

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF COLORADO )  
FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO )  
CONSTRUCT TWO COMBUSTION TURBINES )  
AT THE FORT ST. VRAIN GENERATING )  
STATION, FOR AN AMENDMENT TO ITS )  
CONTINGENCY PLAN, AND FOR EXPEDITED )  
TREATMENT. )

DOCKET NO. 07A-469E

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**APPLICATION FOR REHEARING, REARGUMENT OR RECONSIDERATION OF  
DECISION C08-0369**

**SUBMITTED BY NANCY LAPLACA AND LESLIE GLUSTROM  
APRIL 23, 2008**

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**ATTACHMENT 1** “Xcel Energy proposes quarterly electric adjustment, monthly natural gas adjustment,” Xcel News Release, March 17, 2008 filed with the 08L-094E tariff filing at the Colorado Public Utility Commission.

**ATTACHMENT 2**—Discovery Request LWG 1-6 Docket 07S-521E—PSCo’s Monthly Average Natural Gas Price January 1998-February 2008

**ATTACHMENT 3**—“Big Solar Project Planned for Arizona Desert,” By Marianne Lavelle, US News and World Report, February 21, 2008

Nancy LaPlaca and Leslie Glustrom, citizen interveners each representing herself, respectfully submit this Application for Rehearing, Reargument or Reconsideration (“RRR”) of Commission decision C08-0369 in accordance with Colorado Public Utilities Commission (“PUC”) PUC Rule 1506 in the above captioned Docket relating to the application of the Public Service Company of Colorado (“PSCo” or “Xcel”) for a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of two gas turbines at the Fort St. Vrain (“FSV”) site in Colorado. In Decision C08-0369 mailed on April 3, 2008, the Commission approved Xcel’s Application for a CPCN for two gas turbines and also ordered Xcel to move forward with significant expansions of its demand side programs. We respectfully request that the Commission reconsider the decision to grant the CPCN for the two gas turbines in Decision C08-0369 because:

a) The Commission has failed to follow Colorado statutes and Commission regulations including C.R.S. §40-2-123 (1), §40-3-101 and PUC Rule 3102 (b);

b) The Commission’s decisions related to i) resources in excess of the 16% reserve margin, ii) presumption of prudence, and iii) allowable evidence were not in compliance with C.R.S. § 40-6-101 (4) or Commission Rule 1501(a).

c) The Commission has failed to consider key arguments including i) the likelihood that existing gas turbines such as Spindle Hill will be significantly idled, ii) the possibility that the gas turbines could soon become obsolete if they can’t be hybridized with concentrating solar power, iii) the need to protect ratepayers from serious risk of natural gas fuel cost escalation and iv) the highly questionable “PPA + 10” (Power Purchase Agreement + 10) assumption used by Xcel to claim that the Fort St.Vrain option was cheaper than the Squirrel Creek option; and

d) The Commission needs to consider important new developments since the close of hearings including i) the recent news on the economy including the dramatic increase in the price of oil which is likely to have a ripple effect on the price of natural gas, ii) Xcel's recent acknowledgement of rapidly escalating natural gas prices, and iii) the announcement of another southwestern utility pursuing Concentrating Solar Power that is expected to produce carbon free electricity at less than half the cost of that produced by the Fort St. Vrain turbines.

While we appreciate the obvious effort that the Commission devoted to this decision and to improving Xcel's Demand Side Management (DSM) efforts,<sup>1</sup> Decision C08-0369 still commits ratepayers to a \$192 million investment in violation of law and regulation and we respectfully request reconsideration for the reasons explained below.

## **I. NEED TO RECONSIDER—FAILURE TO COMPLY WITH KEY LAWS AND REGULATIONS.**

While agencies including the PUC are granted significant deference, they must abide by existing laws and regulations. In Decision C08-0369, the Commission failed to comply with key laws and regulations including C.R.S. § 40-2-123 (1), C.R.S. § 40-3-101 and PUC Rule 3102 (b).

### **A. Failure to Comply with C.R.S. § 40-2-123 (1)**

The intent of the Legislature is unambiguously stated in C.R.S. § 40-2-123 (1) which mandates that the Commission shall give “the fullest possible consideration” to clean energy and energy efficient technologies when considering generation acquisitions for electric utilities. The full wording of C.R.S. § 40-2-123 (1) is as follows:

*(1) The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic*

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<sup>1</sup> See the extensive DSM Directives in Decision C08-0369, Paragraphs 59-76). DSM refers to many different types of energy efficiency measures.

prosperity, environmental protection, and insulation from fuel price increases. The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys. (C.R.S. § 40-2-123 (1), Emphasis added.)

