

Decision No. C04-0129

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-021SEG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO, 1225 17TH STREET, DENVER, COLORADO, FOR AN ORDER AUTHORIZING (1) THE ISSUANCE OF SECURITIES WITH MATURITIES GREATER THAN ONE YEAR IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$700 MILLION, (2) A REFINANCING PLAN FOR CERTAIN POLLUTION CONTROL REFUNDING REVENUE BONDS AND THE RELATED ISSUANCE OF \$129.5 MILLION OF SECURITIES, (3) THE ISSUANCE OF SECURITIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$500 MILLION FOR COLLATERAL ON SHORT-TERM BORROWINGS, (4) ENTERING INTO TREASURY RATE LOCKS AND FORWARD STARTING SWAPS, AND (5) THE RECOVERY OF CERTAIN REFUNDING COSTS.

**ORDER OF THE COMMISSION
GRANTING APPLICATION**

Mailed Date: February 4, 2004

Adopted Date: February 4, 2004

I. BY THE COMMISSION

A. Statement

1. On January 12, 2004, Public Service Company of Colorado, a Colorado corporation (the Company), filed an Application, including the required exhibits under Rule 56 of the *Commission's Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* (CCR) 723-1. The Company seeks an Order from the Commission authorizing it:

- 1) to issue and sell from time to time prior to December 31, 2006, at its option, in any combination not to exceed \$700 million, one or more of the following types of securities with maturities greater than one year (collectively, the Non-collateral Securities):
 - a) unsecured debt in one or more series issued pursuant to the Company's Senior Debt Securities Indenture; and
 - b) secured debt in one or more series, which may or may not be in the form of First Collateral Trust Bonds issued pursuant to the

1993 Indenture (FCTBs) and which may or may not be secured by First Mortgage Bonds (FMBs), in any principal amount as may be required from time to time; and

- c) First Mortgage Bonds, provided that any such FMBs shall be issued only as security for FCTBs and shall not affect the aggregate amount of Non-collateral Securities for which authority is requested by this Application.
- 2) to refinance up to \$129.5 million outstanding pollution control refunding revenue bonds, including the related issuance of up to \$129.5 million of FCTBs (the Pollution Control FCTBs) to secure the pollution control refunding revenue bonds.
- 3) to issue, for the purpose of securing short-term borrowings, up to \$500 million of:
 - ~~(a)~~a) FCTBs pursuant to the 1993 Indenture and which will be secured by FMBs (the Collateral Securities); and
 - ~~(b)~~b) FMBs, provided that any such FMBs shall be issued only as security for FCTBs and shall not affect the aggregate amount of Collateral Securities for which authority is requested by this Application, with such securities to be used solely as collateral for short-term borrowings
- 4) to enter into treasury rate locks and forward starting swaps, and
- 5) to recover certain refunding costs.

Such authority would grant the Company the flexibility to enter the financial markets at a time or times when interest rates or other provisions appear most favorable for the security.

1. Non-Collateral Securities Authorization

2. Currently, the Company has no remaining authority to issue and sell securities with maturities greater than one year. The Company used all of its Commission authority in the two transactions described in paragraph 3.

3. On March 14, 2003, the Company issued \$250 million 4.875 percent First Collateral Trust Bonds Series No. 11 due 2013 (the FCTBs Series No. 11). The proceeds were

Formatted: Bullets and Numbering

used to redeem at maturity the Company's outstanding \$250 million 6 percent First Collateral Trust Bonds Series No. 6 which matured on April 15, 2003. The Company issued the FCTBs Series No. 11 under the remaining authority of Decision Nos. C02-804 and C02-804-E.

4. In addition, the Company issued \$575 million of first collateral trust bonds (FCTBs) on September 9, 2003. These bonds were issued in two tranches; the first series was \$300 million 4.375 percent First Collateral Trust Bonds, Series No. 14 due 2008 and the second series was \$275 million 5.50 percent First Collateral Trust Bonds, Series No. 15 due 2014. These bonds were issued under the authority granted in Decision No. C03-0306. The proceeds from this issuance were used to repay short-term debt issued for general corporate purposes, including the repayment of short-term debt issued to redeem prior to maturity \$144.84 million 8.75 percent first mortgage bonds (FMBs) due 2022 and \$200 million 7.60 percent Deferrable Interest Subordinated Debentures due 2038.

