further, Commissioner Nakarado was unwilling to condone negotiations held in secret by some signatory parties without the Commissioners, with subsequent presentation of the resulting agreement on a "take it or leave it" basis. Signing such an agreement could result in the same occurrence in the future, which Commissioner Nakarado did not believe to be in the public interest. See id. at 172. Commissioner Alvarez agreed with the analysis of her fellow Commissioners, and stated that she did not think she was legally bound by the 1986 Fort St. Vrain Settlement, nor did she feel she could legally bind future commissioners, in the manner proposed by the Settlement Agreement. Id. at 175.

The Commissioners, however, stated that they would be willing to consider a new agreement -- presented by the settling parties for Commission approval, rejection,

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9. The Supplemental Settlement Agreement accurately states the Commissioners' position at the October 11, 1991 hearing: "During the course of this conference, the individual Commissioners indicated that, while they had not reached a decision regarding the substantive portions of the proposed Settlement Agreement, they would not agree to be parties because they did not participate in the negotiations and development of the Agreement, they would not and could not bind themselves or future Commissioners and they disagreed regarding the binding effect of the 1986 Agreement." Supplemental Settlement Agreement at 5, ¶ 13 (November 1, 1991).

or modification -- provided that the new settlement did not require their signatures. Id. at 193 (remarks of Chairman Cook). The Commissioners vacated all procedural deadlines, but left open the November 7, 1991 date reserved for hearing on the Fort St. Vrain docket. The parties would then have time to re-negotiate the Fort St. Vrain matter, and possibly present a modified settlement agreement for Commission approval at an evidentiary hearing on November 7, 1991.

On November 1, 1991, as discussed previously, the three settling parties -- the Office of Consumer Counsel, the Concerned Citizens Congress, and Public Service Company of Colorado -- filed an unsigned[10] Supplemental Settlement Agreement, in advance of the November 7, 1991 evidentiary hearing set by the Commission to consider a modified settlement. The Supplemental Settlement Agreement is divided into three parts: Part I (Background); Part II (Terms); and Part III (General Provisions). The terms of the Supplemental Settlement Agreement are virtually identical to the October 9, 1991 settlement agreement. The principal differences between the two settlement documents are that the Supplemental Settlement Agreement does not provide for signature by the Commissioners (at our request, as discussed above), and that Part III provides for alternatives, in the event that certain contingencies arise, including the possibility that a later Colorado Public Utilities Commission would modify the agreement at some point during the Agreement's 12-year (July 1993 - June 2005) duration.

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[10]. The parties filed a signed original Supplemental Settlement Agreement at the Commission on November 13, 1991. Ronald Binz (Director) and Neil Tillquist (attorney) signed the Supplemental Settlement Agreement for the Office of Consumer Counsel. Kathleen Mullen signed the agreement on behalf of the Concerned Citizens Congress. D.D. Hock (President) and James K. Tarpey (attorney) signed the agreement on behalf of Public Service Company of Colorado.

## III. Discussion.

### 1. Early decommissioning of the Fort St. Vrain nuclear reactor is the best resolution for everyone, and clearly in the public interest.

Although the Company has asserted that the choice between early dismantlement and later dismantlement involves no monetary difference, that the two options cost the roughly the same in "absolute terms," see PSCo Fort St. Vrain Application at 4-5, the Commission believes that the early dismantlement is preferable to later dismantlement. Even assuming that the two options cost the same, and even if the Company was not offering the rate concessions contained in the Supplemental Settlement Agreement, early dismantlement has many important benefits to the public over waiting and dismantling Fort St. Vrain under the SAFSTOR option. The Company apparently gave significant weight to the consumer groups' forewarnings of prolonged litigation. We feel that the benefits of early dismantlement justify the decision as in the public interest, even without the offsets extracted by the OCC and the Concerned Citizens Congress.

#### a. Early dismantlement is preferable to SAFSTOR because it removes uncertainties caused by the Fort St. Vrain nuclear reactor.

Early dismantlement under the Supplemental Settlement Agreement removes significant financial, environmental, and regulatory uncertainties caused by the continued presence of a nuclear reactor at the Fort St. Vrain power generation station.

The financial uncertainty which early dismantlement will remove is the difficult, if not impossible task, of assigning a price tag to the dismantlement of Fort St. Vrain sometime during the 21st Century. Also of financial significance is the removal of health and accident risks, and the significant maintenance costs. See Transcript of November 7, 1991 Evidentiary Hearing at 95-98 (testimony of PSCo vice president for

nuclear operations Clegg Crawford) (current maintenance costs are very high). The SAFSTOR option would let the Fort St. Vrain reactor cool down, and remove the nuclear materials as late as 55 years from now. The radioactivity of various reactor elements would be less in fifty years, but the cost of dismantlement may be far more than today's costs. For example, evidence at the November 7, 1991 hearing indicated that the cost of storing low-level radioactive nuclear waste has been going up at the rate of 11.8 percent per year for the last ten years. Transcript of November 7, 1991 Evidentiary Hearing at 97 (testimony of PSCo vice president for nuclear operations Clegg Crawford). See also Transcript of October 11, 1991 Hearing at 134 (Public Service's contract with Westinghouse calls for Westinghouse to remove up to 140,000 cubic feet of low-level waste at $140 per cubic feet. Assuming inflation averages at ten percent for the next ten years, and five percent thereafter; the cost of disposing low-level waste would become $1.7 million per cubic feet in the year 2043.) (testimony of PSCo vice president for nuclear operations Clegg Crawford) (in response to questioning by Commissioner Alvarez). Over the next 50 years, should this escalation rate continue, the cost of storing the remaining approximately 115,000 cubic feet of low-level nuclear waste could be much greater than presently anticipated.

Furthermore, the ability to store radioactive material assumes the availability of storage sites. It is unclear whether radioactive storage sites will be available at any price in fifty years. Currently available sites are closing, with no state eager to open replacement sites to dump radioactive waste. See Id. at 93 (Crawford testimony) (Beatty, Nevada site for 10,000 cubic feet of low-level Fort St. Vrain nuclear waste will close at the end of 1992) and Id. at 94-96 (Crawford testimony) (discussing present litigation obstacles with Governor of Idaho who opposes storage of nuclear waste in his state). At a minimum, the Commission believes that the past trends of high cost

escalations will continue. Thus, it is reasonable to conclude that decommissioning now will likely be significantly less expensive than waiting.

Financial uncertainty concerning Fort St. Vrain is hurting the Company's stock and bond prices, according to testimony at the hearing. See Transcript of November 7, 1991 Evidentiary Hearing at 57-58 (testimony of PSCo Chief Financial Officer Kelly) ("There is no doubt in my mind that over the past 10 years Fort St. Vrain has created a cloud over our stock and bond rating. Any kind of positive news on the resolution of Fort St. Vrain will be seen as positive.") As Chief Financial Officer Kelly testified, Public Service, like all utilities, is a capital intensive corporation, with a $300 million construction program every year. Id. at 46. Currently, the Company is a "Bbb plus company, which is low investment grade" and has had trouble in the capital markets. Id. at 47. Mr. Kelly testified that removing the "cloud" of Fort St. Vrain from Public Service's stock and bond ratings, to the extent that it has a favorable impact upon the Company's cost of capital, "will flow through to the ratepayers in the next rate case." Id. at 58.

Senior Financial Analyst Robert L. Ekland of the Colorado Public Utilities Commission Staff, which was the only party which took a position opposing the Supplemental Settlement Agreement, agreed that the stock and bond markets would favorably react to the early dismantlement of Fort St. Vrain, and that the early dismantlement of Fort St. Vrain would be in the interests of the financial health of the company. Transcript of November 7, 1991 Evidentiary Hearing at 178 (testimony of Senior Financial Analyst Robert L. Ekland) (Ekland also testified that early dismantlement could benefit the ratepayers. "The stronger the company is, within limits, the more favorable it is to the ratepayer's cost.").

The negative effect of Fort St. Vrain -- at least a "psychological" negative effect as discussed by Mr. Ekland; Id. at 178 -- is quite evident in Standard & Poor's Credit Analysis of the Public Service Company of Colorado. See Standard & Poor's Creditweek at 63-65 (October 21, 1991) (Exhibit 6 at November 7, 1991 Evidentiary Hearing). The Report calls successful decommissioning of Fort St. Vrain a "prerequisite" to the future financial health of the Company; states that decommissioning is a "liability to the shareholders" and that the "ultimate cost of this process is unknown due to lack of industry experience and, therefore, is subject to escalation"; and summarizes the Fort St. Vrain defueling and decommissioning situation in a manner very favorable to the early dismantlement option: "Early decommissioning would remove a significant amount of uncertainty." Standard & Poor's Creditweek at 64 (October 21, 1991). Thus, Wall Street observers seem to feel that the early dismantlement of Fort St. Vrain will benefit the Company financially by removing uncertainty. Under our system of regulation, higher equity and credit costs are ultimately borne by the ratepayers, and consequently, lower costs will benefit the ratepayers.

