(Decision No. C94-346)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO; THE OFFICE OF CONSUMER COUNSEL; THE OFFICE OF ENERGY CONSERVATION; AND THE LAND AND WATER FUND OF THE ROCKIES FOR COMMISSION CONSIDERATION OF DECOUPLING REVENUES FROM SALES AND THE ESTABLISHMENT OF REGULATORY INCENTIVES TO ENCOURAGE THE IMPLEMENTATION OF DEMAND SIDE MANAGEMENT PROGRAMS.	DOCKET NO. 91A-480EG COMMISSION ORDER DENYING MOTIONS TO REOPEN DOCKET FOR AWARD OF FEES AND COSTS

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Mailed Date: March 24, 1994
Adopted Date: March 16, 1994

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STATEMENT

BY THE COMMISSION:

On December 2, 1993, the Colorado Office of Energy Conservation ("OEC") filed its Motion to Reopen Docket for the Award of Fees and Costs. The Land and Water Fund of the Rockies ("LAW Fund") filed a similar motion to reopen on December 20, 1993. These parties request that the Commission reopen this docket for the purpose of considering and awarding fees and costs for their participation in this proceeding. In particular, OEC and the LAW Fund request an award of fees and costs from Public Service Company of Colorado ("PSCo" or "Company"). PSCo has filed responses to both motions. The Company opposes both requests on various grounds. Now being duly advised in this matter, the Commission denies the motions to reopen.

In the present docket, the Commission considered whether to decouple revenues from electricity sales for the Company. The Commission also investigated incentives to encourage PSCo to acquire cost-effective demand side management resources, and other regulatory incentives for PSCo. OEC and the LAW Fund were active participants in these proceedings, and now claim that the legal

criteria for an award of fees and costs for their participation have been met. For example, the parties contend that their participation in this docket complied with the statutory standards relating to awards of fees and costs found in § 40-6.5-105, C.R.S. (1993). Consequently, OEC and the LAW Fund request that the Commission reopen this docket for the purpose of considering and making such an award.

As one of its reasons for opposing the motions, the Company generally argues that the motions are untimely. We agree with this assertion. The Commission's initial decision in this matter, Decision No. C93-38, was issued on January 13, 1993. Applications for rehearing, reargument, or reconsideration ("RRR") were filed by several parties, and the Commission denied those applications on February 19, 1993, in Decision No. C93-198. Neither the OEC nor the LAW Fund, at the time those decisions were issued, made a request for fees and costs. Neither did the parties inform the Commission that such a request would be forthcoming (e.g., in an application for RRR or other timely motion). Instead, the parties delayed approximately ten months before submitting their motion to reopen the docket. In these circumstances, we find that the requests are untimely.

A request to reopen the record for further proceedings is addressed to the discretion of the Commission, and such requests should be timely made. In this case, OEC and the LAW Fund undoubtedly knew (or should have known) of their intent to request an award of fees and costs at the time the final decision was entered in this proceeding. No good reason exists for delaying the requests for ten months following the order of adoption.

We note that the statutory criteria for an award of fees and costs (§ 40-6.5-105, C.R.S.) involves a detailed factual inquiry. For example, reimbursements may be awarded only for expenses related to issues not substantially addressed by the Colorado Office of Consumer Counsel, the participation of the requesting party must have materially assisted the Commission in rendering its decision, etc. OEC's and the LAW Fund's delay of approximately ten months following the conclusion of the substantive proceeding before the motions were filed makes this factual inquiry more difficult both for the Commission and the Company. Since there is no good cause for having delayed the requests for fees and costs, these circumstances are sufficient reason to deny the motions to reopen.

THEREFORE THE COMMISSION ORDERS THAT:

The motions to reopen docket for the award of fees and costs by the Colorado Office of Energy Conservation and the Land and Water Fund of the Rockies are hereby denied.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING March 16, 1994.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

CHAIRMAN ROBERT E. TEMMER RESIGNED
EFFECTIVE MARCH 1, 1994

ATTEST: A TRUE COPY

Bruce N. Smith
Director

TM:srs