

BEFORE THE PUBLIC UTILITIES COMMISSION OF COLORADO

DOCKET NO. 08S-520E

**IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF
TARIFF SHEETS FILED BY PUBLIC SERVICE COMPANY OF
COLORADO WITH ADVICE LETTER 1522**

STATEMENT OF POSITION OF

LESLIE GLUSTROM

MAY 12, 2009

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Leslie Glustrom, a citizen intervenor representing herself, submits this Statement of Position in the above captioned Docket related to Public Service Company of Colorado's ("PSCo" or "Xcel") Advice Letter ("AL") 1522 submitted to the Colorado Public Utilities Commission ("PUC" or "Commission") on November 14, 2008. The Advice Letter requested an increase in the General Rate Schedule Adjustment ("GRSA") portion of base rates to provide \$174.7 million increase in revenues in 2009 to cover investments in the new Unit 3 coal plant in Pueblo (known as "Comanche 3" to Xcel), new gas turbines at Fort St. Vrain, pollution control equipment at the Units 1 and 2 coal plants in Pueblo, new transmission coming from the Pueblo coal plants to the Denver Metro area, additional increases in distribution plant and increased operating and maintenance expenses.

I. INTRODUCTION

A. Xcel's Request for Unprecedented Back-to-Back Rate Increases Can Be Characterized as "Ratemaking by Blitzkrieg"

Colorado is being presented with the apparently unprecedented situation of back-to-back rate increases being filed by Xcel within less than six months time.¹ Each of Xcel's rate filings is thousands of pages long and involves the testimony of over a dozen witnesses, seemingly endless exhibits, the support of an extensive legal team and behind

¹ The first rate increase was filed in November 2008 and is the subject of the present 08S-520E Docket. The second rate increase was filed on May 1, 2009 and is presently referred to as the 09AL-299E Docket. Filings are available from the PUC website under the Docket number at <http://www.dora.state.co.us/PUC/DocketsDecisions/HighprofileDockets/HighprofileDockets.htm>.

that over 1,300 Xcel staff people supporting the effort.² Notably, essentially all of Xcel's rate case expenses (for both rate cases) will be borne by ratepayers. The result of these back-to-back overwhelming rate case filings might be called "Ratemaking by Blitzkrieg."³

B. The Pattern is "Xcel Gets About 60% of What It Asks For"

As might be expected, it appears that the response of the PUC Staff and the Office of Consumer Counsel and the other parties—which can never begin to match the resources that Xcel is bringing to bear on this unprecedented set of rate increase requests—has been one of submission and surrender to the overwhelming inundation of information from Xcel.

The result to date in the first rate increase request in this 08S-520E Docket, has been a proposed "black box" "Settlement Agreement" that would grant Xcel a \$112.2 million increase in the GRSA base rate adjustment—an increase to base rates that can be expected to continue essentially "forever," (although it may change name or form as time goes on). This increase in the GRSA adjustment to base rates is to be contrasted with the quarterly changes to the fuel cost rider known as the Electric Commodity Adjustment ("ECA") which lead to both increases and decreases in electric rates depending on what is happening to the cost of coal and natural gas.

The \$112.2 million included in the proposed "Settlement Agreement" in this 08S-520E Docket grants Xcel about 64% of its original rate request of \$174.7 million.

² Exhibit DEP-1 attached to OCC Witness David Peterson's Answer Testimony (Exhibit 30) is PSCo's response to Discovery Request CPUC 16-4 stating that there are approximately 1,350 employees involved in Xcel Energy's company-wide budget process.

³ Blitzkrieg is the German word for "lightning war" a tactic that Germany used during World War II combining rapid advancement of armored tankers and massive air strikes to quickly subdue an enemy. See e.g. <http://www.2worldwar2.com/blitzkrieg.htm>.

In the 2006 rate filing in Docket 06S-234EG, Xcel asked for \$178.31 million and the case was resolved with a “Settlement Agreement” of \$107 million or approximately 60% of what Xcel requested.⁴

In the latest rate request filed on May 1, 2009, (in what is now the 09AL-299E Docket) Xcel has asked for \$180.2 million above the Settlement Agreement levels in the 08S-520E Docket. If the present pattern of “Xcel gets approximately 60% of what it asked for” is continued, the Commission and the other parties can save a lot of time, trouble and paper by just drafting up a Settlement Agreement that grants Xcel about 60% of \$180 million, or \$108 million and everyone can proceed to claim partial victory.

The pattern of rate case “Settlement Agreements” leading to Xcel getting about 60% of what it asks for is undoubtedly not lost on Xcel. Consequently, like any party entering into a negotiation, the party starts higher than they hope to get and then “settles” for something less—which is likely to be in the range of what they were hoping for all along. As a result, ratemaking at the Colorado PUC has come to take on a similarity to the bartering that occurs daily in markets around the world.

The problem with “black box” settlement agreements (such as the one proposed in this Docket), is that the principles of utility rate-making are left behind and the “settlement agreement” is not logically related to the true cost of service—rather it is just a number agreed to in closed-door negotiation—a number that allows the parties and their counsel to claim that they have achieved something when all that really happened was a back-room negotiation which provides Xcel with \$100 million or more in increased revenue whether it is justified or not.