Early dismantlement, under the terms of the Supplemental Settlement Agreement we are approving today, removes additional financial uncertainty for the ratepayers of Public Service. Under the terms of the agreement, all early dismantlement cost overruns (over the budgeted $124 million, including carrying costs) will be borne exclusively by Public Service. The Commission wants there to be no doubt that the income stream produced by this agreement is not open-ended, and that the Company's obligation to complete decommissioning, once begun, is fixed. If early dismantlement costs are less than anticipated, however, the ratepayers will receive the benefits. See Supplemental Settlement Agreement Part II at 6, ¶15 (Terms) ("In the event the remaining actual cost of early dismantlement is less than $124 million, the

amortization shall be reduced accordingly; in the event the remaining actual cost exceeds $124 million, the amortization shall not be increased."). The consumers will be placed in a relatively favorable position by early dismantlement -- they will receive the protections of a fixed-price contract from cost overruns, and the benefits of a flexible costs contract should the early dismantlement expenses be less than calculated. In fact, Mr. Warembourg testified at the evidentiary hearing that the Company's $124 million estimate was very conservative, and that it would not be unusual for the costs to actually be less. See Transcript of November 7, 1991 Evidentiary Hearing at 113-118 and 129 (testimony of Don Warembourg). The Commission notes here that it will carefully audit the contract expenditures to assure the public that its dollars are being appropriately spent.

In addition to removing financial uncertainties, early dismantlement will remove environmental and regulatory risk. The environmental and regulatory uncertainties which early dismantlement would remove include the possibility of much stricter Nuclear Regulatory Commission ("NRC") rules for dismantlement of reactors 50 years from now. At present, Public Service has negotiated a fixed-price contract with Westinghouse, which is likely to win NRC approval.

Don Warembourg, manager of nuclear production for PSCo, who was one of the principals who helped negotiate the contract, describes the contract with Westinghouse as "clearly defined" in its work scope. In testimony at the evidentiary hearing, Mr. Warembourg detailed the four-month negotiating process the Company had with Westinghouse to assure that both sides had a "complete understanding" of the project, to eliminate all surprises. See Transcript of November 7, 1991 Evidentiary Hearing at 117-118 (testimony of Don Warembourg). In response to questioning from Commissioner Alvarez, Mr. Warembourg testified that the Company had a "good

handle" on the administrative costs for winning approval from the Nuclear Regulatory Commission for early dismantlement under the DECON plan. Id. at 129.

Mr. Warembourg, based on his 30 years of experience on the Fort St. Vrain project and in dealing with the Nuclear Regulatory Commission and its predecessor, the Atomic Energy Commission, Id. at 128, testified, that "[i]f we project future regulations from the NRC based on history, we can only project that they are going to get more restrictive." Transcript of November 7, 1991 Evidentiary Hearing at 133 (testimony of Don Warembourg) (in response to questioning by Chairman Cook). In contrast to the future uncertainty of NRC rules and approval, the early dismantlement proposal is at a stage where NRC approval is imminent. Clegg Crawford, PSCo vice president for nuclear operations, testified that the Company submitted its decommissioning plan to the Nuclear Regulatory Commission on November 5, 1990, and that "we are very optimistic that we will have approval from the NRC of that decommissioning plan in the first half of 1992." Transcript of November 7, 1991 Evidentiary Hearing at 89 (testimony of Clegg Crawford).

Although the costs of future dismantlement of nuclear reactors may be very high, Public Service Company may have received a favorable price for the early dismantlement of Fort St. Vrain from Westinghouse. As Mr. Crawford testified, Fort St. Vrain will be the first commercial reactor to be decommissioned under the new decommissioning rules adopted by the NRC. Transcript of November 7, 1991 Evidentiary Hearing at 90 (testimony of Clegg Crawford). In response to questioning by Commissioner Nakarado, Mr. Warembourg would not state that it was possible that the next contract Westinghouse will offer to enter into would be substantially more expensive than the Fort St. Vrain early dismantlement contract, but he did state, "I believe Westinghouse has entered into this contract on the basis of future business, and certainly I think there is some aspect of that in terms of their bid to us. And I think

they would like to establish themselves in the business." Transcript of November 7, 1991 Evidentiary Hearing at 131 (testimony of Don Warembourg).

b. Early dismantlement is preferable to SAFSTOR on the policy grounds of inter-generational equity.

The Commission believes that postponing the dismantlement of the Fort St. Vrain until the next century would be an unfair shift of risk to future generations. As discussed above, we believe it may well be that the future dismantlement of Fort St. Vrain will be more expensive than the DECON option, and that environmental and regulatory costs may be greater 50 years from now. Even if the costs were the same, however, we do not believe it morally defensible to encumber future generations with the risks and the costs of dismantling Fort St. Vrain.

It is this generation that made the decision to build this nuclear plant, and it is this generation that received the power generated by the plant. This Commission is unwilling to close its eyes to potential future environmental and financial risks being passed on to future generations for purposes of political expediency. This generation must bear the responsibility for its actions. We compliment the parties for reaching the accords in the Supplemental Settlement Agreement, and strongly support the agreement by these Colorado stakeholders to accept the clear responsibility to decontaminate the Fort St. Vrain power plant.

2. The Three Foregone Regulatory principles at least offset the rate increase.

The Agreement calls for financing the early dismantlement of Fort St. Vrain over a 12-year period, starting on July 1, 1993, with an annual $13.9 million electric rider placed into effect each July 1st thereafter, until July 1, 2004, in order to collect the $124 million in decommissioning costs and carrying costs needed to effect the early

dismantlement of Fort St. Vrain. See Supplemental Settlement Agreement, Part II at 7, ¶ 16 (Terms). As explained by the Company's Chief Financial Officer Mr. Kelly, the Company could not choose the preferable early dismantlement option without "the creation of a regulatory asset, and as such a revenue stream which, as we have pointed out in the settlement agreement is about $13.9 million per year, which is that revenue stream that allows us to create the regulatory asset and avoid the write-down of $124 million." Transcript of November 7, 1991 Evidentiary Hearing at 46 (testimony of Richard C. Kelly).

In addition to the benefits of early dismantlement discussed in the previous section, the Company in the Supplemental Settlement Agreement has agreed to what amounts to multi-million dollar rate concessions by giving up the right to assert what we will call three "regulatory principles" for the 12-year (July 1993 - June 2005) life of the Agreement. See Supplemental Settlement Agreement II ¶ 16 at 7-8 (Terms) (detailing the three regulatory principles). Although much of the discussion at the evidentiary hearing involved attempting to assign an exact dollar value of the concessions using estimates from the test year used to calculate the 1991 Public Service rate case, it suffices to summarize that the Commission believes that the value of the three regulatory principles will exceed $13.9 million per year during the life of the agreement. Dr. George Parkins, Chief of the Commission's Energy Section, has calculated that the cost to the average residential customer per month of the $13.9 million electric rider would be approximately 43 cents a month, while the benefit of the rate concessions contained in the Supplemental Settlement Agreement is an approximately $1.44 per month decrease in rates for the typical residential customer. Thus, there is a net monetary benefit to the average residential and commercial customer from the terms of the Supplemental Settlement Agreement.

In concluding that benefits of the rate concessions exceed the rate increases, the Commission is especially persuaded by the testimony of the consumer advocates favoring the rate increases. See Transcript of October 11, 1991 Settlement Hearing at 43 (testimony of Office of Consumer Affairs Director Ronald J. Binz) (The OCC agreed to remove the $124 million financial barrier to Company to achieve the goal of early dismantlement "only with offsetting benefits to the ratepayers."); Transcript of October 11, 1991 Settlement Hearing at 32 (testimony of Kathleen Mullen of Concerned Citizens Congress) (Concerned Citizens Congress' position was that the 1986 Fort St. Vrain Settlement Agreement meant that the next generation of ratepayers was not required to pay $13.9 million over the next 12 years to dismantle Fort St. Vrain, therefore, "Public Service Company during the same period of time is going to have to give up at least $13.9 million a year in revenue that they would have otherwise gotten. And that is the fundamental consideration to us."); Transcript of November 7, 1991 Evidentiary Hearing at 144 (testimony of OCC Senior Financial Analyst Paul R. McDaniel) (value of the first regulatory principle alone may equal the rate increase).

As we have discussed earlier, the Commission congratulates the parties on their politically courageous resolution of the Fort St. Vrain problem, a solution which may have been particularly difficult for the consumer advocates because it meant agreeing to a rate increase. Upon independent review of the evidence, we agree with the assessment of the signatory parties that the value of the three regulatory principles exceeds the rate increase, needed as a funding mechanism to allow the early dismantlement of Fort St. Vrain. The Agreement means that a nuclear plant will be dismantled - benefitting the environment and removing risks to future generations in the long-term -- and the Agreement means consumers will benefit from company concessions in the short-term, which will more than offset any rate increase. The Supplemental Settlement Agreement is in the public interest.

3. Colorado Energy Assistance Foundation contributions and other benefits of the agreement to the public further make the agreement in the public interest.

