(Decision No. C91-1589)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE JOINT APPLICATION OF THE PARTIES TO REVISED SETTLEMENT AGREEMENT II IN DOCKETS NOS. 91S-091EG AND 90F-226E FOR COMMISSION CONSIDERATION OF DECOUPLING REVENUES FROM SALES AND ESTABLISHMENT OF REGULATORY INCENTIVES TO ENCOURAGE THE IMPLEMENTATION OF DEMAND-SIDE MANAGEMENT PROGRAMS.	)	DOCKET NO. 91A-480EG

COMMISSION ORDER GRANTING MOTION FOR REVISION OF PROCEDURAL SCHEDULE; MOTION FOR CLARIFICATION AND MODIFICATION OF DECISION NO. R91-1421-I; AND GRANTING MOTION TO REDUCE RESPONSE TIME

Mailing date: December 16, 1991
Adopted date: December 4, 1991

I. Background.

On December 3, 1991, the five parties[1] ("parties") to Revised Settlement Agreement II[2] (the agreement which resolved the 1991 Public Service Company Rate Case) filed a "Motion for Revision to Procedural Schedule, Clarification and Modification of Decision No. R91-1421-I and to Reduce Response Time."

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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

This adjudicatory docket is one of the four new dockets spawned by the agreement which resolved the 1991 Public Service Rate Case, Revised Settlement Agreement II. See Decision No. C91-918 in Docket No. 91S-091EG and Docket No. 90F-226E (Commission Order approving settlement) (July 23, 1991). The four dockets are: (1) this docket -- the docket created to address the issues of decoupling the revenues of the Public Service Company of Colorado from its sales, 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) 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

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23, 1991). Revised Settlement Agreement II is attached to Decision No. C91-918 as Composite Exhibit "C."

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 area[3], 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-

[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".

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 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.

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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 Intervenors 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 Intervenors, 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.

II. New Procedural Schedule.

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 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.
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> 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.
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> 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 this case, the Decoupling-Incentives Docket, Docket No. 91A-480EG, is granted.

The parties filed a similar procedural motion in the Integrated Resource Planning Docket, Docket No. 91R-642EG, which the Commission will also grant, by separate order issued today, Decision No. C91-1588. 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 at the conclusion of this Decision.

III. Modification and Clarification of Decision No. R91-1421-I.

The parties requested clarification and modification of Decision No. R91-1421-I in this Decoupling-Incentives Docket, Docket No. 91A-480EG, released October 28, 1991. The thrust of the parties' objections to Decision No. R91-1421-I is that the Commission may have appeared to have failed to maintain the separateness of the four dockets generated by Revised Settlement Agreement II. According to the parties, Decision No. R91-1421-I mixed discussions of all four dockets, and discussed the October 8, 1991 Prehearing Conference in this Decoupling Docket with the October 15, 1991 Special Open Meeting in the Collaborative Docket, Docket No. 91A-481EG. As the parties expressed the nature of their concerns about Decision No. R91-1421-I: "These [concerns] generally relate to maintaining procedural order among the four dockets resulting from Revised Settlement Agreement II, ensuring the integrity of the nature of the dockets as adjudicatory or rulemaking, and ensuring that the parties receive clear directives about actions the Commission intends for them to take." Joint Motion at 7.

We agree that clarity of process and procedural concerns require careful delineation among these four dockets. Accordingly, Section 6 and Section 7 of Decision No. R91-1421-I at page 6, will be deleted, because they considered two other dockets -- Section 6 deals with the Integrated Resource Planning Docket, Docket No.

91R-642EG, and Section 7 deals with the Low-Income Assistance Docket, Docket No. 91A-783EG.

The parties requested that the Commission clarify Section 8 of Decision No. R91-1421-I, page 6-7 ("Requested Evidence"). Section 8 stated:

> The Commission now provides the parties with guidance to clarify what additional information it expects to have presented as evidence in this docket. In addition to the testimony filed the OEC on August 5, 1991, concerning decoupling and demand side management incentives, the Commission expects the parties to present Public Service-specific foundation evidence on the following:
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> A. Cost-effectiveness tests data.
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> B. Avoided costs data.
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> C. Supply data.
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> D. Demand data.
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> E. The inter-relationship between supply and demand in the Colorado electricity market and Public Service.
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> F. Forecasting data.
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> Decision No. R91-1421-I in the Decoupling Docket, 91A-480EG, at 6-7 (October 28, 1991).