Because the 07A-469E Docket at question here involves “generation acquisitions for electric utilities,” C.R.S. § 40-123 (1) clearly applies. Yet, in its consideration of the CPCN for the two gas turbines at Fort St. Vrain, the Commission repeatedly ignored the mandate of C.R.S. § 40-2-123 (1), declined Motions that were intended to help secure compliance with C.R.S. § 40-02-123 (1) and failed to even mention the statute in Decision C08-0369.<sup>2</sup>

The key issue that the Commission failed to address was the potential for third-party demand response firms or other measures -- such as those taken in California to avoid blackouts in 2001-- to avoid investing \$192 million in gas turbines primarily built to preserve (and even

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<sup>2</sup> The need for the Commission to comply with C.R.S. § 40-2-123 (1) was noted in the following filings in this Docket:

- 1) 07A-469E Petition to Intervene of Leslie Glustrom (Submitted December 10 2007, See page 2)
- 2) 07A-469E Response of Leslie Glustrom to Public Service Company of Colorado’s Motion Requesting Modified Procedure or in Alternative Expedited Procedure (Submitted December 24, 2008, See pages 4 and 6).
- 3) 07A-469E Answer Testimony of Leslie Glustrom (Submitted on January 25, 2008, See page 4, lines 4-10 and page 5, lines 6-7)
- 4) 07A-469E Motion Requesting the Commission to Direct Certain Parties to Contact Demand Response Firms, to Review the California Electricity Crisis Report and to Report Back to the Commission and Shortening Response Time (Submitted January 28, 2008, See page 3).
- 5) 07A-469E Motion Requesting Leave to Reply and Reply of the Public Service Company of Colorado’s Response to the Motion Requesting the Commission to Direct Certain Parties to Contact Demand Response Firms, to Review the California Electricity Crisis Report and to Report Back to the Commission and Shortening Response Time (Submitted January 30, 2008, See page 2)
- 6) 7A-469E Cross Answer Testimony of Leslie Glustrom (Submitted February 5, 2008, See page 5, lines 18-22 and page 7, lines 4-5)
- 7) 07A-469E Response of Leslie Glustrom to the Motion for Limine Filed by Public Service Company of Colorado (Served electronically on Friday February 8, 2008 and in paper copy to the Commission on Monday February 11, 2008, See page 10)
- 8) 07A-469E Response of Leslie Glustrom to the Public Service Company of Colorado’s Motion to Strike Portions of Glustrom Cross Answer Testimony (Submitted on Monday February 11, 2008. While this filing did not specifically mention C.R.S. § 40-2-123 (1), it was filed in defense of Leslie Glustrom’s Cross Answer testimony which specifically discussed the need to comply with C.R.S. § 40-2-123 (1))
- 9) 07A-469E Post Hearing Statement of Leslie Glustrom (Submitted on February 25, 2008. See pp. 1 - 2)
- 10) 07A-469E Motion Requesting the Commission to Submit Questions to the Parties, Establish Additional Time for a Hearing, Extend the Decision Date and Shortening Response Time (Submitted March 14, 2008. See pages 4 and 11)
- 11) 07A-469E Application for Rehearing, Reargument or Reconsideration of Decision C08—341 (Submitted April 4, 2008. See pages 2, 3 and 4.)

exceed) the 16% reserve margin in 2009. Electricity from these two turbines will typically cost over 30 cents per kWh, while idling other recently installed gas turbines.<sup>3</sup> While the Commission gave consideration to future implementation of demand response and other demand side measures, the Commission failed to give the “fullest possible consideration” to the potential of third party demand response integrators and other demand side measures such as those employed in California in 2001 to avoid this \$192 million acquisition of gas turbines.<sup>4</sup>

In this Docket, Xcel went over its own DSM programs repeatedly, always concluding that there was no choice but to self-build two gas turbines—while they worked furiously to ensure that as little information as possible on modern third-party demand response entered the record. Xcel admitted during the hearing that it did not pursue the services of a third party Demand Response firm to address the summer 2009 reserve margin shortfall.<sup>5</sup> Not only did Xcel fail to pursue the services of a third-party demand response firm or firms, essentially every time another party brought up the possibility of demand response firms, Xcel moved to strike the information.<sup>6</sup>

The Answer Testimony of Sheila Sweeney as well as several of the parts of Ms. Glustrom’s Cross Answer Testimony provided a strong indication that third-party demand response could provide an important “cost-effective new energy efficient technology” that could have replaced one or both of Xcel’s self-build turbines at Fort St. Vrain—yet Xcel fought

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<sup>3</sup> See Glustrom 07A-469E Post Hearing Statement, pages 9-11

<sup>4</sup> See Glustrom 07A-469E Post Hearing Statement, pages 2-3

<sup>5</sup> See e.g. Exhibit 1, Karen Hyde Direct Testimony, p. 5, lines 10-15; Exhibit 9, Frederic Stoffel Rebuttal Testimony, p. 14, lines 3-20; and Transcript Feb 12, 2008, p. 24, lines 5-8 and p. 30, lines 5-6.