Finally, the Supplemental Settlement Agreement contains several other benefits to the people of Colorado, an important one being funding for the Colorado Energy Assistance Foundation. The Agreement will assure that Public Service Company donates a minimum of $13 million, and up to $32 million, to the Foundation. See Supplemental Settlement Agreement II ¶ 18 at 10-11 (Terms). Unlike the other provisions of the Supplemental Settlement Agreement, the shareholder-funded contributions for low-income energy assistance will begin upon Commission approval of the Supplemental Settlement Agreement, and will remain in effect for a total of 13 years, not 12 years. For each of the 13 years, Public Service Company's shareholders pledge to donate $1 million to the Foundation. The shareholders further agree to match dollar-for-dollar PSCo's customers' contributions to the Foundation, up to $2 million during the first 12 months of the matching program, and up to $2.5 million annually for the following 12 years. See id.

To further ensure the success of the matching program, the Agreement obligates the Company to aggressively solicit customer contributions to the Foundation to benefit the less fortunate, through the option of a customer billing check-off mechanism for the Colorado Energy Assistance Foundation. See Supplemental Settlement Agreement II ¶ 19 at 12 (Terms).[11] The Company's commitment to the Foundation is strong; the Company contributions to the Foundation will continue even if the Supplemental Settlement Agreement is terminated as a result of a breach of the agreement by Public

[11]. The Commission approved a $44.1 million customer refund in the "Gas Search" case, Docket No. 90A-743EG. See Decision No. C91-1544 (November 22, 1991). The Gas Search bill credits will probably appear on PSCo's gas customers' March 1992 bills, in time to coordinate with the Fort St. Vrain program for the Foundation.

Service Company, or as the result of certain actions by the Commission. See Supplemental Settlement Agreement III ¶ 25 & 27 at 14-15 (General Provisions).

The Agreement provides other possible benefits to consumers, including the sharing of one-half of the net recovery from the Company's litigation against the United States Department of Energy and the State of Idaho, with respect to the storage of Fort St. Vrain spent fuel at the Department of Energy's Idaho National Engineering Laboratory.[12] See Supplemental Settlement Agreement II ¶ 20 at 12 (Terms). Mr. Crawford testified that the cost of delay caused by the State of Idaho has been approximately $2.5 million per month for the last 22 months, or $55 million, and that these delays are continuing. See Transcript of November 7, 1991 Evidentiary Hearing at 100 (testimony of Clegg Crawford). Thus, assuming the Company recovers any of these damages in litigation, the consumers could benefit by an additional amount from the Supplemental Settlement Agreement.

## III. Conclusion.

In summary, the Supplemental Settlement Agreement is a carefully balanced resolution of the Fort St. Vrain decommissioning problem, which benefits the people of Colorado and Public Service Company of Colorado by avoiding a host of potentially escalating unknowns, by accepting today a fixed price for the early dismantlement and decommissioning of the Fort St. Vrain nuclear reactor. The Commission unanimously

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12. Recently, Public Service has stopped all shipment of Fort St. Vrain nuclear waste to Idaho. The Company is now storing the waste near in Colorado on the Fort St. Vrain site. See "St. Vrain Fuel Stored Near Plant," Denver Post December 27, 1991 at C-1, and "St. Vrain Keeps Its Nuclear Waste," Rocky Mountain News December 27, 1991 at 6. (discussing recent events in the federal litigation involving PSCo, Governor Andrus of Idaho, and the U.S. Department of Energy, where a federal judge banned Public Service from making further shipments of Fort St. Vrain nuclear fuel elements to the Idaho National Engineering Laboratory, until the Department of Energy wins an Idaho air quality permit).

approves the Supplemental Settlement Agreement because the agreement is in the public interest.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Commission hereby approves the Supplemental Settlement Agreement (signed copy filed November 13, 1991) attached as Appendix "1" to this Decision.

2. The 20-day time period provided in Colorado Revised Statutes § 40-6-114(1) (1991 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.

3. This order is effective on its date of mailing.

ADOPTED IN SPECIAL OPEN MEETING ON November 21, 1991.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(S E A L)


ATTEST: A TRUE COPY

Robert E. Temmer
Acting Director

ARNOLD H. COOK

GARY L. NAKARADO

CHRISTINE E. M. ALVAREZ

Commissioners

91A 281E

# SUPPLEMENTAL SETTLEMENT AGREEMENT

The **COLORADO OFFICE OF CONSUMER COUNSEL** ("OCC"), **EMMA YOUNG GREEN, DOROTHY STARLING, VERCENIA BELCHER and CONCERNED CITIZENS CONGRESS OF NORTHEAST DENVER** ("Green, et al.") and **PUBLIC SERVICE COMPANY OF COLORADO** ("Public Service Company" or "Company") hereby enter into the following Supplemental Settlement Agreement.

## *I. BACKGROUND*

1. On September 24, 1986, the above-named parties together with the **PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO** ("PUC" or "Commission") entered into a Stipulation and Settlement Agreement ("1986 Agreement") concerning all of the pending litigation and PUC proceedings regarding Fort St. Vrain. This litigation was described in the 1986 Agreement, which is attached hereto as Appendix A and incorporated herein by reference.

2. The purpose of the 1986 Agreement was to settle all of the above-described litigation and to resolve all issues regarding Fort St. Vrain. The 1986 Agreement provided for the dismissal of the proceedings pending before the Commission and the courts; elimination of Fort St. Vrain from the cost of service; payment of certain refunds by the Company; and a "buy back" rate for power subsequently produced by Fort St. Vrain.

3. The parties to the 1986 Agreement resolved the issue of future regulatory treatment of Fort St. Vrain, in paragraph 3 as follows:

> Public Service agrees that in any future rate proceeding before the PUC, it will include no capital investment, operating expenses (as determined based on principles used in I&S 1640), or decommissioning expenses relating to Fort St. Vrain in its PUC cost of service or otherwise reflect such investment and expenses in PUC rates . . . .

4. The parties to the 1986 Agreement explicitly stated that the settlement of the Fort St. Vrain issues contained in the Agreement constituted "a just and reasonable resolution of all issues involving the past, present, and future regulatory treatment of the Fort St. Vrain," except for certain matters outlined in paragraph 5 of the Agreement. Each party further pledged (in paragraph 11) that it would

> [t]ake no action in regulatory or judicial proceedings or otherwise which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Stipulation and Settlement Agreement. . . . [Each party] will take all reasonable steps to support the continued effectiveness of this Stipulation and Settlement Agreement.

5. On April 24, 1991 Public Service Company filed with the Commission an application seeking authority, as appropriate, for the repowering of Fort St. Vrain; for the issuance of such certificates of public convenience and necessity as may be necessary; for the modification of such PUC decisions as may be necessary; for the authorization of a rate methodology to be used for power produced by the repowered facility which would allow recovery of the additional costs associated with early dismantlement; for the granting of such relief on an accelerated

basis; and for such other relief which may be necessary or appropriate.

6. The application was assigned as Docket No 91A-281E. Due and proper notice was given of the application and various petitions to intervene were duly filed with the PUC.

7. Both OCC and Green, et al., protested Public Service Company's application, stating among other things that it was in violation of the 1986 Agreement. In addition, Green, et al., filed a motion to dismiss Public Service Company's application, alleging that the relief sought by the Company could not be granted because it was in contravention of the terms and conditions of the 1986 Settlement Agreement. The OCC filed a legal memorandum supporting the motion to dismiss. Public Service Company filed its response, alleging that the relief could be granted and that the motion should be denied.

8. A prehearing conference was held on July 2, 1991. Green, et al.'s Motion to Dismiss was argued during this pre-hearing conference and was denied by the Commission for the reasons set forth in its July 10, 1991 Decision No. C91-898, which is attached hereto as Appendix B and incorporated herein by reference. Green, et al., made it clear at this pre-hearing conference that any modification of the terms of the 1986 Agreement would be challenged both before the Commission and in the appellate courts, if necessary, unless any such modification was concurred in by all parties to that Agreement.

9. As a result of the pre-hearing conference on July 2, 1991, and further discussions among the parties, certain preliminary matters were addressed, and these are discussed in Decision No. C91-898. Among such matters was a procedural schedule leading up to hearings on Public Service Company's application in April 1992.

10. Because of the protests and threatened legal challenges to Public Service Company's April 24, 1991 application, it became clear that, absent some negotiated agreement among the signatories to the 1986 Agreement, these issues would be subjected to protracted litigation.

11. Because protracted litigation of the issues related to Public Service Company's April 24, 1991 application would make the early dismantlement of Fort St. Vrain an untenable option financially for Public Service Company, the Company contacted all intervenors in Docket No. 91A-281E and proposed an alternative method of dispute resolution, the sole purpose of which was to resolve the financial aspects of early dismantlement of Fort St. Vrain with the express understanding that the issue of repowering Fort St. Vrain would be postponed to another time. Several Intervenors responded that their interests lay with the repowering portion of the Application only, and, therefore, they chose not to participate in any settlement discussions with respect to the financial aspects of early dismantlement of Fort St. Vrain. Public Service Company, in suggesting this settlement process, represented

that unless it has a funding mechanism to recover the $124 million shortfall in the recorded liability for early decommissioning (DECON), it must choose the long-term storage before dismantlement (SAFSTOR) method. The other parties, by participating in this alternative dispute process, have not endorsed and are not hereby endorsing DECON over SAFSTOR or any other alternative decommissioning method.