5. The Company intends to use the proceeds from the issuance of the Non-collateral Securities for general corporate purposes, including but not limited to capital expenditures, repayment of short-term debt, and refunding of long-term debt at maturity or otherwise in the discretion of the Company's management. All proceeds will be used to support the Company's Colorado operations.

2. Tax-Exempt Pollution Control Refinancing Plan

6. The Company requests authority to refinance the following series of pollution control refunding revenue bonds (PCRRBs):

County/Series	Year Issued	Coupon	Maturity	Call Provisions	Outstanding Principal
Adams 1993 Series A	1993	5.625%	2008	101% until 4/04 then 100%	\$ 18,000,000
Adams 1993 Series A	1993	5.875%	2014	101% until 4/04 then 100%	\$ 61,500,000
Morgan 1993 Series A	1993	5.50%	2012	101% until 6/04 then 100%	<u>\$ 50,000,000</u>
Total PCRRBs					\$129,500,000

7. As part of the refinancing plan for the PCRRBs, the Company is seeking approval to enter into financing, or similar, agreements (the Financing Agreements) with the appropriate counties relating to the issuance and sale by the counties of new pollution control refunding revenue bonds (the Refunding Bonds).

8. To the extent the Company decides to collateralize the proposed new Refunding Bonds, the Company also requests authority to issue one or more series of its Pollution Control FCTBs in an aggregate principal amount not to exceed \$129.5 million.

3. Collateral Securities Authorization

9. As of December 31, 2003, the Company had no short-term debt outstanding under its \$350 million 364-Day Credit Agreement that expires May 14, 2004 (the Credit Agreement). The Company intends to renew the Credit Agreement by its expiration date for an amount up to \$500 million.

10. There will be no proceeds to the Company upon delivery of Collateral Securities by the Company, as the Collateral Securities are being issued as collateral for the Company's short-term borrowing facilities including its Credit Agreement.

4. Treasury Rate Locks and Forward Starting Swaps Authorization

11. Additionally, in connection with each of the financing authorizations requested above, the Company requests authority to enter into treasury rate locks and forward starting swaps. Treasury rate locks and forward starting swaps are used to reduce market risk exposure as a result of changes in interest rates. The Company will only enter into treasury rate locks and forward starting swaps related to long-term debt and secured and unsecured short-term debt that has been approved by the Company's Board of Directors.

5. Recovery of Certain Refunding Costs Authority

12. Finally, the Company requests pre-approval of the recovery of redemption premiums, unamortized underwriting costs and expenses associated with any long-term debt that it refunds prior to maturity (Refunding Costs), with the proceeds from the Non-collateral Securities, the issuance of new Refunding Bonds or from other general corporate funds.

13. The Commission noticed this Application on January 14, 2004, allowing parties until January 24, 2004 to intervene or participate as a party in this proceeding and setting this matter for hearing on February 6, 2004. In addition, the Company published a notice of the Application in the legal notices of *The Denver Post* on Wednesday, January 14, 2004. An Affidavit of Publication issued by *The Denver Post* was filed with the Commission on January 16, 2004. Due and proper notice of this matter has been given, and no one seeks intervention or opposes the granting of the Application.

14. The Company has requested this Commission to determine this matter without hearing and on modified procedure. Because no one has intervened in connection with the Application, it is appropriate that this Commission consider this matter in accordance with § 40-6-109(5), C.R.S., and 4 CCR 723-1-24.

B. Findings of Fact

15. The Company is a Colorado corporation qualified to do business within the State of Colorado. Its Amended and Restated Articles of Incorporation have been filed with this Commission, and it is in good standing with the Colorado Secretary of State. The Company provides electric, gas, and steam utility service to various areas in the State of Colorado. The Application has been filed in accordance with § 40-1-104, C.R.S., which requires a public utility to obtain the approval of this Commission before it issues securities such as the Non-collateral Securities, the Pollution Control FCTBs, and the Collateral Securities.

