

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

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

ADVANCE NOTICE OF PROPOSED RULEMAKING
SETTING PREHEARING CONFERENCE FOR MAY 21, 1992; AND
EVIDENTIARY HEARINGS FROM JUNE 2, 1992 THROUGH
JUNE 12, 1992 ON INTEGRATED RESOURCE PLANNING.

The Colorado Public Utilities Commission ("Commission") hereby gives Advance Notice of Proposed Rulemaking concerning integrated resource planning. The Commission, at this time, will not propose any specific rules. Instead, we will alert all interested parties as to the nature of this rulemaking, in the list of issues at the end of this notice.

This rulemaking docket will proceed in a separate, but parallel track, with an adjudicatory docket, Docket No. 91A-480EG. Docket No 91A-480EG concerns the Public Service Company of Colorado, and a proposal to decouple the revenues of the company from its sales. For the convenience of all interested parties, the Commission will attach, as Appendix "A" to this Advance Notice of Proposed Rulemaking, Commission Decision No. C91-1588 (released December 16, 1991), which further details the procedure and background of this rulemaking docket. This rulemaking docket, like Docket No. 91A-480EG, originated in the settlement of the 1991 Public Service Company of Colorado rate case. See Decision No. C91-918 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement) (July 23, 1991).

The Commission will file this Advance Notice of Proposed Rulemaking with the Office of Regulatory Reform during January 1992, because the proposed rulemaking may affect small businesses. The Commission will send the Advance Notice of Proposed Rulemaking to the Secretary of State during January 1992, in order that the Secretary of State can publish the notice in the Colorado Register on or about February 10, 1992. See Colorado Revised Statutes § 24-4-103.5 (1988 Repl. Vol.10A) (requiring 10-days advance notice to the office of regulatory reform); Colorado Revised Statutes § 24-4-103(3)(a) (1988 Repl. Vol.10A) (requiring a minimum of 20-days notice of hearing after publication by the secretary of state). The Commission will conduct public hearings on the integrated resource planning rules issues, commencing each working day at 9:30 o'clock a.m., from June 2, 1992 through June 12, 1992 at the Commission's offices, 1580 Logan Street, Office Level 2, Hearing Room "A", Denver, Colorado 80203. See Appendix "A" to this Advance Notice of Proposed Rulemaking, Commission Decision No. C91-1588 (released December 16, 1991), (further details of this Advance Notice of Proposed Rulemaking procedure).

To summarize the schedule in this rulemaking docket, all interested entities who wish to participate in this rulemaking shall file their initial comments, testimony and exhibits, and any draft rules proposed individually or jointly by some or all of the parties, on or before February 14, 1992. The initial filings will be subject to discovery, with a shortened 21-day response time, in preparation for reply comments to be filed on April 15, 1992. The reply testimony will be due on April 15, 1992, and also subject to discovery, with a 21-day response time. All discovery shall close on May 20, 1992. On or before May 13, 1992, participants shall file pretrial disclosure certificates pursuant to Colo. R. Civ. P. 16, in the format set forth in ordering paragraph 2 in Decision No. R91-1421-I. See Decision No. C91-1588 (Appendix A).

The Commission will hold a prehearing conference on Thursday May 21, 1992 at 9:30 a.m. at the Commission's Offices, 1580 Logan Street, Office Level 2, Hearing Room "A," Denver, Colorado 80203. From June 2, 1992 through June 12, 1992, the Commission will hold evidentiary hearings, commencing each day at 9:30 a.m. at the Commission's Offices, 1580 Logan Street, Office Level 2, Hearing Room "A," Denver, Colorado 80203. (The prehearing conference and evidentiary hearings will be consolidated with the Public Service Company of Colorado "decoupling and incentives" docket, Docket No. 91A-480EG. Separate records will be kept for the two dockets.) On June 29, 1992, the parties shall file statements of position. On or about August 14, 1992, the Commission will issue its decision in this rulemaking docket, setting forth proposed integrated resource planning rules, to be noticed in accordance with the State Administrative Procedure Act. The subsequent rulemaking proceeding will be conducted expeditiously in accordance with the State Administrative Procedure Act.