12. A series of negotiations was held throughout the month of September 1991. The participants in the various negotiations were: Public Service Company, the OCC, Green, et al., and the Staff of the Commission as well as several other intervenors. The result was a proposed Settlement Agreement, the terms of which had been agreed to by the Company, the OCC and Green, et al., all of whom are signatories to the 1986 Agreement.

13. The proposed Settlement Agreement was presented to the PUC for its consideration on October 9, 1991. A prehearing and settlement conference regarding this proposed Settlement Agreement was held before the PUC on October 11, 1991. During the course of this conference, the individual Commissioners indicated that, while they had not reached a decision regarding the substantive portions of the proposed Settlement Agreement, they would not agree to be parties because they did not participate in the negotiations and development of the Agreement, they would not and could not bind themselves or future Commissioners and they disagreed regarding the binding effect of the 1986 Agreement.

14. Although the parties disagree regarding the binding effect of the 1986 Agreement and the authority of this Commission to bind future Commissioners in settlements of contested litigation in the appellate courts, they agreed to enter into further negotiations to determine whether a final settlement of the Fort St. Vrain decommissioning issues could be achieved without the Commissioners being signatories to such an agreement. The following Supplemental Settlement Agreement is the result of such further negotiations.

## *II. TERMS*

15. Public Service Company is authorized to amortize as a cost of service up to $124 million of decommissioning costs and the associated carrying cost. For purposes of this Supplemental Settlement Agreement, it is assumed that the decommissioning amount of $124 million reflects the approximate remaining cost of an early dismantlement approach to decommissioning in excess of the liability recorded on the Company's books at June 30, 1991. In the event the remaining actual cost of early dismantlement is less than $124 million, the amortization shall be reduced accordingly; in the event the remaining actual cost exceeds $124 million, the amortization shall not be increased. The Company is not authorized by this Supplemental Settlement Agreement to amortize or in any other manner to recover from customers any cost related to the defueling of Fort St. Vrain. Public Service Company represents

that the financial provisions of this Supplemental Settlement Agreement are to provide the Company the opportunity to use the DECON rather than the SAFSTOR decommissioning method. In the event that the Company uses the SAFSTOR method of decommissioning, this Supplemental Settlement Agreement is terminated.

16. Based upon $124 million in decommissioning costs, a 12 year amortization period and 9% as an assumed carrying cost, $13.9 million is the amount to be charged to customers each year beginning July 1, 1993 for 12 years.

The method by which the $13.9 million shall be collected annually is as follows. On July 1, 1993 and on each July 1 thereafter through July 1, 2004, an electric rider shall be placed in effect for the purpose of increasing electric base rate revenues in the amount of $13.9 million for the following 12 months. On July 1, 1994 and on each July 1 thereafter through July 1, 2004, the electric rider shall reflect an amount calculated to collect or credit during the following 12 months any undercollection or overcollection of the $13.9 million during the measuring period (which, for July 1, 1994, is the 9 months ended March 31, 1994 and for each subsequent July 1 is the 12 months ended the previous March 31). On October 1, 2005 a one-time adjustment to customers' bills shall be made for any overcollection or undercollection occurring from April 1, 2004 through June 30, 2005.

17. In consideration for the authorization to charge $13.9 million to customers each year for 12 years commencing July 1,

1993, the following conditions shall be adhered to during the same period.

a) With respect to Public Service Company's capital structure, no adjustment shall be made for regulatory purposes if the basis for such adjustment relates to Fort St. Vrain.

b) With respect to construction work in progress (CWIP), the present regulatory treatment (i.e., CWIP including allowance for funds used during construction (AFUDC) is included in rate base and AFUDC is included as an offset to earnings) shall continue. However, it is agreed that Public Service Company may pursue different CWIP treatment during the 12 years with respect to new generating units (defined as any power plant in excess of 200 MW or any jointly-owned plant where the Company's share is more than 100 MW) other than the repowering of Fort St. Vrain. In the event the Company proposes different CWIP treatment with respect to such new units, the other parties are not restricted as to any position they may wish to advocate regarding such a proposal.

c) With respect to Other (than pension) Postretirement Employee Benefits (OPEB), it is noted that the treatment prior to July 1, 1993 is detailed in Revised Settlement Agreement I, which was filed in Docket Nos. 91S-091EG and 90F-226E and approved in Decision No. C91-918. Effective July 1, 1993, the Company shall implement accrual accounting for regulatory purposes in accordance with the provisions of Financial Accounting Standard No. 106,

issued by the Financial Accounting Standards Board, modified as follows:

- the Company's actuarial calculation shall include a return on assets that reflects monthly contributions net of benefit payments throughout the year;
- the attribution period shall reflect each employee's expected retirement date rather than the full eligibility date;
- a forty year levelized principal and interest amortization period shall be used for the transition obligation of moving to accrual accounting; and
- accounting for OPEB life insurance shall be retained on a pay-as-you-go basis.

Public Service Company is authorized to record on its balance sheet and to recover in its cost of service any deferred costs resulting from this modified regulatory treatment of OPEB. Furthermore, the Company will place 100% of the amounts collected from customers as a result of accrual accounting for OPEB in one or more trust funds, similar to the pension plan trust fund.

d) Administrative and general costs shall be allocated to Fort St. Vrain so as to reflect the portion of such costs attributable to Fort St. Vrain. The costs calculated hereunder shall not be included in the Company's cost of service.

18. In addition, upon approval of this Supplemental Settlement Agreement, Public Service Company shall make certain contributions to the Colorado Energy Assistance Foundation (CEAF) as described herein. Contributions made to the CEAF pursuant to this Supplemental Settlement Agreement are "below-the-line" expenses for ratemaking purposes and shall not be included in the Company's cost of service.

For the purposes of this paragraph 18, the first 12 calendar months following approval of the instant Supplemental Settlement Agreement by the PUC shall be referred to as "Year 1". Successive 12 month calendar periods for an additional 12 years shall be referred to as "Years 2 through 13".

Within 30 days following the beginning of Year 1, the Company shall contribute $1 million to the CEAF. For the first year, the Company pledges to match dollar for dollar all contributions by Public Service Company customers received by CEAF as a result of the billing check-off mechanism and/or refund donation option, explained more fully below, provided that said matching shall not exceed $2 million. The initial $1 million shall be taken into account in calculating the Company's dollar for dollar matching contribution and the maximum for matching purposes.

Within 30 days following the beginning of each year of years 2 through 13, the Company shall contribute $1 million to CEAF, provided, however, that the following condition is met: CEAF must first certify that 95% of the Company's contribution at the

beginning of the previous year was distributed during that year to qualified individuals. If the distribution percentage is less than 95%, then the Company's contribution at the beginning of the current year shall be calculated by multiplying $1 million times the lesser percentage.

For each year of Years 2 through 13, the Company pledges to match dollar for dollar all contributions by Public Service Company customers received by CEAF as a result of the billing check-off mechanism and/or refund donation option, explained more fully below, provided that said matching shall not in any year exceed $2.5 million. The initial contribution at the beginning of each year shall be taken into account in calculating the Company's dollar for dollar matching contribution and the maximum for matching purposes.

Public Service Company's matching contribution for each year shall be made on a quarterly basis and the final quarterly payment shall be made within 30 days following the expiration of such year.

Initial and matching contributions and any other contributions made by Public Service Company to CEAF pursuant to this Supplemental Settlement Agreement shall be made with the specific direction that the contributions shall be used solely for direct energy assistance benefits for LEAP-qualified persons whose incomes do not exceed 150% of poverty.

19. At the beginning of Year 1 and each year of Years 2 through 13, the Company, by means of a billing insert, shall solicit customer contributions to CEAF through a billing check-off mechanism and, if applicable, the option of a donation of any customer refund then pending. In addition, if any refund during the year in excess of $5 million is to be made, the Company, by means of a billing insert issued in the billing cycle prior to the refund billing cycle, shall solicit a donation of said refund, provided, however, that only one such additional solicitation each year shall be required. The additional solicitation each year shall be directed toward the largest refund anticipated by the Company in each year. The Company shall confer with the OCC and the CEAF regarding the form and content of the billing insert.

20. The parties are aware of a dispute among Public Service Company, the Department of Energy and the State of Idaho with respect to the storage of Fort St. Vrain spent fuel at DOE's Idaho National Engineering Laboratory located in the State of Idaho and associated shipping delays. In the event that Public Service Company pursues this dispute with the Department of Energy or the State of Idaho now or in the future, is able to obtain recovery of some or all of its expenditures resulting from this dispute and receives recovery in cash payments, the Company's electric customers are entitled to, and shall receive in the form of a refund or credit, one-half of the net (after fees, including legal fees, and costs are first deducted) of any cash payments so

received. The parties agree that the control of any litigation, including the decision of whether to institute any such litigation, is within the sole discretion of the Company.

