(Decision No. C86-1626)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO, FOR AN ORDER AUTHORIZING IT TO INCLUDE IN ITS PUC NO. 5 - ELECTRIC TARIFF AN ELECTRIC COST ADJUSTMENT CLAUSE.	APPLICATION NO. 32603
IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO 550 - 15TH STREET, DENVER, COLORADO 80202, FOR A COMMISSION ORDER AUTHORIZING TERMINATION OF LETTER OF CREDIT AND DISCHARGE OF UNDERLYING LIABILITY.	APPLICATION NO. 34998
IN THE MATTER OF THE PROPOSED INCREASED RATES AND CHARGES CONTAINED IN TARIFF REVISIONS FILED BY PUBLIC SERVICE COMPANY OF COLORADO, 550 15TH STREET, DENVER, COLORADO, UNDER ADVICE LETTER NO. 795-ELECTRIC, ADVICE LETTER NO. 296-GAS, AND ADVICE LETTER NO. 24-STEAM.	INVESTIGATION AND SUSPENSION DOCKET NO. 1425
THE COLORADO OFFICE OF CONSUMER COUNSEL, Complainant, v. THE PUBLIC SERVICE COMPANY OF COLORADO, Respondent.	CASE NO. 6527 COMMISSION DECISION COMPLYING WITH ORDERS OF REMAND OF THE COLORADO SUPREME COURT AND THE DENVER DISTRICT COURT AND GRANTING EXCEPTIONS TO DECISION NO. R86-1349

November 25, 1986

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

This Commission decision is being issued as a result of a

stipulation entered into among various parties which resolves litigation at the Colorado Supreme Court, the Denver District Court, and one pending case before the Commission. The litigation involves the Fort St. Vrain Nuclear Generating Plant (FSV) of Public Service of Colorado (Public Service) and its regulatory treatment by this Commission. The background of this stipulation is as follows:

On September 14, 1967, Public Service filed with the Commission an application for a certificate of public convenience and necessity for the construction, operation, and maintenance of its proposed FSV. By Decision No. 71104 issued April 2, 1968, this Commission 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 (General Atomic), 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 Commission 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 Investigation and Suspension Docket No. 1425 (I&S No. 1425), a general rate increase proceeding initiated by Public Service in 1980. In that proceeding, certain ratepayer intervenors (Green), 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 Decision No. C80-2346 issued December 12, 1980, and Decision No. C81-34 issued January 6, 1981, in I&S No. 1425, the Commission concluded that the relief sought by Green should not be granted while FSV was in its maturation period. On appeal to the Denver District Court the Commission decision was affirmed. Green's appeal to the Supreme Court of Colorado was docketed as Case No. 84SA142.

As part of its ruling in Decisions No. C80-2346 and No. C81-34, the Commission provided that an escrow, consisting of Public Service's

return on its investment in FSV, should be established, and that the escrowed amount would be refunded to Public Service's customers in the event that FSV did not operate at a 50 percent capacity factor or better, exclusive of scheduled downtime for maintenance and NRC ordered downtime, for a 12-month period prior to December 31, 1982. In August 1982, Public Service filed an application with the Commission 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) accordingly should be terminated. This application, which was known as Application No. 34998 and which was opposed by certain other ratepayer intervenors known as Belcher, et al., was granted by the Commission in its Decision No. C83-1717 issued November 8, 1982. On appeal by Belcher, the Denver District Court set aside the Commission's orders. The appeals of the Commission and Public Service from this decision were docketed in the Colorado Supreme Court in Cases No. 85SA18 and No. 85SA15, respectively.

Application No. 32603 is an ongoing proceeding before the Commission 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 Commission for the sale of power to Public Service by cogenerators and small power producers. Public Service protested the FSVIP, which was adopted by the Commission in August 1984 in essentially the form proposed by Staff. On appeal by Public Service, the Denver District Court set aside the FSVIP on the ground that the record did not disclose that the Commission had given adequate consideration to the payments received by Public Service from General Atomic, the contractor who built FSV. The appeals by the Commission and Belcher, et al., from the District Court decision, as well as Public Service's cross-appeal, were docketed in the Colorado Supreme Court in Case No. 85SA135. Through September 1986, the FSVIP penalties and the replacement power penalties described below would have amounted to approximately $78.7 million, inclusive of interest. For periods following November 1, 1984, only the FSVIP penalties have been included (even though replacement power penalties continued to be levied during the pendency of the appeal of the FSVIP) since the FSVIP was designed to supersede the replacement power penalties as of that date.

In Decisions No. R85-454, No. C85-680, and No. C85-822, the Commission 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 Commission. The District Court affirmed. Public Service's appeal to the Colorado Supreme Court was docketed in Case No. 86SA91.

In Decisions No. R86-499, No. C86-797, and No. C86-929, the Commission 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 was docketed in Case No. 86CV14657.

On November 7, 1985, the Office of Consumer Counsel (OCC) filed with the Commission a complaint against Public Service (Case No. 6527) in alleging that FSV should be removed from Public Service's rate base and 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 pending before the Commission, but the hearing dates, originally scheduled for March 11, 12, and 13, 1987, have been vacated.