<sup>6</sup> See for example the responses of Ms. Glustrom to Xcel’s Motions to Strike, and one Motion in Limine ( e.g. Filings 5, 7 and 8 in the list in Footnote 2 above) as well as the Xcel’s objections to putting information about Demand Response firms in the docket from the transcript of the Monday February 11, 2008 hearing in this Docket.

intensely to keep this information out of the record. In addition, Ms. Glustrom filed two Motions, one on January 28, 2008 and one on March 14 2008,<sup>7</sup> specifically requesting the Commission to address the lack of information in the record on Demand Response and other alternatives to acquiring new fossil fuel resources in order to comply with C.R.S. § 40-2-123 (1) and the Commission rejected both Motions.

Without adequate information on the potential of third-party demand response aggregators to address the reserve margin issue for 2009, the Commission could not comply with the clear mandate of C.R.S. § 40-2-123 (1) to “give the fullest possible consideration to cost-effective new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities....” Similarly, the Commission failed to follow the mandate of C.R.S. § 40-2-123 (1) to consider “the beneficial contributions such technologies make to Colorado’s energy security, economic prosperity, environmental protection, and insulation from fuel price increases.”

#### **B. Failure to Comply with C.R.S. 40-3-101**

Under C.R.S. § 40-3-101 (1) and (2), all rates, charges, services and facilities of public utilities must be “just and reasonable.” Petitioners allege that the decision did not comply with the “just and reasonable” provisions of C.R.S. § 40-2123 (1) for the following reasons:

- 1) The electricity from the turbines will cost in excess of 30 cents/kWh or more than three times the average price of electricity,<sup>8</sup>

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<sup>7</sup> See filings 4) and 10) in Footnote 2 above.

<sup>8</sup> See Transcript February 12, 2008 pages 114 and 124-125 as well as pages 10-11 in Ms. Glustrom’s Post Hearing Statement in this Docket.) The average price of electricity for residential ratepayers is a little above 9 cents/kWh according to the Rate Schedule Summation Sheet filed in Docket 08L-094E, Sheet 20. In addition, the electricity from the Fort St. Vrain turbines would have transmission costs associated with it.

2) The turbines are only needed to preserve the tip of the 16% reserve margin for 2009, since even without the FSV turbines, Xcel will have a 700 MW reserve margin above the projected firm obligation of 6773 MW in the summer of 2009—even before pursuing third-party demand response or other innovative demand side programs.<sup>9</sup>

3) If Xcel’s demand side programs increase and the FSV turbines are installed, Xcel will have substantially more than a 16% reserve margin starting in 2010, which could reduce Xcel’s incentive to aggressively pursue cleaner, cheaper, demand side options.<sup>10</sup>

4) If Xcel builds the FSV turbines, the Spindle Hill turbines installed in 2007 are likely to be significantly idled (e.g. potentially operating less than 1% of the time), requiring rate payers to pay for new turbines in 2009 while turbines installed in 2007 sit mostly idle.<sup>11</sup>

5) Xcel’s claim that the FSV self-build will result \$14 million in “savings” over the Squirrel Creek Power Purchase Agreement (PPA) is highly questionable, and is based on a faulty “PPA + 10” assumption as discussed below.<sup>12</sup>

6) Cleaner, cheaper options such as Concentrating Solar Power (CSP) are already appearing in the portfolios of other western utilities. CSP can produce carbon-free peak electricity at a fraction of the cost of electricity from the FSV turbines. Further, CSP can be brought on line in the 2011-2012 time frame, which is likely to make the FSV turbines obsolete long before their expected lifespan of 35 years is complete.<sup>13</sup>

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<sup>9</sup> For reserve margin numbers, see Exhibit ELC-01 included in Exhibit 26 for the hearing in this Docket.

<sup>10</sup> See paragraphs 52 and 59-67 in Decision C08-0369 and Exhibit ELC-01 in Exhibit 26.

<sup>11</sup> .See Exhibits 23 and 51 and Ms. Glustrom’s Post Hearing Statement, pages 9 and 10.

<sup>12</sup> See Ms. Glustrom’s Post Hearing Statement, pages 4-7.

<sup>13</sup> See Ms. Glustrom’s Post Hearing Statement pp. 12-13 and references therein.