21. Within sixty days from the effective date of this Supplemental Settlement Agreement, Public Service Company will reimburse counsel for Green, et al., for the attorney fees incurred based upon actual time spent in connection with Docket No. 91A-281E and the instant Supplemental Settlement Agreement. It is understood that the amount of these fees is currently anticipated to be approximately $7,000, but if additional proceedings or issues require the expenditure of more time by counsel for Green, et al., Public Service Company will reimburse counsel for Green, et al., for the total time actually spent in conjunction with this matter.

## *III. GENERAL PROVISIONS*

22. This Supplemental Settlement Agreement is a supplement to the 1986 Agreement and shall become effective only upon execution by the OCC, Green, et al., and Public Service Company and approved by the PUC on a timely basis.

23. The 1986 Agreement shall remain in full force and effect except as specifically supplemented herein. This Supplemental Settlement Agreement is entered into upon the express understanding that it constitutes a final settlement of the Fort St. Vrain decommissioning issues. The undersigned parties agree that this Supplemental Settlement Agreement constitutes a just and reasonable

resolution of these issues. The parties specifically assert, and it is conclusively presumed, that the purpose and intent of this supplement to the 1986 Agreement are to remove financial impediments to the early dismantlement of Fort St. Vrain while retaining the relative financial responsibilities of the Company and the customers as set forth in the 1986 Agreement with respect to all costs related to Fort St. Vrain and to provide contributions from the Company to the CEAF.

24. This Supplemental Settlement Agreement shall remain in effect until all the obligations of the parties have been completely discharged. This Supplemental Settlement Agreement is an integrated whole and any breach of any of its terms and conditions renders the prospective obligations under this Agreement null and void and the parties further agree that, in such event, the provisions of the 1986 Agreement shall control; provided, however, that in the event Public Service Company breaches this Agreement, Public Service Company's commitments to contribute to CEAF, which are specified in paragraphs 18 and 19 herein, and the post breach requirements specified in paragraph 26 through 29 herein shall remain in effect.

25. Should the Commission, after initially approving this Agreement, at some future date enter any order(s) or promulgate any rule(s) which, directly or indirectly, modifies any of the terms and conditions of this Supplemental Settlement Agreement, this Agreement shall thereupon be terminated and will have no

prospective operation, force or effect, except as provided in paragraphs 18 and 19 and 26 through 29 herein.

26. In the event that the Commission, at some future date, modifies by order or rule any of the terms and conditions of this Supplemental Settlement Agreement, the parties shall immediately jointly appeal that portion only of such decision to the Denver District Court and jointly apply for an immediate stay of that portion only of the Commission's decision permitting recovery of any portion of the DECON costs pending the appeal. If the Denver District Court, for any reason, does not grant the stay, during the entire pendency of the appeal, or if the stay is vacated while on appeal at the district or appellate courts, Public Service Company shall deposit in escrow with the Clerk of the Denver District Court any monies collected from its customers relating to the decommissioning of Fort St. Vrain.

27. All parties to this Supplemental Settlement Agreement agree that in any appeal arising out of the action by the Commission described in paragraph 26 herein, they waive any right to assert mistake of fact or of law, whether unilateral or mutual, intervening change of circumstances, public interest or necessity, impossibility, fraud, duress, coercion or any other invalidating factor which would preclude enforcement of the 1986 Agreement and paragraphs 18, 19 and 26-29 of this Supplemental Settlement Agreement.

28. Each of the parties agrees that it will take no action in regulatory or judicial proceedings or otherwise which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Supplemental Settlement Agreement. Furthermore, each of the parties represents that in any proceeding in which this Supplemental Settlement Agreement or its subject matter may be raised by any other party, such party will take all reasonable steps to support the continued effectiveness of this Supplemental Settlement Agreement and the 1986 Agreement.

Payment of dues to, or membership in, an organization or association does not constitute a violation of this paragraph even if part of the activities of such organization or association are directed at any of the issues covered in this Supplemental Settlement Agreement. Payment of funds or use of employees for a particular effort by any such organization or association directed at any of the issues so covered does constitute a violation of this paragraph.

29. Should Public Service Company violate any of the provisions outlined in paragraphs 26 through 28 of this Supplemental Settlement Agreement, liquidated damages in the amount of twice any amounts relating to the decommissioning of Fort St. Vrain collected and retained by Public Service Company pursuant to paragraph 26 herein subsequent to the breach of this Agreement shall be assessed by the District Court and shall be distributed to the Company's customers in the form of a refund or credit. The

parties to this Agreement specifically state that such liquidated damages are necessary, just and reasonable given the irreparable injury which will occur to customers from any breach of this Agreement and the difficulty in determining at this time the exact monetary value of such damages. Public Service Company agrees that any liquidated damages assessed by the District Court are "below the line" expenses for ratemaking purposes and shall not be included in the Company's cost of service.

30. In the event any provision of this Supplemental Settlement Agreement is determined to be in conflict with any judicial ruling, legislative act, agency rule or order (excepting any acts taken by this Commission), or the Financial Accounting Standards Board general accounting principles, with which the Commission is legally compelled to comply, or is determined to be illegal, and Public Service Company has fully complied with the provisions of paragraph 28, the parties agree that such provision shall be considered severed and the validity of the remaining portions of this agreement shall not be affected for a period of thirty (30) days. Further, the parties shall re-negotiate such severed provision to effect the original purpose and intent of same. If such good-faith negotiations are not successful, this Supplemental Settlement Agreement shall be deemed terminated and shall have no prospective operation, force or effect and, in such event, the provisions of the 1986 Agreement shall control.

Should any party become aware at any time that the terms or conditions of this Supplemental Settlement Agreement have been modified by the Commission or by force of law or regulation, such party shall immediately notify the other parties of such modification.

31. If this Supplemental Settlement Agreement does not become effective, then it shall be treated as a settlement proposal and shall not be admissible into evidence or in any way described or discussed in any proceeding hereafter.

DATED: _____

PUBLIC SERVICE COMPANY OF COLORADO

By: _____
D. D. Hock, President

KELLY, STANSFIELD & O'DONNELL

By: _____
James K. Tarpey, #1705
550 15th Street, Suite 900
Denver, CO 80202
303/825-3534

DATED: _____

COLORADO OFFICE OF CONSUMER COUNSEL

By: _____
Ronald Binz
Director

By: _____
Neil L. Tillquist, #10725
Logan Tower, OL7
1580 Logan
Denver, CO 80203
303/894-2121

DATED: _____

EMMA YOUNG GREEN, DOROTHY STARLING, VERCENIA BELCHER, and CONCERNED CITIZENS CONGRESS OF NORTHEAST DENVER

By: _____
Kathleen Mullen, #8767
733 E. 8th Avenue
Denver, CO 80203
303/894-0995

# STIPULATION AND SETTLEMENT AGREEMENT

THIS STIPULATION AND SETTLEMENT AGREEMENT, entered into this 24th day of September, 1986 among THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO (PUC), THE COLORADO OFFICE OF CONSUMER COUNSEL (OCC), EMMA YOUNG GREEN, DOROTHY STARLING, VERCENIA BELCHER and CONCERNED CITIZENS CONGRESS OF NORTHEAST DENVER (Green, et al., or Belcher, et al.), and PUBLIC SERVICE COMPANY OF COLORADO (Public Service).

WITNESSETH:

## RELEVANT BACKGROUND

On September 14, 1967 Public Service filed with the PUC an application for a certificate of public convenience and necessity for the construction, operation and maintenance of its proposed Fort St. Vrain Nuclear Generating Station (FSV). By Decision No. 71104, issued April 2, 1968, the PUC granted Public Service's application, subject to the following condition:

> The certificate granted herein is further subject to the condition that in any future proceedings involving rates or valuation of [Public Service], this Commission may disallow portions of investment and operating expenses which are excessive due to the fact that the plant is a nuclear powered plant rather than a fossil-fuel powered plant, if the allowance of such portions of investment and operating expenses would adversely affect the ratepayer.....

FSV was originally supposed to be in commercial operation in 1973. Due to a variety of circumstances, FSV was not accepted by

Public Service from its builder, General Atomic Company, as a commercial plant until January 1, 1979. The acceptance followed a series of agreements between Public Service and General Atomic between 1972 and 1978 and a final settlement agreement between them, which was entered into in June 1979. Under these agreements, various payments were made by General Atomic to Public Service, payments which have been credited to Public Service's customers through the ratemaking process and have been determined by the PUC to have kept Public Service's customers whole through the time of the execution of the 1979 settlement agreement.

The regulatory treatment of FSV first became an issue in PUC Investigation and Suspension Docket No. 1425 (I & S 1425), a general rate increase proceeding initiated by Public Service in 1980. In that proceeding, Green, et al., challenged the inclusion of FSV in Public Service's rate base and the related operating expenses in Public Service's overall cost of service. In its Decision No. C80-2346, issued December 12, 1980, and Decision No. C81-34, issued January 6, 1981 in I & S 1425, the PUC concluded that the relief sought by Green should not be granted while FSV was in its maturation period. On appeal to the District Court in and for the City and County of Denver, the PUC's decision was affirmed. Green's appeal to the Supreme Court of Colorado is pending in Case No. 84SA142.