The following table is a tabular summary of the various court cases and Commission decisions which directly or indirectly affect Fort St. Vrain:

TABLE

Commission Docket and Decision Nos.	Denver District Court Docket	Colorado Supreme Court Docket
A. I&S No. 1425 (rate case) Decision No. C86-2346 (12-12-80) Decision No. C81-34 (1-6-81)	81 CV 0411 81 CV 1054	84 SA 142
B. Application No. 34998 (capacity factor test) Decision No. C83-1717 (11-8-83)	84 CV 0113 85 SA 18	85 SA 15
C. Application No. 32603 (ECA; FSVIP adopted) Decision No. C84-874 (8-8-84)	84 CV 9495	85 SA 135
D. Application No. 32603 (FSVIP; $2M refund) Decision No. R85-454 (4-3-85) Decision No. C85-680 (5-21-85) Decision No. C85-822 (6-25-85)	85 CV 9055	86 SA 91
E. Application No. 32603 (FSVIP; $9M refund) Decision No. R86-499 (5-5-86) Decision No. C86-797 (6-24-86) Decision No. C86-929 (7-22-86)	86 CV 14657	
F. Case No. 6527 OCC complaint re: (FSV in rate base)		

On September 24, 1986, a stipulation and settlement agreement was entered into among this Commission, the 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. The agreement provided for a settlement of the FSV litigation which has been described above. For historical purposes, and as an aid for future reference, a copy of the 1986 stipulation and settlement agreement is attached to this decision as Appendix A.

The mechanism of settlement provided that all parties to each proceeding pending before either the Colorado Supreme Court or the Denver District Court shall file motions requesting, on the basis of the 1986 stipulation and settlement agreement, remand to the District Court (with instructions to remand the case to the Commission) or to the Commission as appropriate, provided that in Case No. 86SA91 and Case No. 86CV14657 the remand would be limited to FSV issues and shall not include other electric cost adjustment (ECA) issues. The 1986 stipulation and settlement agreement further provided that once the cases have been remanded to the Commission, the Commission will within 20 days enter orders consistent with the stipulation and settlement agreement in Application No. 32603 respecting the FSVIP and the replacement-power penalty. Within five days of the appropriate Commission decision and order becoming final and no longer subject to judicial review, the OCC is to withdraw with prejudice Case No. 6527.

On October 2, 1986, the Colorado Supreme Court issued its orders of remand in the cases pending before it. On October 7, 1986, District Court Judge Robert P. Fullerton issued a remand order in Case No. 86CV14657. On October 20, 1986, District Judge Gilbert Alexander issued a remand order in Cases No. 81CV0411 and No. 81CV1054; District Court Judge John W. Coughlin issued a remand order in Case No. 85CV9055; District Court Judge Leonard P. Plank issued a remand order in Case No. 84CV0113; and District Judge Warren O. Martin entered a remand order in Case No. 84CV9495.

All appropriate remand orders have now been issued and the matters are pending before this Commission. Although the 1986 stipulation and settlement agreement provides that this Commission would enter appropriate orders consistent with the 1986 stipulation and settlement agreement in Application No. 32603, respecting the FSVIP and replacement power penalty, the Commission is approximately two weeks late in complying with that provision. However, the Commission finds that this two weeks' delay is harmless and will not adversely affect any party to the 1986 stipulation and settlement agreement.

The Commission also notes that on October 29, 1986, Public Service filed exceptions to Decision No. R86-1349 entered by Hearings Examiner John B. Stuelpnagel on October 10, 1986, in Application No. 32603. That decision provided for a purchased power cost penalty assessed against Public Service in the amount of $12,179,751 for the failure of FSV to generate a standard amount for the period of April 1985

through March 1986. That decision also provided that in the event the FSVIP ultimately becomes effective, an additional amount of $27,173,395 for the same period shall be credited to the ECA the month following the date such plan goes into effect. This decision will modify Recommended Decision No. R86-1349 in accordance with the stipulation and settlement agreement insofar as it relates to Fort St. Vrain.

THEREFORE THE COMMISSION ORDERS THAT:

1. To comply with paragraph 7 of the stipulation and settlement agreement the following decisions are modified or rescinded as follows:

a. Ordering paragraphs 9, 10, and 11 of Decision No. C80-2346 dated December 12, 1980, in Investigation and Suspension Docket No. 1425 are rescinded.

b. Decision No. C83-1717 dated November 8, 1983, in Application No. 34998 is rescinded in its entirety.

c. Decision No. C84-874 dated August 8, 1984, in Application No. 32603, is rescinded in its entirety.

d. Ordering paragraphs 5 and 6 of Decision No. R85-454 dated April 3, 1985, are rescinded.

e. Ordering paragraphs 3 and 4 of Decision No. R86-499 dated May 5, 1986, in Application No. 32603, are rescinded.

f. Ordering paragraphs 2 and 3 of Decision No. R86-1349 dated October 10, 1986, in Application No. 32603, are rescinded.

2. The exceptions of the Public Service Company of Colorado filed Application No. 32603 on October 29, 1986, directed to Decision No. R86-1349 dated October 10, 1986, are granted in accordance with ordering paragraph 1f above.

3. To the extent any conflict or inconsistency exists between any decision listed in the table in the above findings of fact and the stipulation and settlement agreement dated September 24, 1984, the stipulation and settlement agreement shall be controlling insofar as it pertains to the Fort St. Vrain Generating Plant of the Public Service Company of Colorado.

4. This Order is effective forthwith.

DONE IN OPEN MEETING the 25th day of November 1986.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Ronald L. Lehr

Edythe S. Miller

Andrea Schmidt

Commissioners

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 FSV 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. 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 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.