7) Xcel has numerous gas contracts which can be renewed in the 2013 time frame, and increased demand side programs will also help reduce demand during these and subsequent years, further obviating the need for the turbines.<sup>14</sup>

8) Xcel's capacity exchange with Tri-State could have eliminated any capacity shortfall in 2010-2012, yet Xcel went ahead with the Tri-State capacity swap after it was clear that the original Squirrel Creek contract was in trouble. The Tri-State capacity swap could have "isolated" the capacity shortfall to a single year—2009.<sup>15</sup>

9) The price of natural gas has almost quadrupled in the last six months since the installation of the Rockies Express pipeline. Xcel knew or should have known that natural gas prices were increasing dramatically during the past few months—yet failed to say so in filings or during the hearing.<sup>16</sup>

10) The turbines will commit ratepayers to paying the price of natural gas for the next 35 years, and under current regulations *all* of the costs of natural gas for the turbines are passed through to ratepayers. Xcel's shareholders bear no risk for the increasing price of natural gas due to the dollar-for-dollar pass-through of fuel costs.<sup>17</sup>

11) The FSV turbines will always be constrained by air permit regulations to run less than 8.4% of the time and won't be able to ramp up in the event of a significant outage of other Xcel resources or to back up intermittent resources.<sup>18</sup>

12) The reliability of Xcel's system could be improved by developing numerous small resources (such as is done by third-party demand response aggregators) and thus avoid the problems that can arise when a few large, supply side resources are taken off line.<sup>19</sup>

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<sup>14</sup> See Exhibit 26 and the discussion of gas contracts below.

<sup>15</sup> See Ms. Glustrom's Post Hearing Statement, pages 7-9. .

<sup>16</sup> See Ms. LaPlaca's Statement of Position, pages 1-4 and the discussion of natural gas prices below.

<sup>17</sup> See Ms. LaPlaca's Statement of Position, pages 1-4

<sup>18</sup> See Ms. Glustrom's Post Hearing Statement, pages 10 and 11 and references therein.

### **C. Failure to Comply with PUC Rule 3102 (b)**

Commission Rule 3102(b) establishes the requirements for CPCN applications, and neither the Commission nor Xcel has complied fully with the provisions of this rule, particularly parts (VIII) and (IX) as reproduced below:

#### **Rule 3102. Certificate of Public Convenience and Necessity for Facilities.**

(b) An application for certificate of public convenience and necessity to construct and to operate facilities or an extension of a facility pursuant to § 40-5-101, C.R.S., *shall* include, in the following order and *specifically identified, the following information*, either in the application or in appropriately identified attached exhibits:

(VIII) As applicable, *information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives.*

(IX) As applicable, *a report of prudent avoidance measures considered and justification for the measures selected to be implemented.*  
*(Commission Rule 3102 (b) emphasis added)*

Rule 3102(b) (VIII) and (IX) above clearly states that CPCN applicants shall provide:

- Information on alternatives
- Costs for those alternatives
- Criteria used to rank or eliminate alternatives
- Report of prudent avoidance measures, and
- Justification for the measures selected.

While Xcel has provided some of this information, the information was cursory rather than a serious study of alternatives, the cost of alternatives, prudent avoidance measures and justification for the FSV turbines. The full array of possible demand side measures -- including both the use of third-party aggregators and the use of other load-reducing tools to achieve large reductions in demand in a short time frame -- were simply not considered by

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<sup>19</sup> See Ms. Glustrom's Post Hearing Statement, pages 13-14

Xcel.<sup>20</sup> Xcel failed to provide any meaningful information on the array of alternatives, the cost of alternatives, and its analysis of alternatives failed to comply with Rule 3102 (b). The Commission never discussed the requirements of Rule 3102 (b) and failed to ensure that Xcel had complied with Rule 3102(b)'s mandate to provide information on alternatives, the cost of such alternatives, the criteria used to rank alternatives, and a justification for the FSV turbines. An agency cannot choose to ignore its own regulations. *Woolsey v. Colorado Dept of Corrections* 66 P.3d 151 (2002).

### **III. NEED TO RECONSIDER DECISIONS ON RESERVE MARGIN, PRESUMPTION OF PRUDENCE, AND EVIDENTIARY RULINGS**

#### **A. Granting of a Reserve Margin in Excess of 16%**

The record is clear that Xcel has 236 MW of transmission import capacity available and that approximately 113 MW will be in excess of the 16% reserve margin.<sup>21</sup> This means that ratepayers will be paying for capacity to preserve a generous reserve margin, plus approximately 113 MW on top of that in 2009. Moreover, the Loads and Resources Table (Table 2.9-2) on page 2-252 in Xcel's Resource Plan filing in Docket 07A-447E (included in Exhibit 26 in this Docket), shows that this excessive Reserve Margin will be even greater in the years 2010-2012—and probably in the years following also. According to Table 2.9-2 in Xcel's Resource Plan filing, the following amounts of excess capacity will exist in the following years:<sup>22</sup>

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<sup>20</sup> (See Ms. LaPlaca's Statement of Position, pages 4-6, Ms. Glustrom's Motion Requesting the Commission to Submit Questions to the Parties, Establish Additional Time for a Hearing, Extend the Decision Date and Shortening Response Time, submitted on March 14, 2008)

<sup>21</sup> (See paragraph 52 in Decision C08-0369).

<sup>22</sup> (See Table 2.9-2, Page 2-152, Xcel's Colorado Resource Plan, Docket 07A-447E) included with Exhibit 26. These numbers may have changed slightly in a subsequent filing, but the basic point about capacity above the 16% reserve margin remains unchanged.

