

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-436E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR AN ORDER AUTHORIZING IT TO IMPLEMENT A PURCHASED
CAPACITY COST ADJUSTMENT RIDER IN ITS PUC NO. 7 - ELECTRIC TARIFF.

**ORDER GRANTING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION
OF DECISION NO. C04-0719**

Mailed Date: October 4, 2004

Adopted Date: September 22, 2004

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for

Rehearing, Reargument, or Reconsideration (RRR) of Commission Decision No. C04-0719 filed

by Public Service Company of Colorado (Public Service or Company) on July 16, 2004. In Decision No. C04-0719, we granted in part Public Service's Application for RRR of Decision No. C04-0476 regarding implementation of a Purchased Capacity Cost Adjustment Rider (PCCA). In this second Application for RRR, Public Service requests rehearing of the Commission's decision to cap PCCA cost recovery for the allowed contracts¹ and reconsideration of the decision to require an Air Quality Improvement Rider (AQIR) credit amount of \$1,800,000 be used to calculate the 2004 PCCA.

2. Now being duly advised in the matter, we grant Public Service's Application for RRR.

B. RRR Issue: Request to Modify the Cap

3. Public Service requests rehearing of the decision to cap the amount of cost recovered through the PCCA for the allowed contracts. Public Service asserts that rehearing would allow the Commission to gain an understanding of the terms and conditions in the Company's power purchase agreements. According to Public Service, the Commission has improperly concluded that the Company has control over the level of payments made by the Company to sellers under the power purchase agreements. Public Service suggests that the Commission has a fundamental misunderstanding of how the Company's power purchase agreements operate.

4. Public Service argues that: 1) Exhibit 17 was not introduced by Public Service; 2) limited testimony was solicited on Exhibit 17; 3) the amounts in Exhibit 17 are budget

¹ The "allowed contracts" are the contracts that are currently reflected in the Company's base rates plus the contracts for the resources approved by the Commission in the Company's 1999 Electric Resource Plan.

estimates and do not represent the maximum amounts that Public Service may be contractually obligated to pay under the allowed contracts; and 4) no party advocated a PCCA cap.

5. Public Service argues that it should be given the opportunity through rehearing to explain to the Commission how actual capacity payments could be greater than the projected capacity payments. In support of its rehearing request, Public Service offers Attachment 2 to its second RRR application, which consists of several pages from Public Service's Model Dispatchable Power Purchase Agreement.

6. In the alternative, Public Service requests reconsideration of the decision to cap the PCCA. Public Service specifically requests that the Commission modify its decision to allow Public Service to recover through the PCCA, the actual capacity payments paid to sellers under the allowed contracts on the basis of the information provided in Public Service's two applications for RRR.

7. We grant the request for rehearing on our decision to cap the amount of costs recovered through the PCCA. A rehearing would allow all parties to submit testimony specifically addressing whether the amounts listed on Exhibit 17 or actual capacity payments for the allowed contracts should be used in determining the amount recovered through the PCCA. However, we decline to consider Attachment 2 to this application for RRR in this proceeding unless it is introduced as evidence during the rehearing because this information is not currently in the record.

C. RRR Issue: Request for Reconsideration of the AQIR Credit Amount Used to Calculate the 2004 PCCA

8. Public Service requests reconsideration of the decision that the AQIR credit amount of \$1,800,000 be used to calculate the 2004 PCCA rider. Specifically, Public Service

requests that the Commission modify its decision and allow Public Service to use an AQIR credit in calculating the 2004 PCCA that reflects the actual amount of double recovery of purchased capacity expense that results from the interaction of the AQIR and the PCCA. Public Service contends that the Commission is incorrect in the conclusions it has drawn from the April 14 transcript. Public Service argues that Mr. Darnell's testimony in this docket makes clear that the purpose of the AQIR credit to the PCCA was to avoid double recovery of the purchased capacity expense associated with 90 MW of the Calpine facility and that the \$1,800,000 amount is an annual amount. Public Service confirms that Mr. Darnell's exhibits used \$1,800,000 for the 2004 PCCA calculation.