The issues in this rulemaking will be the substantially the same as those that the five parties¹ to Revised Settlement Agreement II² (the agreement which resolved the 1991 Public Service Company Rate Case) expected the Commission to resolve. See Decision No. C91-918 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement of 1991 Public Service Rate Case) (July 23, 1991).

¹. The five parties are: (1) the Public Service Company of Colorado; (2) the Colorado Office of Consumer Counsel; (3) the Colorado Office of Energy Conservation; (4) the Land & Water Fund of the Rockies; and (5) the Staff of the Colorado Public Utilities Commission.

². See Decision No. C91-918 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement) (July 23, 1991). Revised Settlement Agreement II is attached to the Decision No. C91-918 as Composite Exhibit "C." The integrated resource planning rulemaking issues are on pages 5 through 6 of Composite Exhibit "C" to Decision No. C91-918.

The Commission expects to resolve at least the following issues in the integrated resource planning rulemaking:

- The integration of demand side management (energy efficiency and conservation programs) into resource planning.
- The evaluation of environmental externalities and whether and how they are taken into account in resource selection.
- The use of the societal test, or other tests, in determining the cost effectiveness of resources.
- The procedures, if any, to be used for the review of the planning assumptions, forecasts, and methodologies, for electric and gas corporations within the jurisdiction of the Colorado Public Utilities Commission.
- The appropriate methodology for determination of avoided costs of supply side resources and appropriate discount rates.
- The objectives of integrated resource planning, and any matter related to the implementation of integrated resource planning.
- Methods to address the uncertainty of demand forecasts (for example, planning flexibility to best accommodate loads that are higher or lower than expected).

ADOPTED IN OPEN MEETING ON December 4, 1991.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(S E A L)



ATTEST: A TRUE COPY

Robert E. Temmer
Robert E. Temmer
Acting Director

ARNOLD H. COOK

GARY L. NAKARADO

CHRISTINE E. M. ALVAREZ

Commissioners

³. This Advance Notice of Proposed Rulemaking was not received by the Secretary of State in time for publication in the January 10, 1992 issue of the Colorado Register. Accordingly, we are sending a new copy, and a copy to all the parties, of the same notice mailed on December 16, 1991.

(Decision No. C91-1588)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

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

COMMISSION ORDER GRANTING MOTION FOR ESTABLISHMENT
OF PROCEDURAL SCHEDULE; VACATING PREVIOUS DEADLINE;
AND SHORTENING RESPONSE TIME

Mailing date: December 16, 1991

Adopted date: December 4, 1991

On December 3, 1991, the five parties¹ ("parties") to Revised Settlement Agreement II² (the agreement which resolved the 1991 Public Service Company Rate Case) filed a "Motion for Establishment of Procedural Schedule, Issuance of Advance Notice of Proposed Rulemaking, Vacation of Comment Date, and to Reduce Time."

This rulemaking docket is one of the four new dockets spawned by the agreement which resolved the 1991 Public Service Rate Case, Revised Settlement Agreement II. The four dockets are: (1) the docket created to address the issues of decoupling the revenues of the Public Service Company of Colorado from its sales,

¹. The five parties are: (1) the Public Service Company of Colorado; (2) the Colorado Office of Consumer Counsel; (3) the Colorado Office of Energy Conservation; (4) the Land & Water Fund of the Rockies; and (5) the Staff of the Colorado Public Utilities Commission.

². See Decision No. C91-918 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement of the 1991 Public Service rate case) (July 23, 1991). Revised Settlement Agreement II is attached to Decision No. C91-918 as Composite Exhibit "C."

Docket No. 91A-480EG, opened July 15, 1991 (the "incentives" or "decoupling" docket); (2) the demand-side management programs collaborative process docket, Docket No. 91A-481EG, opened July 15, 1991; (3) this docket – the Integrated Resource Planning rulemaking docket, Docket No. 91R-642EG, opened October 1, 1991; and, (4) the low-income energy assistance docket, Docket No. 91A-783EG, opened December 2, 1991.

Revised Settlement Agreement II contained an ambitious schedule for these four dockets. The parties intended to complete the four dockets in advance of Public Service Company's next general rate case, which will be filed on November 2, 1992. See Revised Settlement Agreement II at 10, attached as Composite Exhibit "C" to Decision No. C91-91 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement of the 1991 Public Service rate case) (July 23, 1991).