<u>Year</u>	<u>Excess Capacity</u>
2010	246 MW
2011	45 MW
2012	177 MW

These numbers may have changed slightly in a revised filing in the Resource Plan Docket, but the important points are:

1) Ratepayers will pay for capacity above the generous 16% reserve margin in these years—excess capacity that also doesn't take into account Xcel's transmission import capability;

2) If it weren't for Xcel's decision to start shutting coal plants<sup>23</sup> then the excess capacity above the 16% reserve margin would be even greater;

3) As Xcel gets serious about its demand side programs and seeking the services of third-party aggregators, this excess capacity on top of the 16% reserve margin (and apparently on top of the transmission import capability) will become even larger.

4) Referring to Exhibit ELC -01 included in Exhibit 26, it is clear that beginning in 2011, there will be a number of gas contracts expiring including:

<u>Year</u>	<u>Natural Gas Contract Expiring</u>	<u>Size</u>
2011	Manchief	261 MW
2011	Cogentrix Plains End	113 MW
2012	Black Hills Valmont 7 & 8	79 MW
2012	Black Hills Arapahoe 5, 6 & 7	122 MW
2012	Fountain Hills Midway	238 MW
2012	Blue Spruce	271 MW
2013	Rocky Mountain Energy Center	497 MW Reduction

<sup>23</sup> Xcel's decision in late October 2007 to start closing some old coal plants may have been at least in part due to data showing that the Pueblo Unit 3 coal plant was excess capacity as shown in the first Loads and Resources Table in Exhibit 26 in this Docket. The first Loads and Resources Table in Exhibit 26 was Exhibit 19 in Docket 07A-107E, and it showed that at that point in time (July 2007), there would be 532 MW of excess capacity in 2010—the same year that Xcel is planning to bring on the 500 MW of the Comanche Unit 3 coal plant in Pueblo. Thus, before the change in the Squirrel Creek contract, it became apparent that Xcel's billion dollar Comanche 3 coal plant wasn't needed to meet load in 2010. After 2010, expanded demand side programs and the declining cost of carbon-free generation, including Concentrating Solar Power could be brought on line to meet Xcel's demand.

We believe that many of these gas contracts could be renewed rather than invest in new turbines at FSV that will be constrained by their air permit to run less than 8.4 % of the time. In addition, the requested reserve margin is in excess of the 16% reserve margin approved in Decision C05-0049 in the 04A-214E/04A-215E/04A-216E consolidated Dockets.

We believe the approval of the FSV turbines which leads to Xcel exceeding the approved reserve margin requirements for the years from 2010 onward is legally questionable and a violation of the Commission's responsibility to protect the public interest regarding utility rates and practices (*City of Boulder v. Colorado PUC* 996 P.2d 1270 at 1277).

### **B. Presumption of Prudence is Inappropriate**

For all of the reasons stated in this Application for RRR, the presumption of prudence granted by the Commission (See paragraphs 24 and 56 in Decision C08-0369) for the FSV projects is unlawful and inappropriate. Given what Xcel knows now or should have known when they began planning for the FSV project, these turbines are a poor investment and should not be granted a presumption of prudence.

### **C. Decisions on Evidence Were Inappropriate**

The Commission's decisions on which evidence should and should not be included in the record (See Decision C08-0341 as well as the numerous decisions issued on Monday February 11, 2008) were inappropriate and are not in keeping with C.R.S. § 40-6-101 (4) and Commission Rule 1501 (a).<sup>24</sup>

### **D. The Decision Erred in Its Statement of Ms. Glustrom's Position**

In paragraph 25 of Decision C08-0369, the Commission states that, "Ms. Glustrom...advocate(s) that Public Service should reduce its reserve margin from 16 percent to

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<sup>24</sup> See the "Response of Leslie Glustrom to the Motion For Limine Filed By Public Service Company of Colorado" (February 11, 2008) and the "Response of Leslie Glustrom to the Public Service Company of Colorado's Motion to Strike Portions of Glustrom's Cross Answer Testimony"(February 11, 2008), filings 7 and 8 in Footnote 2 above.

12 percent, similar to the level that is being considered on the Xcel system in Minnesota.” In her Answer Testimony, Ms. Glustrom mentioned the possibility of reducing the reserve margin for one year, but the Commission’s decision erred in stating that Ms. Glustrom was advocating for “reducing the reserve margin from 16 percent to 12 percent.”

#### **IV. NEED FOR REARGUMENT—KEY ISSUES WERE IGNORED OR MINIMIZED**

While the Commissioners worked to address a number of issues in this Docket, there were very significant issues that were discussed in the Docket but not in Decision C08-0369. Several of those issues, as summarized below, need to be addressed through reargument, (or rehearing or reconsideration).

##### **A. Failure to Recognize Effect on Other Gas Turbines**

Exhibits 23, 26 and 51 raise important issues about the effect the FSV turbines would have on other natural gas turbines on Xcel’s system.<sup>25</sup> It appears that since the Fort St. Vrain turbines are being proposed to preserve the reserve margin—not to meet load—they would have the effect of idling other turbines such as the Spindle Hill turbines which were just installed in 2007. It makes no sense to invest \$192 million in *new* gas turbines while turbines just installed in 2007 sit idle. In order to fulfill its fundamental responsibility to insure that rates and services are “just and reasonable,” the Commission needs to address the issue of the potential effect of the Fort St. Vrain turbines on existing natural gas turbines, including the gas turbines that are already installed whose contracts will begin expiring in 2011 as discussed above.

##### **B. Failure to Consider Issues of Obsolescence**

There are serious issues related to the probable obsolescence of gas turbines installed in the northern part of the state which can’t be hybridized with Concentrating Solar Power (CSP). CSP with thermal storage has the potential to function much like a gas turbine during the

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<sup>25</sup> This issue is discussed in detail in Ms. Glustrom’s Post Hearing Statement on pages 9 and 10.

summer peak in a carbon-free fashion at a fraction of the price of the electricity from the FSV turbines. While it probably isn't possible to build significant CSP resources between April 2008 and June 2009, it might have been possible to bring on some CSP resources between August 2007 and June 2009—and certainly it *is* feasible to bring on CSP resources in the 2011 time frame. Once CSP begins to fulfill many of the same functions as gas turbines in a carbon- and fuel-free fashion at a fraction of the cost, the FSV turbines run the strong likelihood of turning into stranded assets.<sup>26</sup> In order to ensure that rates and services are “just and reasonable” under C.R.S. §40-3-101, the Commission must address the issues of obsolescence and stranded assets before approving the CPCN for the Fort St. Vrain turbines.

### **C. Failure to Protect Ratepayers from Serious Risks**

The Decision in this Docket balances the relatively small risk that any short fall in the 16% reserve margin could not be met through a variety of demand side programs (perhaps combined with possible turbine rentals) against the need for the FSV turbines. Decision C08-0369 failed to assess the much larger risk that the FSV turbines would soon be obsolete and may become stranded assets. The significant risk that the Fort St. Vrain turbines could (along with other natural gas turbines) become stranded assets, requires that the Commission weigh this possibility carefully in order to meet the “just and reasonable” requirements under C.R.S. §40-3-101.

### **D. Failure to Address the PPA + 10 Assumption**

Decision C08-0369 failed to address the “PPA +10” assumption used by Xcel to make it look like the FSV option would save ratepayers \$14 million when compared to the Squirrel

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<sup>26</sup> See Ms. Glustrom's Post Hearing Statement, pages 12 and 13 as well as Ms. Glustrom's cross examination of Xcel witness Mr. Ford during the hearings.

Creek Power Purchase Agreement (“PPA”).<sup>27</sup> The decision by Xcel to assume an addition of 10 years to the PPA for Squirrel Creek, adds over \$300 million to the Squirrel Creek option--\$300 million that ratepayers weren’t responsible for under the Squirrel Creek PPA and which skews Xcel’s analysis of the two alternatives by over \$300 million. This means that Xcel’s claims that the Fort St. Vrain option will “save ratepayers \$14 million” has been made on a very faulty assumption—an assumption that the Commission failed to address in Decision C08-0369.

#### **IV. NEED FOR REHEARING—LARGE CHANGES HAVE OCCURRED SINCE THE CLOSE OF THE HEARING IN THIS DOCKET**

The hearings in this Docket closed on February 15, 2008 and the Statements of Position were due on February 25, 2008. In the short time since these dates, several important developments have taken place. First, our economy has faltered due to the credit crisis and now oil has reached (and yesterday exceeded) \$117/barrel, which is likely to have a ripple effect on other fossil fuel costs including natural gas. Second, Xcel has filed a fuel cost adjustment that acknowledges that natural gas prices have almost quadrupled in the last 6 months. Third, Arizona Public Service has announced an agreement to bring on a 280 MW Concentrating Solar Power plant by 2011 that is expected to produce electricity at approximately 14 cents per kilowatt hour. As explained below, all of these developments argue strongly for the Commission to reconsider Decision C08-0369 in this case.

##### **A. Our Economy Has Faltered and Oil Has Exceeded \$117/Barrel, Which Could Have a Ripple Effect on Other Fossil Fuel Costs, Including Natural Gas**

Since the close of the hearing in this Docket, our economy has faltered and oil prices have soared, recently passing \$117 a barrel. The Business Section of every newspaper is full of this news. Here are a few quotes from recent media articles:

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<sup>27</sup> See Ms. Glustrom’s Post Hearing Statement, pages 4-7.