1. Non-collateral Securities Authorization

16. Authority is requested to issue and sell, from time to time prior to December 31, 2006, at the Company's option, in an aggregate principal amount not to exceed \$700 million of Non-collateral Securities.

17. Currently, the Company has no remaining authority to issue and sell securities with maturities greater than one year. The Company is requesting up to \$700 million in authority for bonds that are maturing, potential refinancing opportunities and to provide capacity to issue debt on a timely basis in the future.

18. The Company has \$404.5 million debt maturities in 2004 through 2006 comprised of:

- \$45 million 6.90% first collateral trust bonds due February 2, 2004
- \$100 million 8.125% first mortgage bonds due March 1, 2004
- \$134.5 million 6.375% first collateral trust bonds due November 1, 2005
- \$125 million 7.125% first collateral trust bonds due June 1, 2006

In addition, the Company may have the opportunity to refinance \$110 million of 7.25 percent FCTBs due 2024.

19. The type, amount, and length of maturity of the Non-collateral Securities will be decided at the respective times of issuance. The interest rates, whether fixed or variable, the redemption and sinking fund provisions, if any, will be determined through competitive bidding or by negotiation with purchasers, underwriters, or managers at the time of the pricing of said Non-collateral Securities. Credit enhancement mechanisms relating to the Non-collateral Securities, such as bond insurance or letters of credit, may be used if deemed to be advantageous by the Company. As with any long-term financing the Company undertakes, the Board of Directors will approve the execution of any credit enhancement mechanism prior to its execution. This procedure is consistent with the Board of Directors' current practice of requiring the Board of Directors to approve the pricing of a long-term financing transaction.

20. The Company intends to use the proceeds from the issuance of the Non-collateral Securities for general corporate purposes, including but not limited to capital expenditures, repayment of short-term debt, and refunding of long-term debt at maturity or otherwise in the discretion of the Company's management. All proceeds will be used to support the Company's Colorado operations.

21. The Company may register the Non-collateral Securities with the Securities and Exchange Commission pursuant: (i) to Rule 415 (Shelf Registration) of the Securities Act of 1933, as amended, (the Securities Act) for a public issuance; or (ii) such other rule as may be appropriate; or the Company may issue such Non-collateral Securities through a private placement pursuant to an exemption from the registration requirements of the Securities Act and may, but need not, subsequently register such privately placed securities under the Securities Act, or exchange such Non-collateral Securities for registered Non-collateral Securities. In the event of such a registration or exchange, the principal amount of such Non-collateral Securities would be counted only once in calculating the \$700 million limitation requested herein.

22. The Company, after the closing of each Non-collateral Securities issuance, shall make a report to the Commission of such issuances and accompany such report with conformed copies of the Company's registration statements and related prospectuses, and in the case of a private placement, the form of the offering circular and the form of the Non-collateral Security.

23. The Company may issue the Non-collateral Securities in one or more series of unsecured debt issued pursuant to the Company's Senior Debt Securities Indenture.

24. The Company may issue the Non-collateral Securities in one or more series of secured debt, which may or may not be in the form of FCTBs issued pursuant to the 1993 Indenture and which may or may not be secured by FMBs.

25. The Company may issue FMBs, provided that such FMBs shall be issued only as security for FCTBs and shall not affect the aggregate amount of Non-collateral Securities for which authority is requested.

2. Tax-Exempt Pollution Control Refinancing Plan

26. The Company requests authority to refinance up to \$129.5 million of PCRRBs.

27. Each of the PCRRBs included in the Tax-Exempt Pollution Control Refinancing Plan was issued to the public by Adams County or Morgan County, as the case may be, and the proceeds of such PCRRBs were loaned to the Company for the purpose of acquiring, installing, and equipping certain pollution control equipment. At the time of issuance of the PCRRBs, the Company entered into Financing Agreements with the respective counties. Pursuant to such agreements, the Company agreed to pay the counties an amount equal to the principal and interest on the PCRRBs issued by the counties, which the counties would use, in turn, to pay the scheduled payment of principal and interest on their bonds. Because the interest on the PCRRBs is exempt from U.S. federal income taxation on the part of the holders, these tax-exempt bonds generally may be issued at lower interest rates than comparable taxable bonds.