As part of its ruling in Decision Nos. C80-2346 and C81-34, the PUC provided that an escrow, consisting of Public Service's return on its investment in FSV, should be established, which

escrow would be refunded to Public Service's customers in the event that FSV did not operate at a 50% capacity factor, exclusive of scheduled downtime for maintenance and NRC ordered downtime, for a twelve month period prior to December 31, 1982. In August 1982, Public Service filed an application with the PUC asserting that FSV had satisfied the capacity factor test and that Public Service's obligations under a letter of credit (which had replaced the escrow) should accordingly be terminated. This application, which was known as Application No. 34998 and which was opposed by Belcher, et al., was granted by the PUC in its Decision No. C83-1717, issued November 8, 1983. On appeal by Belcher, the District Court in and for the City and County of Denver set aside the PUC's orders. The appeals of the PUC and Public Service from this decision are pending before the Colorado Supreme Court in Case Nos. 85SA18 and 85SA15 respectively.

Application No. 32603 is an ongoing proceeding before the PUC concerning Public Service's electric cost adjustment (ECA) provision. In August 1983, the Staff of the Public Utilities Commission of the State of Colorado (Staff) filed in Application No. 32603 a motion seeking to have included as part of the ECA's administration a "Fort St. Vrain Incentive Program" (FSVIP). The essence of the FSVIP proposed by Staff was the comparison of the revenue requirements of FSV with the value of the power produced by it, based on rates established by the PUC for the sale of power to Public Service by cogenerators and small power producers. Public Service protested the FSVIP, which was adopted by

the PUC in August 1984 in essentially the form proposed by its Staff. On appeal by Public Service, the District Court in and for the City and County of Denver set aside the FSVIP on the ground that the record did not disclose that the PUC had given adequate consideration to the payments received by Public Service from General Atomic. The appeals by the PUC and Belcher, et al., from the District Court decision, as well as Public Service's cross-appeal, are pending before the Colorado Supreme Court in Case No. 85SA135. Through September 1986, the FSVIP penalties and the replacement power penalties described below would amount to about $78.7 million, inclusive of interest. For periods following November 1, 1984, only the FSVIP penalties have been included (even though replacement power penalties continue to be levied during the pendency of the appeal of the FSVIP) inasmuch as the FSVIP is designed to supersede the replacement power penalties as of that date.

In Decision Nos. R85-454, C85-680 and C85-822, the PUC ordered Public Service to refund $2,988,478 for the period March 1983 through September 1983. This amount represents a replacement power penalty for the failure of FSV to operate at a capacity factor deemed satisfactory by the PUC. The District Court affirmed. Public Service's appeal is currently before the Colorado Supreme Court in Case No. 86SA91.

In Decision Nos. R86-499, C86-797 and C86-929, the PUC ordered a replacement power penalty refund of $9,092,744 for the

period October 1983 through March 1985. Public Service's appeal to the Denver District Court, Case No. 86CV14657, is pending.

On November 7, 1985 the OCC filed with the PUC a complaint against Public Service (Case No. 6527) in which it alleged that FSV should be removed from Public Service's cost of service and that the rate which Public Service would be permitted to charge its customers for power produced from FSV should be considerably less than the rate effectively provided for by the FSVIP. Case No. 6527 is currently set for hearing before the PUC in March 1987.

In complete settlement of all the foregoing litigation, and in resolution of all issues pertaining to FSV, Public Service, the OCC, Green, et al., and the PUC agree as follows:

1. Electric Refund

Within thirty days of the effective date of this Stipulation and Settlement Agreement, Public Service shall initiate the process of making a refund to its electric customers in an aggregate amount of $36.5 million and shall make a contribution in the amount of $1 million to the Energy Assistance Foundation. Within one year after the initial refund and contribution, Public Service shall make an additional refund to its electric customers in the aggregate amount of $36.5 million and shall make an additional contribution in the amount of $1 million to the Energy Assistance Foundation. Each of these refunds shall be made on the basis of the refund plan attached as Exhibit A. The parties agree that the above refunds and contributions to the

Energy Assistance Foundation shall extinguish completely all of Public Service's potential liability for all periods prior to September 30, 1986 arising out of the regulatory treatment of FSV, including the "wind down" of the FSVIP for periods following October 1, 1986. The regulatory treatment of FSV and power produced by it on and after October 1, 1986, shall be determined exclusively as set forth in Paragraphs 3 and 4 below.

2. Rate Reduction and Moratorium

Effective October 1, 1986, or within five days of the effectiveness of this Stipulation and Settlement Agreement (whichever is later), Public Service shall file to be effective on one day's notice a negative rider in the amount of 3.15% to its electric rates which will be designed to reduce Public Service's electric revenues by $29 million annually. Public Service agrees not to file for new gas or electric base rates to be effective prior to July 1, 1988, provided that Public Service may file for authority to place into effect an adjustment to the negative rider to reflect the revenue requirements impact of any refund made to the Home Builders Association as the result of the Supreme Court's decision in Home Builders Association v. Public Util. Comm'n of Colorado, 720 P.2d 552 (Colo. 1986). Although the parties agree not to oppose a Home Builders adjustment in principle, they reserve the right to review and question the calculations of the adjustment and its components before the PUC. In addition, Public Service may seek relief from this moratorium in the event it is faced with emergency financial circumstances,

as determined by the PUC after Application by Public Service. Public Service will give at least thirty days' notice of any such Application and the basis for it to the OCC, Staff, Green, et al., and Belcher, et al., who reserve the right to challenge any aspect of the Application and to urge the continuation of the moratorium. During the period when this electric rate reduction is in effect, i.e., until Public Service Company's next general rate case, the OCC, Staff, Green, et al., and Belcher, et al., agree that they will not seek any rate reductions on the basis of the earnings of either the gas or electric department considered separately, provided that they are not precluded from seeking a rate reduction on the basis of asserted overearnings (as measured by the PUC's rate of return on equity determinations in I & S Docket No. 1640) for the combined departments.

3. Future Regulatory Treatment of FSV

The $29 million electric rate reduction referred to in paragraph 2 above reflects, inter alia, the removal from rate base of Public Service's investment in FSV, net of certain payments from General Atomic pursuant to the 1979 settlement, as reflected on attached Exhibit B; a five-year amortization of (1) $22 million of the remaining plant balance and (2) an $11.5 million deficiency in the expense accrued, as of October 1, 1986, for decommissioning FSV, all as shown on Exhibit B; and the removal of FSV's operating expenses from cost of service. Public Service agrees that in any future rate proceeding before the PUC, it will include no capital investment, operating expenses (as

determined based on principles used in I & S 1640), or decommissioning expenses relating to FSV in its PUC cost of service or otherwise reflect such investment and expenses in its PUC rates, except that the amortizations referred to in the previous sentence may continue for five years. By the end of the five-year period Public Service agrees to have taken appropriate steps to remove the effect of these amortizations from its rates. From the expiration of the five-year amortization period, no FSV investment or operating expenses, amortization of $22 million plant balance or amortization of $11.5 million decommissioning deficiency, will be included in Public Service's PUC rates. It is further agreed that the payments from General Atomic reflected on Exhibit B will no longer be considered as a credit to investment in determining Public Service's PUC rates.

4. Power Produced by FSV

From and after October 1, 1986, electric power and energy produced by FSV may be disposed of by Public Service as it determines in its sole discretion, including the delivery of such power and energy into its system for ultimate delivery to its customers. Any such power and energy delivered into Public Service's system shall be treated as having been purchased at the rate of 48 mills per kilowatt hour, subject to adjustment as set forth below, and the monthly amounts reflecting such purchases shall be considered, without any exception whatever, as a reasonable and necessary purchase for purposes of administration of Public Service's ECA provision, or any successor cost recovery

mechanism, provided that the parties reserve the right to review and challenge before the PUC the amounts of power and energy delivered into Public Service's system from FSV. In any month in which FSV uses more power than it generates (negative net generation), the ECA will be credited with the cost of such energy supplied by Public Service at Public Service's TT rate, or successor rate. In the event that the ECA provision should no longer be applicable, Public Service will be permitted to apply for recovery in its rates, in full and on a timely basis, all amounts reflecting its purchases from FSV. The parties shall not object to any such application except on grounds stated above relating to amounts delivered into Public Service's system.

The 48-mill rate referred to above shall consist of two components -- a 32-mill component which shall remain fixed and a 16-mill component which shall be subject to adjustment each March 1 based upon the fuel and operating and maintenance expenses incurred by Public Service in connection with its Pawnee Unit No. 1 Generating Station during the previous calendar year. These expenses shall be adjusted by the ratio of the Bituminous Coal Producer Price Index for the current January to the Index for the prior January. Neither of these adjustments shall ever result in this component being less than 16 mills per kilowatt hour. The rate for power produced by FSV shall never be modified except as set forth in this paragraph. Pursuant to this Stipulation and Settlement Agreement, Public Service is permitted to

buy back from PSV no more than 2.89 billion Kwh per year, calculated at 330 MW operating at 100% capacity factor.