9. Public Service further argues that, in Decision No. C04-0719, the Commission incorrectly determined that Public Service was asking the Commission to make a determination on proration of the AQIR credit for the 2004 PCCA calculation without input from other parties. Consequently, Public Service alternatively requests that the Commission grant rehearing on this matter if the Commission requires more evidence to make a decision on the AQIR credit amount issue.

10. We grant a rehearing on Public Service's request regarding the AQIR credit amount to be used for the 2004 PCCA calculation. The existing record is not clear on the purchased capacity cost amount actually recovered through the AQIR on a monthly basis. A rehearing would allow all parties to submit testimony specifically addressing what AQIR credit amount should be used to calculate the 2004 PCCA.

D. Response to Dissent

11. Our colleague expresses the concern that granting Public Service's request would constitute a "second bite at the apple" and a "dangerous precedent." We do not believe either of these contentions to be true.

12. In our view, Public Service has not had an opportunity to explain the significance of the amounts listed in Hearing Exhibit 17, because no party had proposed a cap on recovery to those amounts. It was advisory staff that made the proposal after the close of record evidence.² The Commission majority in Decision No. C04-0719 expressed difficulty in "understand[ing] how sellers might outperform Public Service's best estimates for these contracts;" our decision today gives Public Service a **first** chance to explain how this may occur.

13. With respect to the AQIR credit, we must respectfully disagree that Public Service witness Darnell clearly testified that the entire AQIR credit amount of \$1,8000,000 would be used for 2004. Here is the relevant exchange:

Gomez: [Y]ou are talking about the AQIR reduction and say that results to \$1.8 Million annually; is this the actual amount of the AQIR reduction that will be used in the PCCA filing?

Darnell: Yes.

We note that the question, "should the AQIR credit amount be prorated for 2004?," was not asked. Moreover, Mr. Darnell's response -- agreeing that the credit should be applied "annually" -- is entirely consistent with proration of the credit.

² Because of this, while we do not consider Attachment 2 of the pending RRR as part of our decision today, we do not fault Public Service for submitting Attachment 2. It is in the nature of an offer of proof; that is, if a rehearing is granted, here is the evidence to be presented. Since this issue arose after the close of evidence, it would unfairly penalize the company to forbid it from attempting to submit evidence addressing the issue, if only in the form of an offer of proof.

14. Finally, as to the "dangerous precedent" argument, we note that Commission decisions as a rule do not bind the Commission in future decisions.³ Second, the Commission, in reaching Decision No. C04-0719, presumed that Public Service did not want a rehearing. The RRR at hand allowed the Company to challenge this presumption. For the same reason, neither the "spirit" nor the language of § 40-6-114, C.R.S., precludes us from granting RRR in the matter at hand. *See* Office of Consumer Counsel v. P.U.C., 752 P.2d 1049, 1052 (Colo. 1988) ("[S]ection 40-6-114(3) does not require a subsequent decision to be a substantial modification of the original decision.").

E. Rehearing Procedural Schedule

15. We adopt the procedural schedule for the rehearing as follows:

Supplemental Testimony	October 8, 2004
Supplemental Answer Testimony	October 20, 2004
Rehearing/Oral Statements of Position	October 26, 2004 - 9:00 a.m

16. Testimony shall be limited to the two issues for which we have granted a rehearing; namely, the amounts for the allowed contracts that should be used in determining the amount recovered through the PCCA, and a determination of the AQIR credit amount that should be used to calculate the 2004 PCCA.

F. Commission Questions

17. Given the limited scope of the rehearing proceeding, we direct that specific questions be addressed as part of this rehearing. Therefore, we direct Public Service⁴ to respond to the following questions:

³ This Commission, or any future commission, can deny a RRR request based on the "second bite of the apple" principle. As noted above, we do not believe that principle applies here.