28. The Company believes that in light of the current interest-rate environment, it may be able to provide even more interest rate savings by refinancing these PCRRBs. Additionally, certain of the PCRRBs may be candidates for extension of maturity, which, if permissible, would provide even further savings by providing for the use of the favorable tax-exempt financing over a longer period. Any refinancing transactions entered into pursuant to the Application, will meet the following criteria set by the Commission in Decision Nos. C96-1110 and C98-1273: *i.e.*,

- a. maintain or lower the Company's embedded cost of debt; or
- b. the PCRRBs refinancing is at a price lower than the comparable taxable debt rate for a similar maturity; or
- c. the PCRRBs refinancing is in response to changes in tax laws that may have the effect of precluding the Company from future opportunities to refinance the PCRRBs (the Refinancing Criteria).

Provided that the Refinancing Criteria is met for each refinancing transaction, the Company is requesting pre-approval of such refinancing transactions and the recovery of refinancing costs in the Company's embedded cost of debt, if deemed appropriate, as described below.

29. As part of the refinancing plan for the PCRRBs, the Company is seeking approval to enter into financing, or similar, agreements (the Financing Agreements) with the appropriate counties relating to the issuance and sale by the counties of new pollution control refunding revenue bonds (the Refunding Bonds). Under such Financing Agreements, the Company would be obligated to pay the appropriate counties amounts equal to the aggregate principal amount of its Refunding Bonds and the premium, if any, and interest thereon. Such payments are to be made on the dates and in the amounts required for the counties to pay principal of and premium, if any, on its Refunding Bonds. The interest rates, whether fixed or variable, and the redemption and sinking fund provisions, if any, for the Refunding Bonds will be determined through negotiations with underwriters or managers at the time of the pricing of the Refunding Bonds. Credit enhancement mechanisms relating to the Refunding Bonds, such as bond insurance or letters of credit, may be used if deemed to be advantageous by the Company. As with any long-term financing the Company undertakes, the Board of Directors will approve the execution of any credit enhancement mechanism prior to its execution. This procedure is consistent with the Board of Directors' current practice of requiring approval of the pricing of a long-term financing transaction.

30. To the extent the Company decides to collateralize the proposed new Refunding Bonds, the Company also requests authority to issue one or more series of its Pollution Control FCTBs in an aggregate principal amount not to exceed \$129.5 million. Such Pollution Control FCTBs would be delivered, in a like amount to the Refunding Bonds to be issued, to one or more

corporate trustees, or similar parties, under indentures of trust between the counties and such trustee in connection with the issuance and sale by the counties and such trustee in connection with the issuance and sale by the counties of their respective Refunding Bonds. The Pollution Control FCTBs would be held by the trustee to secure payment of the Refunding Bonds and payment by the Company of all sums payable by the Company under the Financing Agreements.

3. Collateral Securities Authorization

31. The Company ~~will intends to~~ renew its Credit Agreement ~~in June 2003~~ by its expiration date for an amount up to \$500 million.

32. Given the market environment that exists at the time of the renewal of the Credit Agreement, it is possible that the Company will be required to provide FCTBs to the banks in order to secure the Company's obligations under its Credit Agreement.

33. There will be no proceeds to the Company upon delivery of Collateral Securities by the Company, as the Collateral Securities are being issued as collateral for the Company's short-term borrowing facilities including its Credit Agreement.

34. The Company will not pay interest on the Collateral Securities issued under this Application unless there is an event of default under the Credit Agreement or other short-term borrowing facilities for which the Collateral Securities have been posted as collateral. Consequently, the issuance of the Collateral Securities as collateral bonds should not increase the interest expense to the Company.

35. After issuing the Collateral Securities, the Company shall make a report to the Commission including copies of relevant documents.

4. Treasury Rate Locks and Forward Starting Swaps Authorization

36. Additionally, in connection with each of the financing authorizations requested above, the Company requests authority to enter into treasury rate locks and forward starting swaps. When pricing a bond, there are three major factors that influence the pricing: (1) the U.S. treasury market; (2) the corporate bond environment; and (3) company specific factors. The price of a bond is based on a benchmark U.S. Treasury security plus a credit spread that reflects the additional risk premium an investor requires over a risk free security to compensate for both the general risk of the corporate bond market and company specific risk factors. The premium attributable to the general corporate bond market is based on investor demand for bonds versus other investment opportunities, new issue supply, and industry related conditions.

37. The benchmark U.S. Treasury security generally is the largest component in pricing a bond. By entering into a treasury rate lock, the Company can mitigate interest rate volatility associated with the U.S. Treasury market. A forward starting swap allows the Company to lock in the risk premium associated with the corporate bond market in addition to the U.S. Treasury component. The third pricing component, company-specific factors, is not efficiently hedged.

38. The Company will only enter into treasury rate locks and forward starting swaps related to long-term debt and secured and unsecured short-term debt that has been approved by the Company's Board of Directors. As with any long term financing the Company undertakes, the Board of Directors will approve the execution of any treasury rate lock or forward starting swap prior to its execution. This procedure is consistent with the Board of Director's current practice of requiring approval of the pricing of a long-term financing transaction.

39. Due to the Commission's reluctance to pre-approve the recovery of costs associated with implementing treasury rate locks in previous applications, the Company will not

request pre-approval for the recovery of costs associated with rate locks and forward starting swaps in this Application, however, the Company reserves the right to seek such recovery in future rate proceedings.

40. The Company shall include in its report to the Commission, discussed for Non-collateral Securities, a description of any treasury rate lock or forward starting swap entered into based on the authority granted in this Application and such description will include the costs incurred in executing the hedging transaction.

5. Recovery of Certain Refunding Costs Authority

41. Finally, the Company requests pre-approval of the recovery of Refunding Costs with the proceeds from the Non-collateral Securities, the issuance of new Refunding Bonds or from other general corporate funds. Pre-approval of the recovery of Refunding Costs in the Company's embedded cost of debt is requested only if the refunding maintains or lowers the Company's embedded cost of debt. The Commission has demonstrated previously that it supports the amortization of expenses prudently incurred to provide service to customers if such amortization is justified and the amortization will reduce the level of current expenses chargeable to customers.

42. In resolutions passed by unanimous consent by the Company's Board of Directors on January 9, 2004, it authorized, among other matters, the issuance of the Non-collateral Securities, the Collateral Securities, and the Pollution Control FCTBs and authorized its proper officers to execute and file the Application or to cause the Application to be filed.

43. As with any long-term financing the Company undertakes, the Board of Directors will approve the execution of any treasury rate lock, forward starting swap, or credit

enhancement mechanism prior to its execution. This procedure is consistent with the Board of Directors' current practice of requiring approval of the pricing of a long term financing transaction.

44. The Application contains all of the information required under 4 CCR 723-1-56. The financial information submitted demonstrates that the Company is a sizable enterprise, is solvent, and operates profitably. The Company does not believe that the proposed issuance of the Non-collateral Securities, the Refunding Bonds (and related Pollution Control FCTBs), and the Collateral Securities will change the Company's basic financial status.

45. The Company published notice of the Application and no one seeks intervention or opposes granting the Application. There is no need for a hearing on this matter, and the hearing should be waived under the provisions of § 40-1-104(3), C.R.S. This Commission will decide the matter of the Application on modified procedures pursuant to § 40-6-109(5), C.R.S., and 4 CCR 723-1-24.

46. The Company and the issuance of the Non-collateral Securities, the Refunding Bonds (and related Pollution Control FCTBs), and the Collateral Securities are subject to the jurisdiction of this Commission in accordance with § 40-1-104, C.R.S.

47. The issuance of the Non-collateral Securities, the Refunding Bonds (and related Pollution Control FCTBs) and the Collateral Securities, as stated in the Application will be consistent with the provisions of the public utilities law, is for a lawful purpose, and is not inconsistent with the public interest.

48. The Application should be granted and issuance of the Non-collateral Securities, the Refunding Bonds (and related Pollution Control FCTBs), and the Collateral Securities referenced therein should be authorized and approved.

II. ORDER

A. The Commission Orders That:

1. The Application of Public Service Company of Colorado is deemed complete and granted.

2. Public Service Company of Colorado is hereby authorized to issue and sell, from time to time prior to December 31, 2006, at its option, in any combination not to exceed \$700 million, one or more of the following types of securities with maturities of greater than one year (collectively, the Non-collateral Securities): (1) unsecured debt in one or more series issued pursuant to Public Service Company of Colorado's Senior Debt Securities Indenture; 2) secured debt in one or more series, which may or may not be in the form of First Collateral Trust Bonds issued pursuant to the 1993 Indenture and which may or may not be secured by First Mortgage Bonds, in any principal amount as may be required from time to time; and 3) First Mortgage Bonds, provided that any such First Mortgage Bonds shall be issued only as security for First Collateral Trust Bonds and shall not affect the aggregate amount of Non-collateral Securities for which authority is requested by this Application. Credit enhancement mechanisms, such as bond insurance or lines of credit, relating to the Non-collateral Securities may be used. The interest rates, whether fixed or variable, the redemption and sinking fund provisions, if any, and the type, amount, and maturity of the Non-collateral Securities may be determined by Public Service Company of Colorado at the time of issuance.

3. Public Service Company of Colorado is hereby authorized to refinance up to \$129.5 million outstanding pollution control refunding revenue bonds including the issuance of up to \$129.5 million Pollution Control First Collateral Trust Bonds to secure the pollution control refunding revenue bonds. Authority to enter into financing, or similar, agreements with the appropriate counties is granted. The interest rates, whether fixed or variable, the redemption and sinking fund provisions, if any, for the Refunding Bonds will be determined through negotiations with underwriters or managers at the time of the pricing of the Refunding Bonds. Credit enhancement mechanisms, such as bond insurance or lines of credit, relating to the Refunding Bonds may be used.

4. Public Service Company of Colorado is hereby authorized to issue for the purpose of securing short-term borrowings, up to \$500 million of: (1) First Collateral Trust Bonds issued pursuant to the 1993 Indenture and which will be secured by First Mortgage Bonds (the Collateral Securities); and (2) First Mortgage Bonds, provided that any such First Mortgage Bonds shall be issued only as security for First Collateral Trust Bonds and shall not affect the aggregate amount of Collateral Securities for which authority is requested by this Application.

5. Public Service Company of Colorado is authorized to enter into treasury rate locks and forward starting swaps related to long-term debt and secured and unsecured short-term debt approved by Public Service Company of Colorado's Board of Directors.

6. Public Service Company of Colorado is authorized to implement credit enhancement mechanisms, such as bond insurance or letters of credit, relating to the Non-collateral Securities and Pollution Control Refunding Bonds. The Commission, by this Order, is neither pre-approving nor disallowing recovery of costs associated with employing such instruments. In any proceeding wherein Public Service Company of Colorado requests recovery

of expenses, Public Service Company of Colorado should provide evidence to support the notion that the employment of such instruments and incurring of expense is beneficial to Public Service Company of Colorado and its ratepayers.

7. Additionally, Public Service Company of Colorado may recover in its embedded cost of debt the redemption premiums and unamortized underwriting costs and expenses associated with any long-term debt that it refunds prior to maturity with the proceeds from the Non-Collateral Securities, the issuance of Refunding Bonds, or from other general corporate funds. In requesting recovery of expenses, Public Service Company of Colorado should provide evidence to support the notion that the refunding is beneficial to Public Service Company of Colorado and its ratepayers. In general, refunding activities should maintain or lower Public Service Company of Colorado's embedded cost of debt.

8. Public Service Company of Colorado is authorized to enter into any agreements necessary to effect the financing transactions contemplated by the Application.

9. Nothing contained herein shall be construed to imply any recommendation or guaranty of any obligation with regard to Public Service Company of Colorado's Securities approved under the Application on the part of the State of Colorado.

10. The hearing on this matter, now set for February 6, 2004 is vacated.

11. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 4, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners