

(Decision No. C92-1519)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF COLORADO)
FOR AUTHORITY TO IMPLEMENT A LOW-)
INCOME ENERGY EFFICIENCY ASSISTANCE)
PROGRAM.)

DOCKET NO. 91A-783EG

COMMISSION ORDER APPROVING SETTLEMENT AGREEMENT

- - - - -
Mailed Date: December 2, 1992
Adopted Date: November 25, 1992
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BY THE COMMISSION:

This Docket results from an application filed by Public Service Company of Colorado ("Public Service" or the "Company") on December 2, 1991, requesting that the Public Utilities Commission ("Commission") enter an Order granting the application and allowing the Company to pursue a Low-Income Energy Efficiency Assistance Program ("Program"). The hearing in this matter was held August 3 through 7, 1992. Subsequent to the hearing, the Commission asked the parties to work together to develop a settlement regarding the Program. The Company, the Colorado Office of Energy Conservation ("OEC"), the Land and Water Fund of the Rockies ("LAW Fund"), Denver Catholic Communities Services ("Denver Catholic"), and CF&I Steel Corporation ("CF&I") filed a Stipulation and Settlement Agreement ("Settlement") on October 2, 1992 (Exhibit 46). A copy of the Settlement is attached to this Decision as the Appendix. The Office of Consumer Counsel ("OCC"), Staff of the Public Utilities Commission ("Staff"), the Energy Conservation Association

("ECA"), and Colorado Rural Electric Association ("CREA") chose not to sign the Settlement, and each filed a Statement of Position indicating concerns but did not oppose the Settlement.

On October 19, 1992, the Commission held a Special Working Session to discuss this Docket and decided that a hearing on the issues raised in the Settlement and in the Statements of Position would be held November 20, 1992. By Decision No. C92-1366, dated November 2, 1992, a Procedural Order was issued in which the Commission set forth certain issues to be discussed during the November 20 hearing. During that hearing, supplemental testimony was presented and the issues raised by the Commission in its Order were addressed. The Commission now considers the Settlement.

DISCUSSION

The Company's original application included three components. The first component involved an energy conservation/weatherization program for low-income customers which contained two segments, the "side-by-side" segment which mirrored the program of the Division of Housing ("DOH"), and the "add on" segment which provided services not in the program of the DOH. The second component of the application was an arrearage management program pilot, the purpose of which was to determine whether arrearage forgiveness creates an incentive for low-income customers to pay their monthly bills. The third component of the application was a low-income research project, the purpose of which was to conduct a nationwide information gathering and low-income program analysis over a 12-

month period. The Company proposed to use electric and gas demand side management cost adjustment ("DSMCA") mechanisms to recover its costs and also sought approval of an incentive based on 5 percent of its expenditures.

Subsequent to the filing of the application, the Commission invited all parties to file legal briefs discussing *Mountain States Legal Foundation v. PUC*, 590 P.2d 495 (Colo. 1979) and the issue of the Commission's authority to approve an application specifically targeted to one portion of a customer class, i.e., low-income customers of the Company. *Mountain States Legal*, supra, involved two Commission decisions implementing a discount gas rate plan for low-income elderly and low-income disabled persons in which the resulting revenue losses for the discounted services were to be recovered by higher rates imposed on all customers. The Colorado Supreme Court held that discounted rate plans to selected customers, if unrelated to the cost or type of service provided, violate the statutory prohibition against preferential ratemaking by the Commission. In its legal brief in this Docket, the Company distinguished the Program from *Mountain States Legal* and maintained that the Program would not be discriminatory or in violation of the anti-preference statute. Legal briefs of other parties either opposed the Program because it was not cost effective (and was therefore discriminatory to those ratepayers who received no benefit from the Program but who paid for the Program), or

supported the Program because it would be unduly discriminatory to the low-income customers if the Program were not implemented.

During the course of the August 3 through 7, 1992 hearings, the witness for the LAW Fund proposed a modification to the Program which involved forming a "partnership" between the Company and the DOH to provide the energy conservation/weatherization component of the Program. The Settlement includes such a partnership proposal for the Program, to be jointly managed by the Company and the DOH. The Settlement proposes that the Company and DOH receive advisory input from interested parties but reserves the final decision-making authority to the Company and the DOH. Further, the partnership initially will contract with the existing DOH agencies to provide the services. However, competitive bidding, through a Request For Proposal ("RFP") process and consistent with the DOH guidelines, will commence after the Program's second year. A \$1,500 maximum per unit average is proposed as a means of limiting the amount of money that can be expended on the Program by the Company. Finally, a report on the Program will be presented to the Commission for its review on an annual basis.

The Settlement suggests that a "partnership" will provide several benefits to the Program. First, the administrative costs will be primarily borne by the DOH, which will allow the portion of the Program funded by the Company to pass a Total Resources Cost ("TRC") analysis, thereby making the Program cost effective.

Second, most parties to the proceeding agree that if the Program is cost effective, *Mountain States Legal* should not be a concern. Third, the Program will result in a number of health and safety benefits given the increased number of HOUSING units which can be served through the Program. Finally, an incidental but nonetheless important result of the proposed partnership is that the funds expended on the Program by Public Service can be included in the DOH's calculations for the purpose of leveraging federal assistance funds for the State.

With respect to recovery of the Company's costs of the Program, the Settlement provides for allocation of costs between electric and gas customers in proportion to the respective system's savings and use of the existing electric DSMCA mechanism and the implementation of a gas DSMCA mechanism. The Settling Parties submitted that these recovery mechanisms are appropriate because the Program is a low-income demand side management program, and that use of such mechanisms is fair and reasonable to the Company and its customers. Additionally, the incentive to the Company of 5 percent of total expenditure has been replaced with a performance-based payment of \$60 for each residential unit completed.

In addition to the arrearage management pilot and research study components, the Settlement adds a percentage of income plan ("PIP") pilot to the Program. This pilot was added to investigate the viability of a PIP program in assisting, in a cost-effective

manner, "persistently poor" customers of the Company. Some of the parties argued that these programs should be implemented rapidly, and in conjunction with the remaining elements of the partnership program. While the Commission intends that the Company implement a full-scale PIP program as soon as possible, it will be useful and responsible for the Company to complete a pilot program first. Cost effectiveness of the arrearage management and PIP programs will be determined through the pilot programs.

FINDINGS OF FACT

The Commission finds that:

1. It is in the public interest to implement cost-effective demand side management (DSM) programs. Cost-effective DSM programs should be implemented to reach all customer groups. Approval of the Settlement and implementation of the Program will assist low-income customers of the Company in participating in the DSM programs.

2. The Program as proposed in the Settlement is an innovative approach to providing a benefit to low-income customers of the Company.

3. The Program is a DSM program which is an integral part of the Company's overall demand side management initiative.

4. As suggested by a number of parties to this proceeding, the failure of the Commission to require and approve a cost effective DSM program that is affordable and realistically available to low-income customers, and failure by the Company to implement such a program would result in an inequitable distribution of Public Service Company DSM programs in a manner violative of § 40-3-102, C.R.S.

5. The "partnership" formed between the Company and the DOH will greatly enhance Colorado's ability to access federal funds through the leveraging process contemplated by relevant Department of Energy regulations, thus enabling the Program to assist more of the Company's low-income customers.

6. Using an RFP bidding process for the selection of contractors after the second year of the Program will be an appropriate method of obtaining the highest quality service at a competitive cost. Any bidding process developed for the program should include factors derived from discussions with experienced providers of similar program services. As is required by federal regulations, experienced providers in good standing with DOH should be automatically qualified to bid for participation in the program, and have the benefits given to them by those regulations. However, the Commission notes that the record shows that private contractors serve as sub-contractors today, and intends that such private

contractors should be able to continue to participate based on fairly administered criteria.

7. The Program will be jointly managed by the Company and the DOH. Interested parties will be allowed to participate in an advisory capacity in the Program and development of the RFP, but final decision-making authority will rest with the Company and the DOH. Methods such as circulation of drafts and advisory committees should be used to obtain input from interested parties.

8. Assuming that the Commission has not ordered otherwise, an annual report submitted by the Company to the Commission, along with the annual adjustment filings, on or about October 1 of each year will provide the Commission with the opportunity to review, and if necessary, to effect changes in the program.