The parties wished the Commission to clarify Decision No. R91-1421-I to read that the Public Service Company of Colorado has already submitted Items C, D, and F (relating to supply data, demand data, and forecasting data), in its October 25, 1991 filings. This testimony is to be addressed in the Answer testimony due January 13, 1992, and the Reply testimony due March 13, 1992. The Commission will grant this clarification.

IV. The Colorado OCC v. Mountain States Telephone problem -- rulemaking versus adjudication.

Regarding Item E[5] ("the inter-relationship between supply and demand in the Colorado electricity market and Public Service"), the parties expressed "concern" that evidence on this item, together with any Commission decision, might possibly run afoul of the procedural problem in the Colorado Supreme Court's latest "rulemaking vs. adjudication" decision, Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278 (Colo. 1991). Although the parties expressed "concern," and suggested that the Commission clarify Item E to eliminate these concerns, they did not propose any substitute clarifying language.

The Commission will grant the motion to clarify, but concludes that there is no need for additional language to be added to Decision No. R91-1421-I, because the legal requirements of the State Administrative Procedure Act have been met. The Commission, concludes that the language in Decision No. R91-1421-I quoted above separates the general rulemaking docket -- to set policy for all regulated utilities, Docket No. 91R-642EG; from the specific adjudicatory docket, Docket No. 91A-480EG -- involving only this corporation, the Public Service Company of Colorado. The fact that there are two separate dockets complies with the intent of the State Administrative Procedure Act, and Colorado Supreme Court construction of the

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[5]. The parties' expressed concern about Item E was legal in nature; apparently their concern was not directed at the type of factual evidence requested by Item E. Item E seeks to the put Public Service Company of Colorado's energy supply and demand balance in the larger context of the Colorado regional market, with a special view towards the situation on the Western Slope with the Colorado-Ute bankruptcy and the potential for absorbing the excess capacity of the bankrupt electric cooperative. In general, the greater the supply of electricity, to the extent that transmission capacity and free markets exist to deliver the supply to Public Service, the less need there may be to conserve energy (in the short run) -- the Company can simply buy cheap surplus power in the regional marketplace. The Commission needs evidence on Item E before it embarks on demand side management programs, or integrated resource planning.

Act. Therefore, we conclude that there is no Colorado OCC v. Mountain States Telephone problem here.

In Decision No. R91-1421-I, we unequivocally stated that the parties should present "Public Service-specific foundation evidence" on the listed matters. See Decision No. R91-1421-I at 7 (emphasis added). The Decision required evidence regarding the "interrelationship between supply and demand in the Colorado electricity market and Public Service." Id. (emphasis added). Thus, the Commission has explicitly stated that any decoupling and incentive plan adopted in Docket No. 91A-480EG will apply only to one company, the Public Service Company of Colorado -- we will not be making generally applicable policy in Docket No. 91A-480EG.

In Colorado OCC v. Mountain States Telephone, the Supreme Court held that the Colorado Public Utilities Commission improperly engaged in rulemaking, instead of adjudication as the Commission claimed it was doing, in a docket involving Colorado's largest telecommunications corporation, U S West Communications, Inc. (formerly Mountain States Telephone and Telegraph). As the Court stated in reversing the Commission for its procedural error, "Thus, while the decision [of the Commission] appears in form as a classification of a single public utility's services, it in effect necessarily establishes standards and policies applicable to telecommunications services of all public utilities." Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278, 285 (Colo. 1991) (emphasis added).

In these various dockets established as a consequence of Revised Settlement Agreement II, the Commission will continue to be careful to separate adjudicatory dockets from rulemaking dockets. As discussed previously, today we have approved the proposed procedural schedule submitted by the parties in their "Motion for Revision

to Procedural Schedule, Clarification and Modification of Decision No. R91-1421-I and to Reduce Response Time," (December 3, 1991). We approved the proposal because it provides for separate, but parallel, tracks for the rulemaking docket, Docket No. 91R-642EG, and this adjudicatory docket, Docket No. 91A-480EG. The Commission approved the procedural schedule for separate, but parallel, tracks for the two dockets because: (1) the schedule makes practical sense and efficaciously allows the dockets to be resolved before the Company's next rate case in November 1992, and, (2) because the procedural schedule meets the legal requirements of the State Administrative Procedure Act and Colorado OCC v. Mountain States Telephone, supra. We agreed with the parties' arguments that the sequence was practical and lawful: a sequence "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 3 (filed December 3, 1991).