The Colorado Public Utilities Commission ("Commission") has supported the parties in this ambitious schedule, but has encouraged the parties to clarify the issues and outcomes required to be addressed. On numerous occasions, in prehearing conferences in the Decoupling Docket and elsewhere, the Commission has questioned whether the parties have adequately addressed fundamental issues such as "cost-effectiveness" tests and "avoided costs," as well as important factual matters relating to the Public Service Company of Colorado such as supply data, demand data, and company-specific forecasting data. See, e.g., Decision No. C91-1421-I at 3-4 in Docket No. 91A-480EG (discussions between the parties and the commissioners at the October 8, 1991 Prehearing Conference in the Decoupling Docket). Further, the Commissioners have repeatedly stated that they will insist on a thorough examination of all issues involved, building a clear record which forms a rational basis for the fundamental changes proposed by the parties – such as to decouple a utility's revenues

from its sales; to invest in measures which will save energy instead of letting demand increase and building new power plants to meet the increased demand; and to approach Colorado's energy resources on an integrated basis.

Although the Commission, including two of the three commissioners now sitting, issued a policy statement in December 1990 supportive of energy efficiency and stating a serious intention that the Commission deal proactively with the many issues involved in the energy efficiency area³, the Commission has not predetermined either that a massive "demand side management" effort is a wise course for the Public Service Company of Colorado at this time, or what the needs of Colorado are regarding integrated resource planning. The Demand Side Management Policy Statement stated that the objectives and directions enumerated in the Statement "will not have the legal force of rules." Demand Side Management Policy Statement at 3 (December 5, 1990). The Commission has been troubled by the parties' apparent conclusion, from the non-binding Demand Side Management Policy Statement, that the Commission had already decided, in a legally binding way, to implement specific demand side management programs and integrated resource planning. Again, the Commission must have a complete record upon which to base its decisions, and it needs a strong, clear, fact-specific basis upon which to predicate fundamental changes, which may appear to be counter-intuitive at first glance.⁴ This is both a legal necessity and a practical

³. The Policy Statement was entered in Commission Docket No. 90I-227EG, and entitled "Demand Side Management, Energy Efficiency, Renewable Energy Resources, and Environmental Quality".

⁴. For many, it appears to be counter-intuitive to pay an electric company not to produce electricity. This year, however, an intermediate appellate court in New York upheld exactly such a result against legal challenge, and issued what is probably the first reported case in the country concerning both the legality of state public utility commission demand side management programs, and "incentive regulation" — Multiple Intervenor v. Public Service Commission of New York, 569 N.Y.S.2d 522, 166 A.D.2d 140, 122 PUR4th 600 (N.Y. App. Div. 1991). In Multiple Intervenor,

approach, grounded in a recognition of disparate views of the proper role of the Commission in initiating change. Our constituents and stakeholders – including the public, the industrial and commercial users, the Legislature, and the courts – have a right to know how any evolutionary change we might make is rationally based on a cautious and thorough examination of carefully determined facts.

In emphasizing here that we have not yet decided whether any particular demand side management or integrated resource planning program is appropriate, we do not mean in any manner to discourage this ambitious undertaking by the parties. As we noted in approving Revised Settlement Agreement II, the Agreement embodies "the building of a framework for responsible and sustainable energy planning for years to come. In all respects, the Agreement represents a potential turning point for how utilities may be regulated in Colorado." Decision No. C91-918 at 2 (Commission order approving settlement) (July 23, 1991). The Commission is generally supportive of the undertaking, but the public, the Legislature, and the courts will insist on a responsible fact finding and market-based approach.

After the October 8, 1991 Prehearing Conference in the Decoupling Docket, Docket No. 91A-480EG, and the October 15, 1991 Special Open Meeting in the Collaborative Docket, Docket No. 91A-481EG, the parties conferred in an attempt to compromise and reconcile their strong desire to complete all four dockets by the November 2, 1992 goal set in Revised Settlement Agreement II, with the

supra, the New York Appellate Division affirmed the award of an incentive payment of 20% for Orange & Rockland Utilities and 10% for Niagara Mohawk Power for the dollar savings in reduced consumption of electricity caused by the "demand side management" (energy efficiency and conservation) programs, rejecting the argument that paying an electric company not to produce electricity was beyond the New York Public Service Commission's rate-making jurisdiction.

Commission's insistence on a complete examination and discussion of the issues involved. As the motion asserts:

The proposed schedule has been agreed upon after extensive and difficult discussions among the Applicants and other active parties. It seeks to accommodate the Commission's desire to have cost effectiveness and avoided cost issues addressed in the Decoupling-Incentives docket and the parties' continuing belief that those issues should be addressed primarily in the broader context of the IRP docket. It also has taken into account that the Decoupling-Incentives docket is an adjudicatory proceeding while the final phase of the IRP docket must be conducted as rulemaking, the need for separate records and separate decisions, and the related legal requirements. Finally, the proposed schedule recognizes that Public Service will be filing its next rate case on November 2, 1992.

With all of these factors in mind, the proposed schedule provides for conducting the Decoupling-Incentive docket and the IRP docket separately but on parallel tracks. The sequence is designed so that the particular events in each docket complement each other logically, because the issues in the two dockets are interrelated, while nevertheless maintaining separate records.

Joint Motion at 2-3 (filed December 3, 1991).

The Commission has reviewed the motion, with its proposed schedule, and will grant the motion, except that the evidentiary hearing will commence on June 2, 1992, instead of June 1, 1992. The proposed schedule represents an appropriate response to the Commission's concerns, and an innovative accommodation of the various interests. Accordingly, the motion in the Integrated Resource Planning Docket, Docket No. 91R-642EG, is granted.

The parties filed a similar procedural motion in the Decoupling-Incentives Docket, Docket No. 91A-480EG, which the Commission will also grant, by separate order issued today, Decision No. C91-1589. For the convenience of the parties, the Commission will list the procedural dates for both dockets in both orders issued today, in the ordering paragraphs below.

THEREFORE THE COMMISSION ORDERS THAT:

1. The "Motion for Establishment of Procedural Schedule, Issuance of Advance Notice of Proposed Rulemaking, Vacation of Comment Date, and to Reduce Time," filed on December 3, 1991, by the Public Service Company of Colorado; the Colorado Office of Consumer Counsel; the Colorado Office of Energy Conservation; the Land & Water Fund of the Rockies; and the Staff of the Colorado Public Utilities Commission; is hereby granted.

2. The response time for this motion is hereby reduced to December 4, 1991.

3. The December 16, 1991 date for filing comments in this docket, set forth in Decision No. C91-1398, is hereby vacated.

4. The Commission will issue an Advance Notice of Proposed Rulemaking in the Integrated Resource Planning Docket, Docket No. 91R-642EG, during the month of December 1991. The Commission will submit the Advance Notice of Proposed Rulemaking to the Colorado Secretary of State on or before December 31, 1991, for publication in the Colorado Register on January 10, 1992. The Advance Notice of Proposed Rulemaking will not contain a proposed integrated resource planning rule, but rather will rely upon the integrated resource planning issues listed in the parties' Revised Settlement Agreement II at III ¶7 page 5-6; attached as Composite Exhibit "C" to Decision No. C91-91 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order Approving Revised Settlement Agreement II) (July 23, 1991). The Advance Notice of Proposed Rulemaking is attached as Appendix "A" to this Decision.

5. In the Decoupling-Incentives Docket, Docket No. 91A-480EG, the Public Service Company of Colorado shall file supplemental direct testimony pertaining to cost effectiveness data, avoided cost data, supply data, demand data, and forecasting

data on or before January 13, 1992. The supplemental direct testimony will be subject to discovery, with a shortened 21-day response time.

6. In the Integrated Resource Planning Docket, Docket No. 91R-642EG, the parties shall file their initial comments, testimony and exhibits, and any draft rules proposed individually or jointly by some or all of the parties, on or before February 14, 1992. The initial filings will be subject to discovery, with a shortened 21-day response time, in preparation for reply comments to be filed on April 15, 1992.

7. In the Decoupling-Incentives Docket, Docket No. 91A-480EG, the parties shall file answer testimony and exhibits regarding cost effectiveness data, avoided cost data, supply data, demand data, and forecasting data (answering the supplemental direct testimony filed by the Public Service Company of Colorado on January 13, 1992) on or before March 13, 1992. The answer testimony will be subject to discovery, with a shortened 21-day response time.

8. In the Integrated Resource Planning Docket, Docket No. 91R-642EG, the parties shall file reply comments, testimony, and exhibits (to the initial February 14, 1992 filings) on or before April 15, 1992. The reply testimony will be subject to discovery, with a shortened 21-day response time.

9. In the Decoupling-Incentives Docket, Docket No. 91A-480EG, the parties shall file rebuttal and cross-rebuttal testimony to previously filed matters on or before April 30, 1992.

10. With respect to discovery deadlines in the Integrated Resource Planning Docket, Docket No. 91R-642EG, the final absolute discovery deadline is May 20, 1992. The discovery schedule shall track the procedural schedule with the respect to the filings, and shall contain several mini-deadlines before the final cut-off date. First,

on April 15, 1992, all written discovery on the February 14, 1992 initial comments, testimony and exhibits and draft rules, is due. Second, on April 24, 1992, all written discovery on the April 15, 1992 Reply comments, testimony and exhibits, is due. Third, on May 20, 1992, all depositions shall be completed and no further discovery of any kind shall be allowed, absent an order by the Commission.

11. With respect to discovery deadlines in the Decoupling-Incentives Docket, Docket No. 91A-480EG, the final absolute discovery deadline is May 20, 1992. The discovery schedule shall track the procedural schedule with the respect to the filings, and shall contain several mini-deadlines before the final cut-off date. First, on March 13, 1992, all written discovery on the January 13, 1992 filing by the Public Service Company, as well as discovery on all the previously-filed direct testimony, is due. Second, on April 30, 1992, all written discovery on the March 13, 1992 Reply testimony is due. From April 30, 1992 onward, all discovery requests or responses shall be served by hand-delivery or by overnight mail. Third, on May 7, 1992, all written discovery on the April 30, 1992 rebuttal and cross-rebuttal testimony is due. Fourth, on May 15, 1992, all responses to the May 7, 1992 written discovery are due. Fifth, on May 20, 1992, all depositions shall be completed and no further discovery of any kind shall be allowed, absent an order by the Commission.

12. In the Integrated Resource Planning Docket, Docket No. 91R-642EG, the parties shall file pretrial disclosure certificates pursuant to Colo. R. Civ. P. 16, in the format set forth in ordering paragraph 2 in Decision No. R91-1421-I, on or before May 13, 1992.

13. In the Decoupling-Incentives Docket, Docket No. 91A-480EG, the parties shall file pretrial disclosure certificates pursuant to Colo. R. Civ. P. 16, in the format

set forth in ordering paragraph 2 in Decision No. R91-1421-I, on or before May 13, 1992.

14. The Commission will hold a consolidated prehearing conference in both dockets, the Integrated Resource Planning Docket, Docket No. 91R-642EG, and the Decoupling-Incentives Docket, Docket No. 91A-480EG, on Thursday May 21, 1992 at 9:30 a.m. at the Commission's Offices, 1580 Logan Street, Office Level 2, Hearing Room "A," Denver, Colorado 80203.

15. From June 2, 1992 through June 12, 1992, the Commission will hold consolidated evidentiary hearings on both dockets, the Integrated Resource Planning Docket, Docket No. 91R-642EG, and the Decoupling-Incentives Docket, Docket No. 91A-480EG, commencing each day at 9:30 a.m. at the Commission's Offices, 1580 Logan Street, Office Level 2, Hearing Room "A," Denver, Colorado 80203. The hearing record will be made a part of the separate records of each docket.

16. On June 29, 1992, the parties shall file statements of position, separately, in the Integrated Resource Planning Docket, Docket No. 91R-642EG, and in the Decoupling-Incentives Docket, Docket No. 91A-480EG.

17. On or about August 14, 1992, the Commission will issue its decision in the Decoupling-Incentives Docket, Docket No. 91A-480EG.

18. On or about August 14, 1992, the Commission will issue its decision in the Integrated Resource Planning Docket, Docket No. 91R-642EG, setting forth proposed integrated resource planning rules, to be noticed in accordance with the State Administrative Procedure Act. The subsequent rulemaking proceeding will be conducted expeditiously in accordance with the State Administrative Procedure Act.

19. This decision is effective on its date of mailing.

ADOPTED IN OPEN MEETING ON December 4, 1991.

(S E A L)



ATTEST: A TRUE COPY

Robert E. Temmer
Robert E. Temmer
Acting Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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