⁴ See page 3, lines 1-8 of the Answer Testimony of Office of Consumer Counsel witness Dennis Senger in this 08S-520E.

C. The Parties and Their Legal Counsel Can All Claim “Partial Victory”

While Colorado Ratepayers Are Left Paying the Bill

While the pattern of “Xcel gets about 60% of what it asks for” appears to allow all parties to claim a partial victory, the unseen victims, are of course, the vast majority of Xcel’s approximately 1.3 million electric ratepayers in Colorado.⁵ While the large ratepayers such as CF&I Steel and Climax Molybdenum Mines can afford to hire expensive legal representation to attend PUC hearings and partake in Settlement Agreement discussions, and a few other large industrial customers have high-quality legal representation in the form of the Colorado Energy Consumers (“CEC”), the vast majority of Xcel’s Colorado customers must rely on the Staff of the PUC and the Office of Consumer Counsel to protect their interests.

The seriousness of the lack of proper protection for Colorado ratepayers is intensified by the present economic conditions which are often referred to (including by Xcel witness Paul Moul⁶) as “the worst financial crisis in a century.”⁷ If the Commission allows Xcel to continue with this approach of “Ratemaking by Blitzkrieg” the results for every citizen and business in Colorado is likely to be very serious. As tens of thousands of homeowners and businesses that are already on the edge financially are pushed over

⁵ For a breakdown of Xcel’s approximately 1.3 million electric customers, see pages 8-9 of the Direct Testimony of Scott Wilensky. Residential customers make up approximately 1.1 million of the 1.3 million customers. Secondary General customers make up approximately 37,823 customers and include retail businesses, hotels, schools, municipal buildings and light manufacturing plants. Use by these Secondary General customers is greater than the residential customers and they generated slightly more revenue in 2007 (\$858 million) than did the residential class (\$809 million.) Adding up the revenues from the various classes as shown on pages 8 and 9 of Mr. Wilensky’s Direct Testimony, Xcel’s 2007 revenues from Colorado customers totaled a little more than \$2 billion.

⁶ Xcel witness Paul Moul stated on page 30, lines 5-6 of his Direct Testimony that, “The 2008 situation represents the worst financial crisis since the Great Depression.”

⁷ For a summary of present economic conditions, see for example the Answer Testimony of PUC Staff Karlton Kunzie in this 08S-520E Docket—or read any business page from late 2008 or early 2009.

the edge by increased utility bills,⁸ the Colorado economy can be expected to continue suffering, which will place increasing pressure on the state budget which will further strain Colorado citizens and businesses and the downward economic cycle could easily perpetuate itself.

In the beginning, Xcel may appear to be better off from its increased revenue, but in the long run a company that is losing customers at the rate of several thousand a month is not likely to perform well financially in the long run since, of course, just raising rates and cutting off customers is not a sustainable business plan.

D. The Colorado Public Utilities Commission Has So Far Failed to Provide Proper Support for PUC Staff and the OCC to Ensure Protection of Ratepayers' Interests

Given the overwhelming size of the filings associated with Xcel's back-to-back rate increases,⁹ it is essentially impossible for the PUC Staff and the OCC to adequately represent ratepayers—unless of course the PUC Commissioners make it clear that the puc Staff and the OCC have the support they need to provide rigorous oversight on the ratemaking process.

In the present case, not only has the Commission **not** made it clear that it intends to protect average ratepayers, it has sent the following signals that “the coast is clear” for Xcel to proceed with this “Ratemaking by Blitzkreig:”

⁸ In the 07A-447E Docket, Xcel reported that it expected 47,000 customers to have service disconnected between April 2008 and October 2008. See Attachment 8 to the Cross Answer Testimony of Leslie Glustrom in the 07A-447E Docket.

⁹ Speaking from personal experience, the mountain of paper associated with these back-to-back rate increases is so large as to make grown men and women either cry—or just give up; the other parties have given up (though they hide it behind the “Xcel-gets-60%-of-what-it-asks-for-while-we-all-claim-partial-victory-black-box” Settlement Agreement) and this grown women has had to fight back the urge to cry because the task is so overwhelming.... A more sanitized version of the overwhelming nature of Xcel's rate filing is provided in PUC Staff Charles Hernandez Answer Testimony on page 10, lines 1-9.

- The Commissioners decided not to hear the rate case themselves but rather referred the rate increase to an Administrative Law Judge (see Decision C08-1260);¹⁰
- When the Commissioners assigned the rate case to the Administrative Law Judge, they issued an order¹¹ that appeared to indicate they did not intend to oppose the unprecedented use of a “Future Test Year.”
- The Commissioners have engaged in a large number of other activities and dockets¹²—all of which perhaps have merit, but which have sent the signal that the Commission’s attention is elsewhere and it does not intend to provide a rigorous review of Xcel’s back-to-back rate increases.