The legal distinction between an administrative agency's "rulemaking" actions and its "adjudicatory" actions is clear on paper, but often presents difficulty in the real world of administrative practice, as the Colorado Supreme Court recognized in Colorado OCC v. Mountain States Telephone. In the following passage, the Court recognized the practical difficulty in the "rulemaking vs. adjudication" distinction, but attempted to provide guidance by furnishing general definitions of "agency rulemaking proceedings" and "agency adjudicatory proceedings."

> While these APA provisions suggest that agency rule-making functions are clearly distinct from agency adjudicative functions, the experience of agency process had proved to be the contrary. Agency proceedings often require application of both rule-making and adjudicatory authority because of the nature of the subject matter, the issues to be resolved, or the interests of parties or intervenors. In general, agency proceedings

> that primarily[6] seek to or in effect determine policies or standards of general applicability are deemed rule-making proceedings. Agency proceedings which affect a specific party and resolve particular issues of disputed fact by applying previously determined rules or policies to the circumstances of the case are deemed adjudicatory proceedings. The determination of whether a particular proceeding constitutes rule-making requires careful analysis of the actual conduct and effect of the proceedings as well as a determination of the purposes for which it was formally instituted.
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> Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278, 284 (Colo. 1991) (extensive citations to authority omitted) (emphasis added).

This Decoupling-Incentives case presents exactly the situation mentioned by the Colorado Supreme Court in one of the sentences in the passage quoted above: "Agency proceedings often require application of both rule-making and adjudicatory authority because of the nature of the subject matter, the issues to be resolved, or the interests of parties or intervenors." Id.

In the Decoupling docket, the Commission is adjudicating a plan for the Public Service Company of Colorado. The proposing parties hope the plan will give the company the same incentive to save electricity as it has to sell electricity, by decoupling the company's profits from its sales. The parties expect the decoupling plan to benefit the company (by increased profits); the environment (by avoiding the need to build new power plants); and the economy (through increased efficiency and savings by producing "more" energy with the same investment). Amory Lovins, one of the experts retained by the Land & Water Fund of the Rockies, maintains that it is often cheaper to save

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6. The Colorado Supreme Court added the word "primarily" to this sentence on September 16, 1991, modifying its original July 15, 1991 decision. After adding this one-word qualifier (the only change it made to the opinion), the Court denied the petitions for rehearing filed by the parties.

electricity than to meet new demands by building new sources of supply, what Lovins calls the "negawatt revolution."

Yet, for the Commission to evaluate the "negawatt revolution," the Commission has determined to have in effect a rulemaking definition of fundamental matters such as "avoided costs" (a measure of costs avoided by energy efficiency programs which then cancel the new to build new supply sources) and a "cost-effectiveness test" (benefit of the energy conservation). Again, from the same previously quoted passage Colorado Office of Consumer Counsel v. Mountain States Telephone, the Colorado Supreme Court offered this definition of rulemaking: "In general, agency proceedings that primarily seek to or in effect determine policies or standards of general applicability are deemed rule-making proceedings."

In order to rule on a plan to break the link between Public Service's sales and its profits, the Commission has decided to have in place benchmark definitions for "avoided costs" and "cost-effectiveness." A cost-effectiveness test and avoided cost, as well as decoupling profits from sales, were discussed in the Demand Side Management Policy Statement, but, again that Statement is not binding. See Decision No. C90-1641 Demand Side Management Policy Statement at 9-10 (December 5, 1990) ("A program is cost effective whenever the total cost of a resource -- which includes a utility's program costs, all costs borne by the program participants, and the proper accounting for externalities is less than the utility's avoided costs. At the present time, we favor the societal test of cost-effectiveness."). Accordingly, because the Commission does not presently have "a binding agency statement of general applicability and future effect implementing, interpreting or declaring law or policy" regarding cost-effectiveness tests and avoided costs, we have chosen to engage in rulemaking to evaluate the proposal to decouple Public Service Company's revenues from its sales. See State Administrative

Procedure Act, Colorado Revised Statutes § 24-4-102 (15) (1988 Repl. Vol.10A) (defining a "rule").[7]

