(Decision No. C92-1646)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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INVESTIGATION INTO THE DEVELOPMENT OF RULES CONCERNING INTEGRATED RESOURCE PLANNING.	))))	DOCKET NO. 91R-642E

STATEMENT OF ADOPTION

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Adopted Date: December 30, 1992
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STATEMENT

BY THE COMMISSION:

On October 1, 1991, Public Service Company of Colorado ("PSCo") and other parties to the settlement of PSCo's 1991 general rate case filed a petition requesting the Commission to commence a rulemaking docket for the purpose of developing rules concerning integrated resource planning ("IRP"). The Commission, in response to that petition, initiated Docket No. 91R-642EG (The gas element was separated, and the electric rule docket was changed to 91R-642E).

An Advanced Notice of Proposed Rulemaking was issued, and the Commission conducted hearings from June 10, 1992 through June 19, 1992 to consider relevant issues regarding integrated resource planning for electric utilities. The interests represented at that hearing were diverse. For example, active parties included regulated electric utilities, consumer groups such as the Colorado Office of Consumer Counsel ("OCC"), environmental interests such as the Land and Water Fund of the Rockies ("LAW Fund") and the Colorado Office of Energy Conservation ("OEC"), fuel suppliers for electric utilities, commercial and industrial electric customers, and Commission Staff.

After the hearings, the parties filed closing statements of position. In those statements, some of the parties suggested specific rules for further rulemaking proceedings.

The Commission considered all oral and written evidence and argument from Docket No. 91R-642E. Based upon those considerations, the Commission issued Decision No. C92-1129 on September 2, 1992. That decision instituted formal rulemaking proceedings regarding electric IRP rules. Notice of the proposed rulemaking along with proposed rules was filed with the Secretary of State. In accordance with that formal notice, the Commission conducted formal rulemaking hearings on October 30 and November 2, 1992. The complete record of oral and written evidence and argument presented as a result of the Advance Notice of Rulemaking was made a part of the formal rulemaking record here.

The Commission has now considered all submissions, both oral and written, in the present docket. Now being fully advised in the matter, we hereby adopt the rules attached to this statement of adoption.

We first note that the regulated electric utilities which are subject to the IRP rules--the rules would apply to PSCo, Tri-State Generation and Transmission Association, Inc ("Tri-State"), and WestPlains Energy ("WestPlains")--generally supported the concept of integrated resource planning. *See* WestPlains' Post-hearing Comments filed November 13, 1992, page 1 (WestPlains supports the Commission's efforts to adopt IRP rules. It is important that this proceeding lead to IRP rules which will enable utilities to identify resources to serve consumers in the future, to promote efficient use of energy, to promote compliance with environmental regulations, and to

maintain a reliable and adequate supply of energy for the future); Comments of Tri-State filed October 30, 1992, page 6 (Tri-State is committed to a planning process that takes into account when new resources will be needed, sophisticated load forecasting, new technologies and changing economics of supply-side and demand-side resource acquisitions, public participation, and consideration of the environmental and economic impacts of future resource options). PSCo itself emphasized that it "has historically engaged in resource planning and in recent times, considered both demand and supply side resources in an integrated fashion." Post Hearing Statement of Position of PSCo, filed November 13, 1992, page 3. Public Service then stated (page 3 of post-hearing statement), "The Company accepts the Commission's desire to 'open up' the resource planning process of the Company to provide an opportunity for public input...." While the utilities objected to some of the particular IRP rules proposed, they generally recognized the value of integrated resource planning.

We also note that IRP for electric utilities has been accepted in other jurisdictions. Comment at hearing (LAW Funds' October 29, 1992 comments, page 2) indicated that as of 1991, at least 20 states had promulgated rules concerning IRP. In short, integrated resource planning is now well-established as a valuable concept for electric utilities, including by the regulated utilities themselves.

By compliance with these rules, actions by Colorado utilities will likely be consistent with federal requirements contained in the landmark National Energy Policy Act of 1992, signed into law by President George Bush, as Public Law 102-486, on October 24, 1992. Subtitle B of that law, entitled "Utilities," contains Section 111, entitled "Encouragement of Investments in Conservation and Energy Efficiency by Electric Utilities," Part (a) of that section reads: "Amendment to the Public Utility Regulatory Policies Act--The Public Utility Regulatory Policies Act of 1978 (P.L. 95-617; 92 Stat. 3117; 16 U.S.C. 2601 and following) is amended by adding the

following at the end of section 111(d):

> (a) Amendment to the Public Utility Regulatory Policies Act.-- The Public Utility Regulatory Policies Act of 1978 (P.L. 95-617; 92 Stat. 3117; 16 U.S.C. 2601 and following) is amended by adding the following at the end of section 111 (d):
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> > "(7) INTEGRATED RESOURCE PLANNING.-- Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented."