⁴ Other parties to the proceeding are free to address any and all of these questions as they see fit.

a) Please provide the assumptions used in preparing the costs listed in Exhibit 17. If the assumptions are unique for each contract, please explain how Public Service determines the assumptions that apply to a contract.

b) Please explain why actual costs for each contract might be greater than the costs listed in Exhibit 17.

c) What are the maximum costs that Public Service might actually incur for each contract listed in Exhibit 17 for October, November, and December, 2004; each month of 2005; and each month of 2006?

d) Please explain how the \$257,143 monthly AQIR Credit on line 11 of Supplemental Exhibit No. RND-10 page 1 of 3 was derived.

e) Please explain how the \$150,000 monthly AQIR Credit on line 11 of Supplemental Exhibit No. RND-10 page 2 of 3 was derived.

f) Please explain how the \$150,000 monthly AQIR Credit on line 11 of Supplemental Exhibit No. RND-10 page 3 of 3 was derived.

g) Supplemental Exhibit No. RND-11 provides detail for the \$1,800,000 annual amount of capacity cost recovered through the AQIR. Please explain how this \$1,800,000 is actually collected monthly from ratepayers through the AQIR.

h) Please explain why the AQIR credit should be prorated for an equal amount each month when the AQIR is applied to usage amounts (kWh for non-demand metered customers and kW for demand metered customers), which vary per month.

i) In the Application for Rehearing, Reargument, and Reconsideration of Decision No. C04-0719, Public Service requests “that the AQIR credit used in calculating the 2004 PCCA reflect the actual amount of double recovery of purchased capacity expense.” How would the “actual” amount of double recovery for 2004 be determined?

II. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado’s request for rehearing of the Purchased Capacity Cost Adjustment Rider cap amount is granted consistent with the discussion above.

2. Public Service Company of Colorado’s request for rehearing on the amount of the Air Quality Improvement Rider credit to be used to calculate the 2004 Purchased Capacity Cost Adjustment Rider is granted consistent with the discussion above.

3. The procedural schedule indicated above is adopted. A rehearing is scheduled in this matter as follows:

DATE:	October 26, 2004
TIME:	9:00 a.m.
PLACE:	Commission Hearing Room A 1580 Logan Street, OL2 Denver, Colorado

4. Public Service Company of Colorado shall address the questions specified in the above discussion in testimony.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 22, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER POLLY PAGE
DISSENTING.

III. COMMISSIONER POLLY PAGE DISSENTING:

1. I respectfully disagree with the majority decision to set for rehearing the PCCA cap and AQIR credit amount issues. In situations similar to this in past Commission decisions, we have consistently denied such applications for RRR. I am concerned that granting Public Service a “second bite of the apple” via a rehearing to the issues it raises in its second application for RRR sets a dangerous precedent. Public Service, represented by competent counsel, had ample opportunity to make its case in this matter both at hearing and in its first application for RRR. I also take issue with Public Service’s attempt to present new evidence through the RRR process, simply because it does not like our decision. Consideration of any such evidence would clearly place the other parties to the matter at a distinct disadvantage and raises due process concerns, given that they may not respond to Public Service’s RRR.

2. I find that Public Service had ample opportunity through its pre-filed testimony, through cross-examination and re-direct examination, to present evidence or to clarify that the amounts identified in Exhibit 17 did not represent the total amounts it wished to recover through the PCCA. Similarly, regarding the AQIR credit amount, the record is clear that Public Service witness Darnell, responding to our attorney’s questions, testified that the AQIR credit amount of \$1,800,000 would be used for 2004. Public Service’s attorney had the opportunity to clarify the amount on redirect, but for whatever reason did not do so. Based on that testimony, the Commission made its decision on the evidence presented and we should uphold the decision. I find that Public Service has offered no compelling or extraordinary reason for us to alter our original findings.

3. I interpret the spirit of §40-6-114(3), C.R.S. to require a party filing a second round of RRR to limit such application only to the part of the original Commission decision modified by virtue of the first RRR. It is my contention that the Commission's action today, sets a precedent that opens the door to unlimited rounds of RRR, until a utility is happy with the outcome. Therefore, I respectfully dissent from the majority's decision.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioner