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IN THE MATTER OF THE)
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SUSPENSION OF TARIFF)
SHEETS FILED BY PUBLIC)
SERVICE COMPANY OF)
COLORADO FOR ADVICE)
LETTER NO. 1454-ELECTRIC)
AND ADVICE LETTER)
NO. 671 GAS)

Docket No. 06S-234EG

**APPLICATION FOR REHEARING, REARGUMENT OR
RECONSIDERATION OF COMMISSION DECISION C06-1379
APPROVING THE SETTLEMENT AGREEMENT WITH MODIFICATIONS**

SUBMITTED BY DAN FRIEDLANDER

December 21, 2006

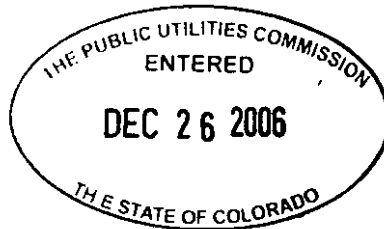


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This is an Application for Rehearing, Reargument or Reconsideration (“RRR”) on Colorado Public Utilities Commission (“PUC”) decision C06-1379 approving with modification the Settlement Agreement in Docket 06A-234EG addressing Public Service Company of Colorado (“PSCo” or “Xcel”)’s most recent rate increase and restructuring of the Electric Commodity Adjustment “ECA”) and Purchased Capacity Cost Adjustment (“PCCA”).

The Commission erred in its approval of this Settlement Agreement for reasons that the Commission itself has recognized as well as for a host of other reasons. In the most fundamental sense, the Commission has failed in its duty to protect the public interest in this case. In accepting a Settlement Agreement among a handful of parties to settle a complex rate case and to ignore many of the key issues at hand is a violation of the public trust. If the Public Utilities Commission does not protect the public from the monopoly power of utilities, there is no other body that can do so. As a businessman, Xcel ratepayer, father, grandfather and citizen of the planet, I object in the strongest possible terms to Decision C06-1379.

I. The Commission Failed to Undertake Its Own Decision Making in This Docket

TC "I. The Commission Failed to Undertake Its Own Decision Making in This Docket" \f C \l "1"

As noted in Paragraph 22 of C06-1379:

...a Settlement Agreement such as the one presented for approval here has the

effect, to a certain degree, **of removing the Commission from the role of decision-maker.** While the Settling Parties rightfully pointed to our rule encouraging settlement agreements, we note that, as with all rules, it should be tempered with public interest consideration. We remind the parties, especially OCC and Staff, that **transparency of our decision-making processes remains paramount to ensure public confidence in the role of this Commission.** While the terms of the Settlement Agreement certainly provide a just and reasonable outcome for Public Service, **it is critical that ratepayers understand how the parties arrived at the settlement to ensure they are comfortable that the outcome is just and reasonable for them as well.** (Decision C06-1379, page 9, emphases added)

In a case of this magnitude and with as many policy issues as this docket involved, it is all the more imperative that the Commission exercise its own independent decision making and not just serve as a rubber stamp—as it has so often done in recent years—of a Settlement Agreement worked out in the upper floors of Xcel’s headquarters, as this Settlement Agreement was. To fail to undertake this independent decision making is to render a decision that is not only not in the best interest of the public but also arbitrary and capricious.

II. The Settlement Agreement Represents a Minority of Parties TC "II. The Settlement Agreement Represents a Minority of Parties" \f C \ 1 "1"

The Settlement Agreement approved in C06-1379 represents a minority of the intervening parties and is therefore not representative of all of the arguments made in the record. Moreover, several of the non-settling parties have a significant number of members or represent a large number of entities, which makes the Settlement Agreement even less a statement of consensus of the parties to the Docket. Moreover, when issuing Decision

C06-1379, the Commission essentially ignored most of the positions of the non-settling parties. This hardly constitutes reasoned decision making.