The purpose of our IRP rules is stated in section 1.01. The rules are intended to establish a formal process by which the regulated utilities shall plan to meet future electric needs of their customers. This process, in part, is intended to minimize costs of electric service to the people of Colorado, while preserving the reliability of electric utility service. The rules are also intended to allow for increased public participation in the utilities' planning process. Inasmuch as this Commission must eventually approve resource acquisition decisions by the regulated utilities (*e.g.*, in certificate of public convenience and necessity proceedings, or rate cases when the utility requests recovery of expenses), and inasmuch as ratepayers must pay through rates for the decisions made by utility management, increased public participation in the planning process is appropriate. We believe that such public participation, at a time preceding resource acquisition decisions, will be helpful to the utility, the public, and the Commission.

Generally, the adopted rules accomplish their intended purpose by requiring the regulated electric utilities to prepare certain energy and demand forecasts (Section 4). The utility is then required to assess both supply- and demand-side options for meeting forecasted needs (Section 5). After assessing potential resources for meeting projected need, the utility will be required to develop its plans for meeting its customers' electric needs (section 6) allowing for public

participation (section 7). In order to make the process meaningful, the rules require Commission review of the utility's selected plan (section 8) both for completeness (i.e. whether the plan contains the information mandated by the rules) and consistency with the purpose of the rules (i.e. minimizing costs of meeting future electric needs, while preserving reliability of utility service). Section 9 allows for waivers of any requirements set forth in the rules for good cause shown.

In their comments, the utilities contended that various provisions of the proposed rules impermissibly interfere with management prerogative. Specifically, the utilities argue that under present procedure, the utility proposes either supply- or demand-side measures to the Commission through the application process. The Commission then accepts or rejects the utility's application, but does not order the utility to acquire a different resource. Such action by the Commission, according to the argument, would constitute unlawful usurpation of management discretion. The utilities then conclude that the Commission, pursuant to Sections 6-8 of the rules, will improperly insert itself into the process of planning and resource selection--functions which belong to management--since the rules allow for Commission approval of the resource plan. The utilities suggest that the Commission may only accept, but not approve, the plan submitted by the utility under the rule.

The Commission recognizes that it cannot lawfully assume the role of management of a utility. Although we have the responsibility to declare managerial abuses of discretion if we find they exist, and to then enter such orders as will prevent harm to ratepayers, we acknowledge that the Commission regulates; it does not manage. Colorado-Ute v. Public Utilities Comm., 760 P.2d 627 (Colo. 1988); Colo. Municipal League v. Public Utilities Comm., 473 P.2d 960 (Colo. 1970). In the case of IRP and the rules we now adopt, we believe the utilities' argument is largely based upon an incorrect premise. So that no doubt remains, we state that the rules do not require the utility to

acquire specific resources. Nor is it the intent of the rule that the Commission may substitute its own preferred plan for that of the utility. On the contrary, the rules (Section 6) require the utility to develop its own preferred plan for submission to the Commission. The utility is also directed to develop and file with the Commission its own short-term action plan. While the rules (Section 8) contemplate Commission review and approval (including partial approval or partial rejection) of the plan, the rule does not suggest that the Commission may substitute its own plan for that of the utility. It is our intent that upon review of the plan, we will issue a decision stating whether the submitted plan is consistent with the purpose of the IRP rules. If we grant less than full approval of the utility's plan, we would, under the rules, explain the reasons for our decision. It is not the intent of the rules that the utility would be directed to file a specific Commission-determined plan. Moreover, the rules do not suggest that the utility will be directed to acquire specific resources. In short, plan development and resource selection under the rules are left to the utility, but regulatory oversight is retained by the Commission.

In order to make the process meaningful, the rules (Section 8) create the rebuttable presumption that actions consistent with the plan should be approved. In future certificate of public convenience and necessity proceedings or future rate cases, actions consistent with the plan will be presumed to be in the public interest. The rules do not dispense with the future proceedings (*e.g.*, a CPCN hearing). Additionally, parties, in the future proceeding, may attempt to show that utility actions, even though consistent with the plan, are not in the public interest and should not be approved. In summary, the rules do not impermissibly interfere with management discretion.

The parties filed extensive comment concerning the treatment of externalities in the proposed rules (Section 5.11). The finally adopted rule is significantly different from some provisions in the proposed rules. The noticed proposals contained provisions which would have

mandated quantification or monetization of externalities. That is, the utility, in its plan, would have been required to assign dollar values to externalities such as air pollution. This proposal was extremely controversial, with some parties (*e.g.*, the LAW Fund and OEC) strongly advocating monetization and some parties arguing, for various reasons, that specific values for externalities not be considered in IRP. For example, at the initial hearings, PSCo contended that compliance with existing environmental laws equated to zero externalities. Some of the parties also argued that consideration of externalities is within the authority of environmental agencies, and not this Commission.