Stock prices are gyrating. The dollar hovers near low points against leading currencies. The credit markets remain unsettled. And traders keep buzzing that Bear Stearns which was saved from the prospect of a bankruptcy filing through a takeover backed by the Federal Reserve, may not be the last Wall Street bank to run into trouble. (“A Nervous Wall St. Seems Unsure What’s Next,” By Julie Creswell, *The New York Times* Monday March 31, 2008)

U.S. crude settled up \$1.89 at \$119.37 a barrel after hitting an all-time peak of \$119.90 earlier. London Brent crude gained \$1.52 to settle at \$115.95 a barrel, after rising to a record peak of \$116.75. Oil’s fresh highs extended a rally that has seen prices climb more than five-fold since 2002, as booming demand from emerging markets such as China has coincided with long-term supply constraints. (“Oil Rallies to Record Near \$120 on Supply Worries,” Reuters April 22, 2008)

As our economy falters and oil prices reach unprecedented highs which could ripple through to other fossil fuels such as natural gas, consumers and businesses are carefully considering large capital expenditures. The Commission should do the same to ensure that ratepayer investments are made with the utmost care. For all the reasons stated in this RRR, spending \$192 million on the Fort St. Vrain turbines at this point in time is not a prudent investment.<sup>28</sup>

### **B. Xcel’s Recent Acknowledgement of Rapidly Increasing Natural Gas Prices Was Not Clearly Presented During the Course of This Docket**

On March 17, 2008 Xcel filed for an Electric Commodity Adjustment (“ECA”) rate increase to pay for “the higher costs associated with natural gas and coal prices affecting the electricity generated by Xcel Energy....”<sup>29</sup> The press release accompanying the rate filing noting that local wholesale natural gas prices have “nearly quadrupled in the last six months with

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<sup>28</sup> The need to reconsider spending \$192 million of ratepayer money is intensified by the fact that there are many unpaid bills and bills coming due on Xcel’s system including the billion dollar Pueblo coal plant, increased fossil fuel prices and several new transmission lines. In addition, upper income ratepayers are likely to “escape” from many of these rate increases by installing photovoltaic or small wind systems, leaving an increasing burden to lower income ratepayers who are already struggling to pay their utility bills.

<sup>29</sup> See Docket 08L-094E

the addition of pipeline capacity out of the region...” is included as Attachment 1. Increased natural gas prices further undermine the wisdom of making a 35 year commitment to a natural gas resource that is not in a location that can be easily hybridized with Concentrating Solar Power.

The issue of natural gas prices was important during this hearing and Xcel witness Kurt Haeger, the Managing Director of Wholesale Planning, was cross examined by Ms. LaPlaca as well as by all three Commissioners on this subject.<sup>30</sup> Mr. Haeger either knew or should have known what was happening with natural gas prices during this time and yet, despite repeated questioning while under oath, Mr. Haeger failed to inform the Commission about recent steep increases in Xcel’s natural gas prices during this period. Mr. Haeger spoke of the loss of the “basis differential” between the Henry Hub natural gas prices and those for the Rocky Mountain Region but he repeatedly failed to disclose Xcel’s rapidly rising natural gas costs during the previous six months.

Through Discovery in Docket 07S-521E,<sup>31</sup> Ms. Glustrom obtained the natural gas prices paid by month by PSCo for the last 10 years. The Discovery Response is Attachment 2 to this Application for RRR. The table of monthly natural gas prices from 1999 to 2008 is copied below.

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<sup>30</sup> See the Hearing transcript for the cross-examination of Mr. Haeger from Thursday February 14, 2008.

<sup>31</sup> These prices were obtained in Discovery Request LWG 1-6 in Docket 06S-521E (the “ISOC Docket”).

**Table NLP/LWG -1**  
**Monthly Natural Gas Prices Paid by PSCo**  
**January 1999-February 2008**

(Data from Discovery Request LWG 1-6 in Docket 07S-521E, Colorado PUC)