III. The Settlement Agreement Lacks Appropriate Transparency TC "III. The Settlement Agreement Lacks Appropriate Transparency" \f C \ "1"

As noted in Paragraph 23 of the Commission decision:

We would have preferred for the settlement to have been more transparent in the development of the rate increase amount. OCC witness Dr. Schechter's candid testimony during the hearing, on the proposed settlement that the effect of not having to resolve each and every issue in order to reach the \$107 million dollar rate increase **allowed each party to live in its own "fantasy world"** that its disputed issues were resolved in its favor, was telling. While this may be true for the Settling Parties, the lack of transparency of this settlement places us in a difficult situation, especially when such large dollar amounts are involved. (Decision C06-1379, page 10, emphasis added)

Not only was the Settlement Agreement worked out in the upper floors of the Xcel building, the lack of transparency means that the decision approving the Settlement Agreement has the quality of being arbitrary and capricious because the method of resolving the issues is not clear and ratepayers are not allowed to see how their rates are being determined.

IV. The Decision Wrongly Favors Xcel's Short Term Financial Integrity, to the Detriment of Both Ratepayers and, *Importantly*, the Long Term Financial Health of Xcel TC "IV. The Decision Wrongly Favors Xcel's Short Term Financial Integrity, to the Detriment of Both Ratepayers and, *Importantly*, the Long Term Financial Health of Xcel" \f C \ "1"

As noted in Paragraphs 25 and 26 of the Commission Decision, the \$107 million "appears to be reasonable" because it:

should help maintain Public Service's financial integrity during its current large construction program (Comanche 3 and various other transmission line projects). It would be short-sighted and ultimately detrimental to the ratepayer for this Commission to jeopardize Public Service's financial integrity by denying a favorable regulatory environment in which it can timely recover its costs of providing service to customers.

This reasoning, of course, is faulty on several accounts. The Commission is supposed to balance the financial concerns of the company and of the ratepayer and, as explained more fully below, the Settlement Agreement does not adequately protect ratepayers interests.

In rendering Decision C06-1379, the Commission could only do so by ignoring vast amounts of evidence in the record. Once again, this is arbitrary and capricious—and dangerous not only for ratepayers but also, ultimately for the Company.

Ironically, the Settlement Agreement does not even protect the long term financial interests of Xcel. To allow a company to undertake a large capital construction program for a coal plant at this point in time is an irresponsible decision for all the reasons pointed out time and again in the record for this Docket. Similarly, providing for the Company to be incented to use more coal at this point in time is also a serious mistake. These failures of oversight on the part of the Commission could easily have the effect of creating a serious risk to the long term financial integrity of the Company.

As will be pointed out below, among other things, the Company has not done any analyses of how to get coal to the (at least) billion dollar coal plant that it is asking

ratepayers to finance. (See Exhibits 117 and 118)

Building a coal plant is a risky business for many reasons these days, but it is especially absurd to make a billion dollar investment in a power plant that you don't know how to get the fuel to. As a result, Xcel runs the risk of undertaking a very large construction program for an asset that will ultimately be useless because, of course, you can't make electricity with a coal plant if you can't get the coal to it!

It is precisely these large capital investment mistakes that the Commission is supposed to protect both ratepayers and the Company from making. By abdicating their decision-making responsibility in this case, the Commission is risking not only the interests of ratepayers, but also, ultimately of the Company. The bankruptcy of Colorado-Ute should serve as a stark omen for anyone who cares about the future of our state. By blindly carrying on with a billion dollar power plant that they don't know how to get the coal to, puts Xcel in a financially precarious position indeed. It is the Commission's job to protect both Xcel and the ratepayer from such obviously flawed decision making.

V. The Return on Equity Granted to Xcel is Too High TC "V. The Return on Equity Granted to Xcel is Too High" \fC \l "1"

As described extensively in the record for this Docket, Xcel has successfully transferred essentially all of its business risks to its ratepayers. A 10.5% return on equity is, therefore, completely unjustified. As noted by the Commission in Paragraph 34 of Decision C06-1379, the 10.5% Return on Equity "is at the high end of the range of

reasonableness....” Once again, rather than exercise its own decision-making, the Commission has put undue weight on the opinions of the parties to the Settlement (which are a minority of the parties to the Docket) and allowed the arguments (in Paragraph 32) of the settling parties that “the 10.5 percent ROE was an integral part of the Settlement Agreement and as such should not be altered” to unduly sway the Commission. Once again, this is not a reasoned decision making process and is unacceptable.

VI. Allowing a 60% Equity Structure Unduly Increases Costs to Ratepayers

TC "VI. Allowing a 60% Equity Structure Unduly Increases Costs to Ratepayers" \f C \ "1"

As noted on page 11 of the Settlement Agreement attached to Commission Decision C06-1379, the cost of equity is 10.5% while the cost of debt is only 6.38%. By allowing Xcel to proceed with a 60% equity: 40% debt capital structure, the Commission is forcing ratepayers to pay unnecessarily high costs to cover this capital structure. Rather than hide behind the claim in Paragraph 37 that no party protested this capital structure, the Commission has an independent obligation to consider the implications of a 60% capital structure.

VII. Allowing CWIP Financing Without An AFUDC Offset for a Billion Dollar Power Plant that Xcel Does Not Know How to Get the Coal to is Arbitrary and Capricious at Best TC "VII. Allowing CWIP Financing Without An AFUDC Offset for a Billion Dollar Power Plant that Xcel Does Not Know How to Get the Coal to is Arbitrary and Capricious at Best" \f C \ "1"

In Paragraph 52 of Decision C06-1379, the Commission approved

Construction Work in Progress (“CWIP”) financing without an Allowance for Funds Used During Construction (“AFUDC”) offset for the Pueblo coal plant because “it is important that we keep our regulatory promises provided in previous matters.”

Certainly, keeping regulatory promises is an important principle. There is, however, a more important principle that the Commission failed to consider. The Commission failed to grasp the enormity of Xcel’s disclosure that it has done no analyses of how it will get the coal to the new coal plant it is constructing (See Exhibit #118). In this case, the Commission has a duty that overrides its duty to keep regulatory promises. Let me try stating it in bold print to see if the Commission can begin to understand.

It is now apparent that Xcel is asking ratepayers to finance a billion dollar coal plant that Xcel doesn’t know how to get the coal to. It is imperative that the Commission halt construction and the financing of that construction until this situation has been thoroughly reviewed. To do otherwise is not only to risk the financial interests of the ratepayers, it is to risk the long term financial health of Colorado’s largest utility. This could be disastrous for the entire state and the Commission has a higher duty to consider these possibilities than it has to keep a previous regulatory promise—which I point out was made in violation of Colorado law (e.g. CRS 40-2-123) and several Commission regulations (e.g. Rule 3610 (b)) and policies (e.g. granting a Certificate of Public Convenience and Necessity (“CPCN”) as part of a Least Cost Plan proceeding)!

This is simple logic. If a coal plant doesn't have a supply of coal it cannot produce electricity. Coal can only realistically be transported around most of this country by railroad. (Barge traffic is also possible, but not between Wyoming and Colorado.) There is abundant testimony in the record that there are already constraints on this country's railroad capacity for moving coal. Xcel's President of Energy Supply David Wilks testified in the United States Senate in May 2006 about the constraints on railroad capacity (Exhibit #117) and Xcel has answered Discovery questions detailing problems it is already having with coal supply at its existing coal plants (Exhibit #118).

When asked what analyses they have done on constraints on future delivery of coal to their coal plants, including the new billion dollar (at least) coal plant in Pueblo, Xcel acknowledged simply that, "No such analyses have been conducted." (Exhibit #118, RUC 2-10 (g)). In short, Xcel is asking ratepayers to finance a coal plant and then assuming that if they build the plant, the coal will just show up. This is hardly reasoned business decision making and constitutes a business oversight of monumental proportions. Now let me summarize this in bold letters again.

Coal does not just appear at coal plants. It has to be transported there. The only way to realistically get coal to Colorado plants is on the railroads. There is extensive information in the record (including Exhibits # 117 and 118) that there are constraints in our railroad capacity that will make it difficult (at best) to get coal to the new Pueblo coal plant. Coal does not fall out of the sky and railroads

don't appear out of thin air.

If Xcel continues to build a coal plant that it doesn't know how to get the coal to, it risks not only the financial interests of ratepayers, it risks its own financial integrity and ultimately the financial health of our entire state (since the loss of financial integrity of our state's largest utility is likely to have economic repercussions that will resonate throughout the entire state's economy.)

The only realistic way to increase coal transportation is to build new railroad capacity and this will be enormously expensive. The Commission must consider this issue before allowing Xcel to proceed with construction and before allowing Xcel to begin collecting financing charges (e.g. CWIP without an AFUDC offset) for the new Pueblo coal plant.

Under normal circumstances, keeping regulatory promises can be a valid argument—but these are not normal circumstances. By failing to give due consideration to the issues of coal supply (as well as the other issues described below) the Commission has failed to reach a reasoned and rational decision and in doing so, is risking the economic well being of our entire state. Such a failure is completely unacceptable and must be corrected immediately.

As was so eloquently testified to in the CWIP testimony submitted by staff, OCC and Colorado Energy Consumers witness Ron Binz in the dockets consolidated with the 04A-214E (2003 "Least Cost Plan") Dockets, CWIP financing without an AFUDC

offset should only be used in extraordinary cases. This is clearly not an extraordinary case; to the contrary, this is a quintessential example of why ratepayers should **not** pay any costs of power plant construction until the plant is “used and useful.” Without a steady supply of coal, the new coal plant in Pueblo may never be truly “used and useful,” and of course if it does become operational it will be a nightmare when all of the pollution it emits is considered.

VIII. The Commission Wrongly Failed to Consider the Benefits of Concentrating Solar Power TC "VIII. The Commission Wrongly Failed to Consider the Benefits of Concentrating Solar Power" \f C \l "1"

During this Docket, the Commission repeatedly ruled to strike the testimony of RUC witness John O'Donnell without considering its importance for the ECA mechanism and failed to consider the benefits of Concentrating Solar Power. (See e.g. Decisions C06-1235 and C061248.)As we head into a time of constraints on fossil fuel supplies and transportation and increasing concerns about global warming and other pollutants from the combustion of fossil fuel, the Commission's unwillingness to consider the contributions that Concentrating Solar Power can make to electricity generation and fuel displacement were arbitrary and capricious.

IX. The Commission Failed to Reach a Reasoned Decision on the ECA and BLEB Mechanism TC "IX. The Commission Failed to Reach a Reasoned Decision on the ECA and BLEB Mechanism" \f C \l "1"

There is abundant evidence in the record that the Commission failed to reach a reasoned decision on the ECA and Baseload Energy Benefit (“BLEB”) mechanism. The background on this issue is provided in Paragraph 13 of the Commission decision. The Commission discussion is in Paragraphs 63 to 73. Clearly there are more than two ways to make electricity. Xcel’s only choices are not between coal and natural gas. They have wind, solar, hydro and efficiency resources to consider at least. At this point in time it is unconscionable to structure the ECA in a fashion that incentivizes the use of more coal.

As the Commission noted in Paragraph 73 of Decision C06-1379:

We also note our concerns with the BLEB. First, it is evident there is a lack of “downside” risk should Public Service’s coal generation not perform adequately. We are also concerned whether the higher of 18,300 gWh or the three-year average sets a high enough standard to be considered superior performance in order to earn an incentive.

Rather than blindly accepting the Settlement Agreement, the Commission should have designed an ECA that:

Included all forms of meeting electric demand including efficiency

Incented the use of clean energy first and foremost

Included an incentive to start producing steam at existing coal and natural gas plants using concentrating solar power

Is symmetrical in its structure and included penalties for Xcel, not just incentives

Truly rewarded superior performance in providing electric service to Xcel customers

Once again, the Commission has failed to meet its duty to Xcel ratepayers in failing to construct an ECA mechanism that represents the needs of this century—not the past.

X. The Commission Failed to Make a Reasoned Decision on the PCCA TC
"X. The Commission Failed to Make a Reasoned Decision on the PCCA" \fC \1"

The Purchased Power Capacity Cost Adjustment ("PCCA") is discussed in Paragraphs 74-81 of Commission Decision C06-1379. Once again, the Commission failed to make a reasoned decision about the balancing of risks born by Xcel and by the ratepayers in establishing the PCCA. Rather it is once again allowing Xcel to pass all risks related to Purchased Power Agreements ("PPAs") on to ratepayers. Once again this is not acceptable and constitutes arbitrary and capricious decision making.

XI. The Commission Failed to Consider the Abundant Testimony Given by the Public TC
"XI. The Commission Failed to Consider the Abundant Testimony Given by the Public" \fC \1"

As in many PUC dockets there was extensive public input in this proceeding. The PUC has not considered any of this input in reaching its final decision. I have gone to the trouble of intervening in this docket (and allowing my computer to be overrun with rate case documents...) but clearly this is impractical for most members of the public. If the public's voice is to be heard in PUC proceedings, the PUC must make a special effort to review the submissions of the public and take them into account in its decision making. To fail to do so is to essentially exclude the public from any role in the oversight of the monopoly utility that it has no choice but to pay its utility bills to.

XII. The Commission Failed to Give Reasoned Analysis to the Late Charge on Xcel Bills –and Especially to the Size of the Late Charge TC "XII. The Commission Failed to Give Reasoned Analysis to the Late Charge on Xcel Bills –and Especially to the Size of the Late Charge" \f C \l "1"

In Paragraphs 87-93, Commission Decision C06-1379 discusses the issue of a late payment fee on ratepayers' bills. The Commission fails, however, to consider the size of the late payment. A 1 % late fee compounded annually is a usurious rate and should have been analyzed carefully before being adopted. Office of Consumer Counsel witness Cory Skluzak noted in his Answer Testimony that Xcel only pays 3.16% per year on customer deposits and that this translates into 0.26% per month. In comparison, the 1% late fee, when compounded, represents an unfair rate. Also there are all the issues of equity and the difficulties of low income ratepayers in paying the fee. The Commission appears to be unduly swayed by the argument in Paragraph 90 that Xcel

...will contribute the equivalent of the after-tax revenue that it collects from the residential late payment fee (if approved), to Energy Outreach Colorado to help Public Service's low-income customers pay their utility bills.

This "faux generosity" of Xcel's is hardly reassuring. Moneys given to Energy Outreach of Colorado are merely taking a short detour before ending up back in Xcel's coffers. This feeble attempt at a moral band aid hardly justifies charging usurious rates which will fall disproportionately on those least able to pay either their utility bill or Xcel's proposed late fee

XIII. The Docket Was Characterized By Numerous Procedural Problems TC

"XIII. The Docket Was Characterized By Numerous Procedural Problems" \f C \f

"1"

This docket was plagued by numerous procedural issues that increased the difficulty of the public participating in a meaningful fashion. These included:

The confusing nature of the original notice of this rate increase. It made it appear that the public could only comment for a short period of time which would have a negative effect on public involvement.

The intimidating atmosphere set in the Commission room by the Chairman who repeatedly expressed distaste for citizens and their representatives

The inappropriate exclusion of members of groups that were intervenors from testifying in the public hearing—a practice which does not appear to comply with Commission Rule 1105 (b) (II) and which was not applied equally to all groups. Once again this had a very chilling effect on public involvement.

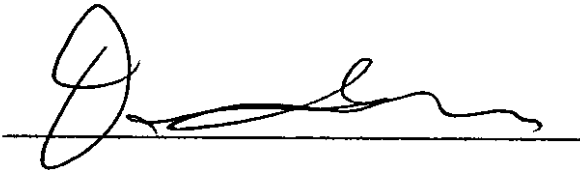
The effort of the Chairman of the Commission to characterize this Docket as only a Phase I Rate Case on the day of the public hearing (October 23, 2006) when the Docket also included the issues of the ECA, the BLEB and the PCCA. This effort was both confusing and intimidating to the members of the public who had gone to the effort to appear at the public hearing.

RELIEF REQUESTED TC "RELIEF REQUESTED" \f C \1 "1"

I hereby request that the Commission suspend Commission Decision C06-1379 and consider the issues brought forth in this Request for Rehearing, Reargument and Reconsideration. To do otherwise is to allow unreasoned and arbitrary and capricious decision making to prevail and to require ratepayers to begin paying for a coal plant that may never produce electricity and be "used and useful." This must not be allowed and therefore Decision C06-1379 must be suspended until a more reasoned analysis and decision can be completed. It has long been apparent to the public that building a coal plant was not a prudent investment at this pointing time; now it should be clear to the Commission and Commission staff as well.

Submitted this 21th Day of December

2006

A handwritten signature in black ink, appearing to read "Dan Friedlander", is written over a horizontal line.

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I hereby certify that on this 20th day of December 2006, the original and seven copies of the foregoing **POST-HEARING STATEMENT OF POSITION BY DAN FRIEDLANDER** were served on:

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by hand delivery

And copies were served by e-mail on all Parties on this service list:

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