9. The annual report submitted to the Commission for review and approval should include the following:

- a. Information regarding performance levels of contractors,
- b. The amount of work that is sub-contracted to private contractors,
- c. A Colorado Arrearage Management Program update,
- d. A PIP update,
- e. A progress report on the monitoring and evaluation efforts as discussed by Company witness Dr. Meng Chi in his rebuttal testimony,

f. A cost-effectiveness estimate for the upcoming year's low-income program, including:

- (1) An estimate of the number of households to be treated,
- (2) An estimate of the level of federal funding for the next year's program, and
- (3) A listing of measures to be paid for by Public Service and utilized in the next year's program,

g. A determination of the program's cost-effectiveness for the previous year, including:

- (1) A tally of the number of households treated,
- (2) The level of federal funding received for the previous year, and
- (3) A listing of measures paid for by Public Service and utilized in the previous year's program.

10. The Program is found to be cost-effective under a TRC test for the initial two years of the Program. Thereafter, if the Program is continued, it shall be maintained on a cost-effective basis by modifying the Program as required.

11. The cost-effectiveness of the overall Program is a significant factor, and there are other additional, non-quantifiable benefits, such as the leveraging of federal funds, which are important to all people of the State of Colorado.

12. The annual expenditures for the Company shall not exceed \$2.9 million in the first year; \$4.3 million in the second year; and, if continued unmodified by the Commission, \$5.8 million in the third year; and \$8.4 million in subsequent years.

13. A performance-based incentive recovery of \$60 for each unit completed is appropriate because it will ensure the Company's full support and participation in the Program.

14. It is appropriate to allocate the costs of the "partnership" program between the electric and gas customers in proportion to the respective savings to the Company's electric and gas systems.

15. The existing electric DSMCA is an appropriate mechanism for recovery of the Company's costs allocated to electric customers of the "partnership" program.

16. It is appropriate to establish a gas DSMCA to be used solely in this Docket for the recovery of the Company's costs allocated to gas customers of the "partnership" program.

The Company is directed to design and implement, with the assistance of the Utilities Task Force and other interested parties, a two-year PIP pilot program to be implemented during the 1993-94 heating season.

The arrearage management pilot will continue for two years, after which time the Commission will review a report to be filed with the Commission by the Company regarding its plans for the implementation of a full-scale program.

17. This Docket, including the record and the decision of the Commission, will apply only to the Company and will not apply to other utilities that are subject to regulation by the Commission.

CONCLUSION

The Commission finds that approval of the Settlement is in the public interest for the reasons set forth herein.

THEREFORE THE COMMISSION ORDERS THAT:

1. The application of the Company is hereby granted as set forth in the Stipulation and Settlement Agreement attached to this Decision and Order as the Appendix. Public Service Company of Colorado is authorized to implement the Low-Income Energy Efficiency Assistance Program. The Stipulation and Settlement Agreement filed October 2, 1992 is approved subject to this Order, including the following modifications:

a. The program is initially approved for two years, subject to the overall expenditure limits specified in ¶ 12 of the Findings of Fact, and may be continued beyond two years if the Commission

finds it is cost effective, or upon modification to make it so, as specified in ¶ 4 below.

- b. The annual report, including the information set forth in ¶ 9 of the Findings of Fact, shall be filed with the adjustment clause filings each year, on or about October 1.
- c. The Commission will establish a demand side management cost adjustment consistent with the Stipulation and Settlement Agreement for use solely in this Docket for the recovery of Public Service Company of Colorado's costs allocated to gas customers of the "partnership" program.
- d. The existing demand side management cost adjustment mechanism shall be used for recovery of Public Service Company of Colorado's costs allocated to electric customers of the "partnership" program.
- e. The Company is directed to design and implement, with the assistance of the Utilities Task Force and other interested parties, a two-year percentage of income pilot program to be implemented during the 1993-94 heating season.

2. The arrearage management pilot will continue for two years, after which time the Commission will review a report to be filed with the Commission by the Company regarding its plans for the implementation of a full-scale program.

3. If the program is continued after two years, it will be maintained on a cost-effective basis by modifying the program as required.

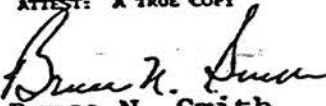
This Order is effective on its Mailed Date.

ADOPTED IN SPECIAL OPEN MEETING November 30, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



ATTEST: A TRUE COPY


Bruce N. Smith
Executive Secretary

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT E. TEMMER

CHRISTINE E. M. ALVAREZ

Commissioners

COMMISSIONER GARY L. NAKARADO ABSENT
BUT CONCURRING.

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APPENDIX
Page 1 of 8 Pages
Decision No. C92-1519
Mailed December 2, 1992
Docket No. 91A-783EG

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF COLORADO,) Docket No. 91A-783EG
1225 - 17TH STREET, DENVER, COLORADO)
80202, FOR AUTHORITY TO IMPLEMENT A)
LOW-INCOME ENERGY EFFICIENCY)
ASSISTANCE PROGRAM.)

STIPULATION AND SETTLEMENT AGREEMENT

COME NOW, Public Service Company of Colorado ("Public Service Company" or the "Company"), the Colorado Office of Energy ~~Conservation~~ ("OEC"), ~~Land and Water Fund of the Rockies~~ ("LAW Fund"), Denver Catholic Community Services ("DCCS"), and CF&I Steel Corporation ("CF&I") (collectively referred to as "the Settling Parties"), by and through their undersigned counsel and submit this Stipulation and Settlement Agreement for consideration by the Public Utilities Commission of the State of Colorado ("Commission") in resolution of the above-referenced docket.¹ Public Service Company understands that the Staff of the Public Utilities Commission ("Staff") is supportive of the Settlement Agreement, but has an outstanding issue regarding review of actual cost effectiveness data to be addressed in Staff's Statement of Position.

¹ CF&I joins in this Settlement Agreement with respect to the cost recovery provisions in paragraphs 9 through 15. CF&I neither advocates for nor objects to the remainder of the Settlement Agreement.

PRELIMINARY STATEMENT

The Settling Parties agree that Public Service Company should pursue an energy efficiency program for its low-income customers. The Settling Parties have worked diligently in attempting to craft the instant Stipulation and Settlement Agreement ("Settlement Agreement") which resolves the issues presented to the Commission in this proceeding in a manner which is consistent with the directions given by Chairman Temmer at the conclusion of the hearing that ". . . the briefs talk about how we can do this, not how we can't." (Tr. 8/7/92, p. 196, l. 12-13). In that light, the parties have resolved the major conceptual issues in this case in a way which is in the public interest and will result in the implementation of an energy efficiency program targeted at Public Service Company's low-income residential customers. Additional details will be addressed as set forth in paragraphs 5 and 15, below.

SETTLEMENT PROVISIONS

1. Public Service Company agrees to implement a "partnership program" between Public Service Company and the Colorado Division of Housing ("DOH") to weatherize and conserve electricity and gas in the homes of low-income families and individuals. The participation of OEC and DOH in the partnership program is contingent upon a satisfactory program design approved by the Commission.

2. The partnership program will not conflict with any DOH or Department of Energy Weatherization Assistance Program rules and regulations. The program will provide energy efficiency measures to a target of 7,000 residential units per year within Public Service Company's service territory, if feasible.

3. The Company will contract with current DOH agencies (subgrantees) to begin the partnership program. The term of these initial contracts will run for two (2) years from April 1, 1993 to April 1, 1995. Each agency will be a contractor to the Company and a subgrantee to DOH (contractor-subgrantee to the partnership).

4. The Company and DOH will jointly issue Requests for Proposals ("RFP") and will re-compete the selection of one contractor-subgrantee for each weatherization agency on a three-year cycle. These competitions will be open only to government agencies and not-for-profit companies and will not conflict or be in violation of any existing Department of Energy Weatherization Assistance Program rules and regulations. The first RFP will be advertised in late 1994 with contractors-subgrantees selected to commence work for the program year beginning April 1, 1995.

5. The monies expended by Public Service Company will be primarily devoted to energy efficiency measures in order of their cost effectiveness beginning with most cost effective measures and proceeding in descending order of cost effectiveness through the remaining list of measures. Public Service Company will develop a representative list of the energy efficiency measures to be utilized and an indication of the relative cost effectiveness of

each measure within 30 days of the filing of this Settlement Agreement and submit that list to the parties and the Commission for their review.

6. The DOH monies will primarily be expended on administration, capital equipment, participant intake, health and safety measures, and those weatherization measures not funded by Public Service Company. With respect to weatherization measures funded by DOH, those measures will likewise be funded in the order of most cost effective measures first, followed in descending order of cost effectiveness by the remaining measures within the limits of the DOE Weatherization Assistance Program Regulations.

7. A management committee consisting of Public Service Company and DOH will be formed. The Management Committee will report the progress of the program to the Public Utilities Commission on an annual basis commencing on April 1, 1994.

8. The Management Committee will seek input from one or more advisory committees. A member of the Utilities Task Force will be represented on at least one of these advisory committees.

9. The costs expended by Public Service Company and incentives paid to the Company for the program will be recovered through the existing electric Demand Side Management Cost Adjustment Clause approved by the Commission in Docket No. 90A-147E and through a gas DSMCA pursuant to a rider implemented by Public Service Company as a result of the instant proceeding.

10. Only gas related costs and incentives of this program will be recovered through the gas DSMCA. The gas DSMCA is limited

to cost recovery and incentives associated with this docket unless explicitly ordered by the Commission.

11. The amount to be collected through these riders will be determined by using the same methodology approved in the electric DSMCA clause. The capital expenditures will be accorded rate base treatment, earn the authorized rate of return and be amortized over seven years. The program expenses will be recovered as they are in the existing DSMCA.

12. Public Service Company's average cost per residential unit shall not exceed \$1,500 for the first two (2) years of this program. Beginning with the annual review filing in 1995, the Company will provide an alternative average cost per residential unit (if necessary) for the coming program year.

13. The allocation of these costs and incentives between gas and electric customers of the Company through the respective DSMCAs will be on the basis of the proportion of gas and electric dollar savings to Public Service Company's system (on a net present value basis over the life of the installed measures) from the low-income program as determined by the monitoring and evaluation program described in paragraph 15. The percentage rider which will be placed in effect for both gas and electric will be based on this allocation.

14. The incentive component of the DSMCA clause will be replaced with a performance bonus of sixty dollars (\$60) per residential unit completed. Upon certification of completion of the installation in compliance with the DOH Residential Energy

Conservation Assistance Program field standards, the incentive will be recoverable in accordance with the DSMCA.

15. Prior to implementing the partnership program, Public Service Company will make available to interested parties the final monitoring and evaluation plan as outlined in the attachment to Exhibit 8 and sponsored by Dr. Meng Chi in this docket. Public Service Company will implement the final monitoring and evaluation plan. The results of the monitoring and evaluation program will be reported to the Commission annually in the Management Committee's annual reports as set forth in paragraph 7.

16. This energy efficiency partnership program is to be implemented as soon as practicable after a final Commission order approving the instant Settlement Agreement, but not later than April 1, 1993.

17. Public Service Company will complete the arrearage forgiveness pilot program within a two-year period and evaluate the program and its effectiveness. If the results of the pilot program demonstrate a benefit to low-income customers and do not adversely affect Public Service Company or its other ratepayers, Public Service Company will file an application to implement a program territory-wide for its customers who meet the necessary qualifications. Expenses of the pilot program will be recovered through the normal rate-making process.

18. Public Service Company will complete the research project on other low-income programs and will prepare a summary report which will be submitted to the Commission and all interested

parties on or about January 1, 1993. In addition, Public Service Company agrees to work with the Utilities Task Force on the following:

- A. To develop and implement a system for the collection of information on the number of customers who cannot pay their bill in full because they would be categorized as "persistently poor" and to work with the Utilities Task Force on the development of the data collection system.
- B. To retain the assistance of an expert with sufficient credentials, to familiarize Public Service Company with arrearage management, percentage of income, or rate discount programs from other regions of the United States which, with modifications, could be used in Colorado.
- C. To design and implement a percentage of income, rate discount or other pilot program intended to address the needs of the persistently poor by May 31, 1993 with appropriate assessment of the pilot's feasibility and success at its conclusion.

WHEREFORE, for all the foregoing reasons, the Settling Parties respectfully request that the Commission approve this Stipulation

and Settlement Agreement and enter an order consistent herewith granting the Application of Public Service Company of Colorado consistent with the provisions of this Settlement Agreement.

DATED this 2d day of October, 1992.

Respectfully submitted on behalf
of the Settling Parties,

KELLY, STANSFIELD & O'DONNELL

By: 

Mark A. Davidson, #10364
1225 - 17th Street, Suite 2600
Denver, Colorado 80202
(303) 295-2500

ATTORNEYS FOR PUBLIC SERVICE
COMPANY OF COLORADO