The procedure proposed by the parties resolves the need for rulemaking to evaluate the decoupling application by running the decoupling docket, 91A-480EG, on a parallel track with the rulemaking docket, 91R-642EG, allowing both matters to be accomplished at the same time. This procedure complies with the State Administrative Procedure Act, and the Colorado Office of Consumer Counsel v. Mountain States Telephone case. To return to the quoted passage, the third sentence after the two previously quoted sentences, offers a definition of "adjudication": "Agency proceedings which affect a specific party and resolve particular issues of disputed fact by applying previously determined rules or policies to the circumstances of the case are deemed adjudicatory proceedings." Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278, 284 (Colo. 1991) (emphasis added). This passage presents practical problems, because it assumes, without qualifying language, that there are no adjudicatory cases of "first impression", in other words, that the Commission will always have "previously determined rules or policies" to apply to a specific fact situation.

The Model State Administrative Procedure Act recognizes that administrative agencies often make new law or policy in adjudications. The Model Act recommends, or optionally requires, for a principal of law or policy to have general effect, that administrative agencies codify their new law into rules, after the determination as been made in a specific case. See Model State Administrative Procedure Act § 2-104(4)

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7. The State Administrative Procedure Act defines a "rule" as follows: "'Rule' means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency." Colorado Revised Statutes § 24-4-102 (15) (1988 Repl. Vol.10A).

(Uniform Law Commissioners 1981) (Required Rule Making) ("In addition to other rule-making requirements imposed by law, each agency shall: [4] as soon as feasible and to the extent practicable, adopt rules to supersede principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases."). The cautious approach chosen by the parties in the Motion for Revision of Procedural Schedule, given the language in Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278, 284 (Colo. 1991), is nevertheless appropriate. New policy, if any, will be made in the rulemaking docket, 91R-642EG, and may be applied to Public Service in the adjudicatory docket, 91A-480EG, after a full and fair hearing. To summarize, the Commission approves the procedural schedule, and concludes that the proposed schedule complies with all legal requirements.

THEREFORE THE COMMISSION ORDERS THAT:

1. The "Motion for Revision to Procedural Schedule, Clarification and Modification of Decision No. R91-1421-I and to Reduce Response 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 previous procedural deadlines in this docket are modified. The evidentiary hearings set in this Decoupling docket for January 27, 1992 through

February 6, 1992, are hereby vacated. As detailed below, the evidentiary hearings in this Decoupling and Incentives docket will consolidated with the hearings in the Integrated Resource Planning Rulemaking docket, Docket No. 91R-642EG, with separate records kept in each docket. The evidentiary hearings will be held from June 2, 1992 through June 12, 1992.

5. The Commission hereby modifies Decision No. R91-1421-I in Docket No. 91A-480EG (October 28, 1991) in the following respect: Section 6 and Section 7 of Decision No. R91-1421-I at page 6, will be deleted.

6. Commission hereby clarifies Decision No. R91-1421-I in Docket No. 91A-480EG (October 28, 1991) in the following respect: Section 8 of Decision No. R91-1421-I, page 6-7 ("Requested Evidence") regarding Items C, D, and F, is clarified in that the Public Service Company of Colorado has already submitted Items C, D, and F, relating to supply data, demand data, and forecasting data, in its October 25, 1991 filings, and that this testimony is to be addressed in the Answer testimony due January 13, 1992 and Reply testimony due March 13, 1992.

7. The Commission grants the motion to clarify Decision No. R91-1421-I in Docket No. 91A-480EG (October 28, 1991), Section 8, page 7 ("Requested Evidence") regarding Item E. Item E is entitled: "The inter-relationship between supply and demand in the Colorado electricity market and Public Service.". This adjudicatory docket applies only to one company, the Public Service Company of Colorado. It will not establish standards and policies applicable to any other similarly-situated corporation. Thus, the Commission's actions in this adjudicatory docket will comply with the procedural requirements of the State Administrative Procedure Act, as interpreted by the Colorado Supreme Court in Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Co., 816 P.2d 278 (Colo. 1991).

8. 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 closely follow 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 settlement of 1991 Public Service rate case) (July 23, 1991).

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

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

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
Acting Director

ARNOLD H. COOK

GARY L. NAKARADO

CHRISTINE E. M. ALVAREZ

Commissioners