5. Tax Matters

The parties recognize that there is currently a dispute between Public Service and the Internal Revenue Service concerning, inter alia, the tax treatment of certain of the payments received by Public Service from General Atomic in connection with the settlements mentioned above. The parties expressly agree that nothing contained in this Stipulation and Settlement Agreement is intended to preclude any party from asserting any position it may wish to take concerning the ratemaking treatment to be given any payments which may ultimately be made by Public Service to the Internal Revenue Service. It is agreed that Public Service will not seek to increase its rates with an effective date prior to July 1, 1988 as a result of any such payments which it may make, provided that Public Service shall be permitted to seek rate coverage after July 1, 1988 for such payments despite the fact that they may have been made prior to July 1, 1988 or may be outside of a test period used for ratemaking purposes. It is the intent of the foregoing proviso that Public Service shall not be precluded from seeking appropriate ratemaking treatment for any payments to the IRS simply as a result of the time when those payments were made.

6. Attorneys Fees

Within thirty days of the effectiveness of this Stipulation and Settlement Agreement, Public Service will reimburse counsel for Green, et al., and Belcher, et al., for the attorneys fees incurred in connection with FSV proceedings before the PUC and the courts. Subject to audit, it is understood that these fees amount to an aggregate of approximately $125,000.

7. Effectiveness

This Stipulation and Settlement Agreement shall become effective upon its execution by all parties subject, however, to the timely occurrence of the following events: Within twenty days of execution, all parties to each proceeding pending before either the Colorado Supreme Court or the District Court in and for the City and County of Denver shall file Motions requesting, on the basis of this Stipulation and Settlement Agreement, remand to the District Court (with instructions to remand the case to the PUC) or to the PUC as appropriate, provided that in Case No. 86SA91 and Case No. 86CV14657 the remand shall be limited to FSV issues and shall not include other ECA issues. Once the cases have been remanded to the PUC, the PUC will within twenty days enter orders consistent with this Stipulation and Settlement Agreement in Application No. 32603 respecting the FSVIP and the replacement power penalty. Within five days of these PUC orders becoming final and no longer subject to judicial review, the OCC shall withdraw with prejudice Case No. 6527.

It is recognized that it is the parties' desire to effect the $29 million electric rate reduction on October 1, 1986 or as soon thereafter as possible and that it is unlikely that all the requirements of the preceding paragraph will have been met by that date. Public Service will nevertheless proceed with the $29 million annual electric rate reduction upon execution of this Stipulation and Settlement Agreement or October 1, 1986, whichever is later, provided that if any of the requirements of the preceding paragraph fail to be fulfilled on a timely basis, Public Service shall have the right to file an application (which OCC, Green, et al., Belcher, et al., and Staff agree not to oppose) to rescind the negative rider and to replace it with an electric rider designed to recover over a like period the realized portion of the $29 million annual rate reduction placed into effect on October 1, 1986 or thereafter, and all parties shall be free to reinstate their appeals from previous PUC decisions.

8. Term.

This Stipulation and Settlement Agreement will be in effect from the time it becomes effective as set forth in Paragraph 7 above until all the obligations of the parties have been discharged and for so long thereafter as FSV generates power and energy.

9. Non-Severability; Privilege.

The various provisions of this Stipulation and Settlement Agreement are not severable and, unless this Stipulation and

Settlement Agreement becomes effective in accordance with Paragraph 7, then (i) it shall be privileged, and (ii) it shall not be admissible in evidence or in any way described or discussed in any proceeding hereafter. The provisions of this Stipulation and Settlement Agreement are intended to relate only to the specific matters referred to here.

10. Justness and Reasonableness; Reservation.

This Stipulation and Settlement Agreement is entered into upon the express understanding that it constitutes a negotiated settlement of the specified issues, which settlement the parties agree constitutes a just and reasonable resolution of all issues, except as specifically reserved in Paragraph 5, involving the past, present and future regulatory treatment of FSV. Except as otherwise expressly provided for in this Stipulation and Settlement Agreement, neither Public Service, OCC, Green, et al., Belcher, et al., nor the PUC shall be deemed to have approved, accepted, agreed to, or consented to any administrative practice, ratemaking principle or valuation methodology underlying or supposed to underlie any of the rates, costs of service, refunds or other matters provided for in this Stipulation and Settlement Agreement.

The parties recognize that the treatment provided here for FSV is based on the unique circumstances surrounding that facility and this Stipulation and Settlement Agreement is not intended to establish any precedent concerning the regulatory treatment of Public Service's generation facilities.

11. Oblication of Parties to Defend Stipulation and Settlement Agreement

Each of the parties agrees that it will take no action in regulatory or judicial proceedings or otherwise which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Stipulation and Settlement Agreement. Furthermore, each of the parties represents that in any proceeding in which this Stipulation and Settlement Agreement or its subject matter may be raised by any other party, it will take all reasonable steps to support the continued effectiveness of this Stipulation and Settlement Agreement.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

By _____
Ronald L. Lehr, Chairman

By _____
Edythe S. Miller
Commissioner

By _____
Andra Schmidt
Commissioner

By _____
Mark Bender, Assistant
Attorney General

EMMA YOUNG GREEN, DOROTHY STARLING, VERCENIA BELCHER AND CONCERNED CITIZENS CONGRESS OF NORTHEAST DENVER

By _____
Kathleen Mullen

THE COLORADO OFFICE OF CONSUMER COUNSEL

By _____
Ronald Binz, Director

By _____
Anthony Marquez,
Asst. Attorney General

PUBLIC SERVICE COMPANY OF COLORADO

By _____
D. D. Hock, President

By _____
James R. McCotter
Associate General Counsel

# EXHIBIT A

Public Service Company of Colorado proposes to refund to its electric customers $73,000,000 in two equal refund amounts of 36.5 million dollars. In mid December 1986 (or as soon as possible thereafter) and in December 1987, refunds to current customers will be posted to their accounts, and claim forms for refunds to former customers will be mailed. The refund will be made, essentially, in accordance with the Commission's Policy Statement Regarding Refunds to Gas Customers.

The dollars available for refund will be divided by the PUC Jurisdictional revenue collected during the revenue months of November 1984, through September 1986, to arrive at a percentage refund increment. Customer refunds will be calculated by applying the percentage refund increment to the amount billed each customer during the refund period. The revenue months of November 1984, through September 1986, which will be used to calculate the 1986 and 1987 refund, is the period the Fort St. Vrain Incentive Plan was effective subject to judicial review.

Customers who had usage during the refund period at their current address will receive a credit on their bill. Customers who have left the system, or have begun service at a new address and had usage at their previous address during the refund period, will be issued claim forms. Refund checks will be issued to those customers who return their claim form. Inactive eligible customers who have outstanding balances owed Public Service Company will have their refund checks applied toward any balance owed the Company.

The Commission's Policy on Refunds does not specifically address the issue of a minimum refund. Because of the cost of processing the refund to customers who have closed their account and either left the system or receive service at a new address, all refunds to those customers whose refund check would amount to less than $1.00 will be excluded.

Customers who have left the system will have three months from the date stated on the claim forms to return their claim form. This will allow Public Service Company to refund to customers the entire amount due them on an expedited basis. Allowing more than three months to return the claim forms creates certain processing problems. Special bookkeeping and bank accounts, opened specifically for the refund, must remain open until the refund processing is complete. Through previous gas refunding experience, these accounts become idle for the majority of the time when a longer claim period is used. In addition, allowing three months to return claim forms will allow enough time to complete the refund and determine the amount of over or under refunding.

Any difference between the proposed refund amount of 36.5 million dollars for the 1986 refund and the amount actually refunded to customers will be credited to the 1987 refund amount. Any difference between the actual refund amount for the 1987 refund and the amount actually refunded to customers will be credited to the Company's Electric Cost Adjustment (ECA) and passed through the rates.

One copy of a report showing the names, addresses and amounts of refunds due all persons to whom the 1986 refund cannot be made will be held by Public Service Company and be available for inspection until the completion of the 1987 refund, at which time it will be disposed of. One copy of a report showing the same concerning the 1987 refunds which cannot be made will be held by Public Service Company and be available for inspection for one year following the completion of the 1987 refund, when it will be disposed of.

Returned claim forms from the two refunds will be held for one year following the completion of the 1986 and 1987 refund respectively, when the claim forms will be disposed of.

Out-of-pocket expenses incurred in processing the refund will be applied against the refund. Specifically these out-of-pocket expense items are: "material outside", which includes specially ordered customer inserts, special-order computer claim forms, and special-order refund claim form return envelopes; "postage and freight", which includes stamps for claim form envelopes and for refund checks issued; and "other services, outside", which includes assistance from outside vendors for inserting and from temporary help for updating refund files for issuance of checks. These are the same "out-of-pocket costs" the Commission allowed when it granted Public Service Company's last gas refund in Decision No. C86-619.