	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>JAN</b>	\$ 1.95	\$ 2.25	\$ 7.20	\$ 2.62	\$ 3.14	\$ 5.27	\$ 5.63	\$ 8.63	\$ 4.83	\$ 6.15
<b>FEB</b>	\$ 1.81	\$ 2.39	\$ 5.75	\$ 2.30	\$ 3.57	\$ 5.01	\$ 5.52	\$ 6.85	\$ 6.60	\$ 7.12
<b>MAR</b>	\$ 1.80	\$ 2.51	\$ 4.82	\$ 2.62	\$ 4.26	\$ 4.37	\$ 5.46	\$ 6.08	\$ 6.15	
<b>APR</b>	\$ 1.97	\$ 2.70	\$ 4.62	\$ 2.60	\$ 3.25	\$ 4.38	\$ 6.27	\$ 5.57	\$ 4.09	
<b>MAY</b>	\$ 2.07	\$ 3.79	\$ 3.73	\$ 2.30	\$ 4.05	\$ 4.94	\$ 6.04	\$ 5.43	\$ 4.21	
<b>JUN</b>	\$ 2.07	\$ 3.75	\$ 2.91	\$ 1.73	\$ 4.85	\$ 5.56	\$ 5.60	\$ 5.00	\$ 3.23	
<b>JUL</b>	\$ 2.07	\$ 3.79	\$ 2.46	\$ 1.72	\$ 4.65	\$ 5.27	\$ 6.35	\$ 5.25	\$ 3.67	
<b>AUG</b>	\$ 2.37	\$ 3.32	\$ 2.57	\$ 2.03	\$ 4.19	\$ 5.27	\$ 6.29	\$ 6.03	\$ 3.65	
<b>SEP</b>	\$ 2.71	\$ 3.58	\$ 2.62	\$ 1.75	\$ 4.32	\$ 4.47	\$ 8.12	\$ 4.77	\$ 1.72	
<b>OCT</b>	\$ 2.65	\$ 4.38	\$ 1.98	\$ 2.14	\$ 4.05	\$ 4.61	\$ 9.86	\$ 3.78	\$ 2.17	
<b>NOV</b>	\$ 2.61	\$ 4.87	\$ 2.95	\$ 3.01	\$ 4.80	\$ 6.56	\$ 10.10	\$ 6.08	\$ 3.84	
<b>DEC</b>	\$ 2.24	\$ 6.53	\$ 2.45	\$ 3.16	\$ 4.62	\$ 6.16	\$ 9.40	\$ 5.84	\$ 6.16	

As can be seen from Table 1, the price paid by PSCo for natural gas was increasing rapidly during the time that Xcel was planning for and asking the Commission to approve the FSV turbines. (e.g. September 2007 –February 2008). Yet, despite being under oath, Mr. Haeger never revealed “the whole truth” about PSCo’s natural gas prices, or that PSCo would soon be

applying for a 15% increase in rates<sup>32</sup> due to increasing natural gas (and coal) prices. We respectfully request that the Commission remedy this situation by reconsidering the decision on the Fort St. Vrain turbines and, if necessary, holding a rehearing on the matter.

**C. Arizona Public Service Announced After the Close of the Hearing That It Would Proceed with a Concentrating Solar Power Development that Will Perform in a Significantly Comparable Fashion to the Gas Turbines but at a Fraction of the Cost**

Just a few days after the FSV hearing closed, Arizona Public Service announced that it was undertaking a 280 MW Concentrating Solar Power plant with the large Spanish CSP developer, Abengoa. The plant will have 6 hours of thermal storage and is expected to produce electricity (assuming the Investment Tax Credit for solar is extended) at about 14 cents/ kWh. A press story about the announcement is included as Attachment 3.

A CSP plant with thermal storage can make a very significant contribution to summer peaking needs and 14 cents/kWh is less than half the price of the electricity that would be produced by the FSV turbines. Even if CSP electricity in Colorado is several cents a kWh more than in Arizona, a CSP plant would still be substantially cheaper than the FSV turbines. While it is probably not possible to bring a significant sized CSP plant on line for the 2009 peak at this point in time, it should be possible to bring significant amounts of CSP on line in Colorado in the 2011 time frame and on out and these CSP resources are likely to make natural gas resources much less useful and possibly obsolete. As discussed above, we already have numerous gas turbines installed in the state. It isn't prudent to spend \$192 million to add to that inventory.

During the hearing, Commissioner Binz repeatedly referred to "turning the corner," and by requiring Xcel to build at least a hybridized CSP-gas plant, Colorado would certainly "turn

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<sup>32</sup> In Docket 08L-094E, Xcel asked for an increase in the Electric Commodity Adjustment from \$0.02506 to \$0.03849 /kWh which was a 15% increase in rates and a 53% increase in the ECA.

the corner,” since 64% of Xcel’s energy currently comes from coal, and 32% from gas.<sup>33</sup> In fact, although Xcel’s CRP proposes to *decrease* its gas energy from 32% to 18% in 2012, its gas capacity will only decrease from 55% to 47%. Investing potentially billions of dollars in new gas plants that Xcel plans to use *less and less* violates both common sense and the legislature’s intent that “clean” energy be given the “fullest possible consideration.”

**WHEREFORE, for all the reasons stated in this Application for Rehearing, Reargument and Reconsideration,** Glustrom and LaPlaca respectfully request that the Commission reconsider Decision C08-0369.

Respectfully submitted this 23rd day of April 2008,

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<sup>33</sup> Xcel’s Colorado Resource Plan, Vol. 2, p. 2-53 and 2-58.

## CERTIFICATE OF SERVICE

This is to certify that this **APPLICATION FOR REHEARING, REARGUMENT OR RECONSIDERATION OF DECISION C08-0369** will be delivered on April 23, 2008 to the:

Colorado Public Utilities Commission,  
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Denver, CO 80202

and sent by e-mail, to the following:

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