Although the adopted regulation does not require quantification of externalities, we reject the primary arguments of those parties opposing the proposed rule. We are not persuaded that mere compliance with existing environmental laws is equivalent to an absence of any externalities. The evidence in the record indicates that the views and regulations of environmental agencies and applicable statutes change over time. We also note that utility plants may be in compliance with environmental mandates while still emitting substances and pollutants. Parties may argue that compliance with environmental laws is evidence of no substantial externalities. However, to say that compliance means no externalities strikes as implausible.

Furthermore, we do not agree that we lack the authority to require consideration of externalities in IRP. A requirement to consider such factors does not equate to an attempt, on our part, to engage in environmental regulation. Such a requirement simply recognizes that external costs (*i.e.*, costs not recovered in rates) may exist which must be paid by the people of the State, even if payment is not made in utility rates. And it is clear that additional requirements could be imposed in the planning period which could increase costs. Given our charge to protect the public interest, we may properly require utilities to consider all costs of electric generation, not simply

those which are directly recoverable in rates.

In any event, the evidence in the record indicates that the methods for quantification of externalities are highly complex, and, at this time, still speculative. Even the main proponents of monetization, the LAW Fund and OEC, suggested a "dry run" at quantification in the initial IRP filings. Given this current state of knowledge, it would be premature to mandate utilities to monetize externalities. The adopted Rule 5.11, consistent with comments of the utilities, requires only a qualitative consideration of externalities in the plan.

Another proposal which resulted in much comment concerned the suggestion to establish a Participation Fund to encourage public participation in the IRP process. *See* Option B, proposed Rule 7.00. The Fund would have been established with ratepayer monies, and would have allowed non-utility parties in IRP proceedings to jointly hire consultants for participation in Working Group sessions. Parties opposing creation of the Fund contended that this proposal violated Section 40-6.5-105 where the OCC intervenes in IRP proceedings. In part, that statute provides:

> If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors . . . and the amounts thereof shall be based on the following considerations:
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> (a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel . . . .

Based upon the record before us, we agree that the Participation Fund would likely violate the legislative intent set forth in the OCC's statute in instances where the OCC participates. We believe that public participation is important to IRP. The availability of diverse views in the planning process will likely improve utility resource plans. In addition, we recognize that participation in Commission proceedings (*e.g.*, with attorneys and consultants) can be costly to

parties. However, we must also be mindful of legislative directives such as those stated in the OCC's statute.

We note that our present ruling on the Participation Fund does not preclude the award of fees and expenses whenever the OCC participates in IRP proceedings. Assuming the other statutory criteria in C.R.S. § 40-6.5-105 are met, we interpret C.R.S. § 40-6.5-105(1)(a) as allowing an award of expenses whenever a party addresses issues in a manner substantially different from the OCC. That is, a significant difference in position on a topic would, in our view, relate to issues "not substantially addressed" by the OCC. Therefore, we agree with the LAW Fund's suggested clarification that intervenors whose position on issues differed from that of the OCC would not be found ineligible for reimbursement simply because the OCC had addressed these issues from a different perspective.[1]

Tri-State and WestPlains each requested additional time to file a plan which is fully compliant with the rules. Tri-State contended that, in light of its existing surplus capacity, it should not be required to file a complete plan until its third IRP filing. For its part, WestPlains suggested that a small utility needs "ramp up" time to gain the expertise and personnel to fully comply with the rules, and requested that it be allowed until July 1, 1994 to file its first plan. We note that the rules already contain waiver provisions (Section 9). Although an application for waiver will require additional effort on the part of the utilities, we believe that a specific waiver proceeding is the more appropriate forum to consider the waiver requests along with related issues (*e.g.*, what steps the

[1] We do not believe it necessary to incorporate this interpretation in the rules, inasmuch as the rules are IRP regulations, and our interpretation of the OCC statute relates to more than IRP. Moreover, a specific rule incorporating our present interpretation of the OCC's statute raises questions regarding the adequacy of the notice of proposed rulemaking.

utility will take to come into compliance with the rules in a timely manner). Therefore, we do not grant any waiver for Tri-State or WestPlains as part of this rulemaking proceeding.

After the close of the rulemaking hearing, CF&I, Tri-State, and the Colorado Office of Energy Conservation requested that the Commission accept various filings. We now grant the motions and accept all late-filed submissions into the record.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER GARY L. NAKARADO
NOT PARTICIPATING