EXHIBIT B

AMORTIZATION OF FT ST VRAIN INVESTMENT AND DECOMMISSIONING DEFICIENCY

| | INVESTMENT | TOTAL FT ST VRAIN | PUC JURISDICTIONAL |
|---|---|---|---|
| 1 | RATE BASE | 233,403,166 | 229,706,034 |
| 2 | | | |
| 3 | LESS: | | |
| 4 | GENERAL ATOMIC PAYMENTS | 88,973,110 | 84,132,923 |
| 5 | NUCLEAR FUEL | 81,020,841 | 76,613,307 |
| 6 | | | |
| 7 | BALANCE | | 59,959,754 |
| 8 | | | |
| 9 | 22/60 OF BALANCE | | 21,985,243 |
| 10 | | | |
| 11 | FIVE YEAR AMORTIZATION | | 14,397,049 |
| | DECOMMISSIONING | | |
| 12 | DEFICIENCY THROUGH SEPTEMBER 30, 1986 | | 11,500,000 |
| 13 | FIVE YEAR AMORTIZATION | | $2,300,000 |
| 14 | TOTAL AMORTIZATIONS | | $6,697,049 |

(Decision No. C91-898)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AUTHORIZATION OF THE REPOWERING OF FORT ST. VRAIN, FOR ISSUANCE OF SUCH CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AS MAY BE NECESSARY TO ACCOMPLISH THE ABOVE PURPOSE, FOR MODIFICATION OF SUCH COMMISSION DECISIONS AS MAY BE NECESSARY TO ACCOMPLISH THE ABOVE PURPOSES, FOR AUTHORIZATION OF A RATE METHODOLOGY ASSOCIATED WITH THE REPOWERING, FOR GRANTING OF THE RELIEF SOUGHT ON AN ACCELERATED BASIS, AND FOR SUCH OTHER RELIEF AS MAY BE NECESSARY OR APPROPRIATE TO ACCOMPLISH THE ABOVE PURPOSES. | DOCKET NO. 91A-281E |

**COMMISSION ORDER DENYING MOTION TO DISMISS AND SETTING PROCEDURAL SCHEDULE**

Mailing date: July 12, 1991
Adopted date: July 10, 1991

BY THE COMMISSION:

This matter came on for consideration at a Prehearing Conference held on Tuesday July 2, 1991 at 9 a.m. The Commission heard argument of counsel concerning the Motion to Dismiss filed by Intervenors Belcher, Green, Starling, and the Concerned Citizens Congress of Northeast Denver; and recessed to allow the parties to confer on a proposed procedural schedule. The Commission makes the following rulings.

Regarding the motion to dismiss, the Commission adopts the standard of review for motions to dismiss filed pursuant to Rule 61(d) of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1, which apply to motions to dismiss filed in the court system. The United States Supreme Court's classic statement of the standard of review on a motion to dismiss is:

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
>
> Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In its Motion to Dismiss, Intervenors seek to dismiss the Application because the Application allegedly: (1) breaches the September 24, 1986 Fort St. Vrain Stipulation and Settlement Agreement; (2) seeks an unconstitutional impairment of the obligation of contracts; and (3) would result in rates and regulatory treatment which is neither just nor reasonable. Intervenors' allegations in its Motion to Dismiss raise disputed issues of fact. Upon review of a motion to dismiss of a Commission application, as upon review of a motion to dismiss a complaint, the facts alleged in the application, and reasonable inferences from those facts, are presumed to be true. See Hishon v. King & Spalding, 467 U. S. 69, 73 (1984) ("At this stage in the litigation, we must accept petitioner's allegations as true."). For example, we must accept as true Public Service's allegations of "changed circumstances" since the 1986 agreement, leading to "significant, widespread benefits of early dismantlement", which would mean that it would be in the "public interest" for the Commission to approve this Application. See Application at 16, ¶ 24. At this stage of the litigation, the Commission cannot state that it is clear that no relief could be granted to Public Service

under any set of facts that could be proved consistent with the allegations in the Application.

Further, the Commission agrees with Public Service's argument that the PUC has the legal power to change or modify the 1986 Fort St. Vrain settlement, if the company demonstrates facts establishing "changed circumstances" and that a modification of the 1986 Settlement would be in the public interest. "If the facts exist to indicate an adverse change in circumstances such that prior agreements offend the public welfare, the PUC must pursue its lawful mandate. After providing parties with an opportunity to be heard, it may then rescind, alter or amend its prior orders or decisions." Public Service Response to Motion to Dismiss at 5, citing, Zelinger v. Public Service Co., 435 P.2d 412, 416 (Colo. 1967) ("a general grant of power to regulate rates authorizes a commission to regulate or modify rates fixed by contract") (quoting 73 C.J.S. Public Utilities § 41 at 1085); Consolidated Freightways Corp. v. PUC, 406 P.2d 83, 87 (Colo. 1965) (PUC cannot change, alter, amend or strike an order previously in effect without a hearing when requested); Municipal Authority of Township of Blythe v. Pennsylvania PUC, 185 A.2d 628, 631 (Pa. Super. Ct. 1962) ("Public Utilities Commission has jurisdiction over the price charged for utility service regardless of whether that price has been established by a deed, a contract, ordinance, or otherwise"); Colorado Revised Statutes § 40-6-112 (1) (1984 Rep. Vol.17) ("The commission, at any time upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it."). While the Company may have a difficult burden in proving facts showing "changed circumstances" such that the Commission would conclude that modifying the 1986 Settlement was in the "public interest", at this stage in the litigation, the company should be allowed to proceed with this Application. Accordingly, the motion to dismiss is denied.

At the prehearing conference, the parties conferred among themselves concerning a procedural schedule. In advance of the Commission regular Open Meeting on July 10, 1991, the parties conferred further, and sent correspondence to the Commission indicating a desire to delay the procedural schedule by approximately one month. The Commission will accept the schedule agreed to by the parties:

| | |
|---|---|
| September 13, 1991 | Public Service Supplemental Direct Testimony due. |
| November 7, 1991 | Scheduling Conference before the en banc Commission, 9:30 a.m. |
| December 6, 1991 | Intervenor Answer Testimony due. |
| December 12, 1991 | Scheduling Conference before the en banc Commission, 9:30 a.m. |
| February 21, 1992 | Reply Testimony by Public Service due. |
| March 19, 1992 | Final Prehearing Conference, 9:30 a.m. before the en banc Commission. Colo.R.Civ.P. 16(a) Supplemental Disclosure Certificates due one week in advance, March 12, 1992. |
| April 6 through 9, 1992 | Hearings before the en banc Commission on the Application. |

THEREFORE THE COMMISSION ORDERS THAT:

1. The Motion to Dismiss, filed on June 21, 1991, by Intervenors Belcher, Green, Starling, and the Concerned Citizens Congress of Northeast Denver, is hereby denied.

2. This Application shall proceed with discovery as usual, except that responses to discovery requests shall be due in 21 days, rather than the normal 30 days.

3. On or before September 13, 1991, Applicant the Public Service Company of Colorado shall file its supplemental direct testimony.

4. On November 7, 1991, the Commission, sitting en banc, will conduct a Scheduling Conference, at the following place and time:

Time: Thursday November 7, 1991, 9:30 a.m.

Place: Logan Tower
1580 Logan Street, Office Level 2
Hearing Room "A"
Denver, CO 80203.

5. On or before December 6, 1991, Intervenors shall file their Answer Testimony.

6. On December 12, 1991, the Commission, sitting en banc, will conduct a Scheduling Conference, at the following place and time:

Time: Thursday December 12, 1991, 9:30 a.m.

Place: Logan Tower
1580 Logan Street, Office Level 2
Hearing Room "A"
Denver, CO 80203.

7. On or before February 21, 1992, the Public Service Company of Colorado shall file its Reply Testimony.

8. On or before March 12, 1992, the parties shall file Supplemental Disclosure Statements, conforming to Colo.R.Civ.P. 16(a).

9. On March 19, 1992, the Commission, sitting en banc, will conduct a Final Prehearing Conference, at the following place and time:

Time: Thursday March 19, 1992, 9:30 a.m.

Place: Logan Tower
1580 Logan Street, Office Level 2
Hearing Room "A"
Denver, CO 80203.

10. During the week commencing April 6, 1992, the Commission, sitting en banc, will conduct 4 days of hearing on this Application, commencing each day at 9:30 a.m. (The Commission will reserve Friday April 10, 1992 for a possible fifth day of hearing, if necessary.) The hearing will be held at the following time and place:

Time: Monday - Thursday, April 6 through 9, 1992, 9:30 a.m.

Place: Logan Tower
1580 Logan Street, Office Level 2
Hearing Room "A"
Denver, CO 80203.

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

ADOPTED IN OPEN MEETING ON July 10, 1991.

(S E A L)

ATTEST: A TRUE COPY
Suzanne A. Fasing
Suzanne A. Fasing
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARNOLD H. COOK

CHRISTINE E. M. ALVAREZ

Commissioners

COMMISSIONER GARY L. NAKARADO ABSENT
BUT CONCURRING IN THE RESULT.