Without a strong signal that at least a majority of the three Commissioners support an aggressive defense of ratepayers’ interests,¹³ it is very difficult for the vastly outnumbered PUC Staff and the OCC to “hold the line” for ratepayers, since whenever it

¹⁰ The case was referred to an Administrative Law Judge by Decision C08-1260.

¹¹ See ¶ 9 in Commission Decision C08-1260 limiting the nature of testimony related to the Future Test Year. Whether rightly or wrongly, many parties interpreted this ruling from the Commission as indicating that the Commission was inclined to grant Xcel the unprecedented use of a “Future Test Year.” This issue is discussed further in the body of this Statement of Position.

¹² In addition to all the usual business of the Commission, including dockets on the Renewable Energy Standard Compliance (08A-532E), Renewable Energy Standard Rulemaking (08R-424E), Demand Side Management (08A-366EG), Black Hills Resource Plan (08A-346EG), several Gas Demand Side Management Plans (08A-425G, 08A-431G, 08A-433G, 08A-436G), Xcel’s Windsource Program (08A-260E) and Innovative Clean Technology (09A-015E) the Commission has initiated a number of investigatory dockets including 08I-113EG (Utility Rate Incentives), 08I-227E (Electric Transmission Issues), 08I-420EG (Rate Incentives for Customers), 09I-041E (Electric Planning Oversight for Generation Cooperatives) and a number of miscellaneous dockets including 09M-056EG (Utility Involvement in the Economic Stimulus) and 09M-183E (PSCo Phase II Rate Design Issues). Each of these dockets has involved filing several rounds of testimony and has made it impossible for most parties to stay up with the workload—except of course Xcel which has several thousand employees—all paid with ratepayer money—to complete the filings.

¹³ No matter how competent an Administrative Law Judge may be, it is clear that the ALJ often feels constrained by what he or she believes is the will of the Commission and will work to ensure that the outcome of the case matches the signals that have been sent by the Commission.

needs to, Xcel can just hire another attorney or bring on another witness and add the costs to the ratepayers' bill.

With ratepayers paying for the blitzkrieg of information, witnesses and legal motions filed by Xcel to support its unprecedented request for back-to-back rate increases, it can be predicted that sooner or later Xcel will just exhaust the PUC Staff and the OCC and they will capitulate. The only way to begin to even the playing field is if the PUC Staff and the OCC have received a strong message that their efforts to support the public interest will be supported by the Commission. No such strong message has yet been provided by the Colorado PUC with respect to Xcel's unprecedented back-to-back rate increases.

Without strong backing from the Commission, the onslaught of witnesses and testimony can quickly overwhelm even the best of intentions from the PUC Staff and the Office of Consumer Counsel. In the present case, the signals sent by the Commission clearly undermined the will of both the PUC Staff and the OCC. As just one example of how this worked, the OCC recommended in Answer Testimony that Xcel only be granted a revenue increase of approximately \$3.8 million,¹⁴ while the OCC's rebuttal position suggested the slightly higher revenue increase of approximately \$11.1 million,¹⁵ yet the OCC ended up signing a proposed Settlement Agreement at \$112.2 million. While the full set of reasons for OCC's decision may never be known or public, agreeing to a Settlement Agreement that is 10 times or over \$100 million higher than either the party's original or rebuttal position has all the hallmarks of a capitulation. If the OCC had had a

¹⁴ For the OCC's original \$3.8 million increase in revenue requirement recommendation see the Answer Testimony of OCC witness Dennis Senger, page 5, lines 3 through 7.

¹⁵ For the OCC's rebuttal recommendation of \$11.1 million, see the Surrebuttal Testimony of OCC witness Dennis Senger, page 12, lines 1 through 7.

strong signal that the Commission was dedicated to protecting ratepayers' interests, it seems unlikely that OCC would have chosen to capitulate so dramatically.

While it is admirable that the Commission is taking on so many issues related to the transition to the post-fossil fuel world, it is also critical that the Commission give proper attention to its fundamental duties under Colorado Law to protect the public from the monopoly power of utilities and to ensure that all utility rates are “just and reasonable” under Colorado Revised Statutes (“C.R.S.”) § 40-3-101—especially during these extremely difficult economic times. As discussed in this Statement of Position, there are many reasons to question whether the rates applied for by Xcel are “just and reasonable.”

E. Present Economic Conditions Underscore the Need for Aggressive PUC Oversight on Utility Rate Increases; To Date, That Oversight is Essentially Non-Existent

Given the present economic circumstances, it is even more essential that the PUC oversee the charges proposed by Xcel to ensure that Colorado ratepayers are not asked to pay more than is necessary to provide “adequate, efficient, just and reasonable” service and facilities in accordance with C.R.S. § 40-3-101 (2). To date, the Commission has failed to take the necessary actions to ensure that the oversight of rate increases—the Commission’s most fundamental duty—is being properly fulfilled. Unless the Commission changes its approach, there is a great risk that Xcel’s Colorado ratepayers will be asked to pay significantly more than is needed to ensure the financial integrity of PSCo and its parent holding company, Xcel Energy.

II. SUMMARY

To summarize, this Statement of Position respectfully requests that the Colorado PUC:

1) Provide aggressive oversight on the unprecedented request by Xcel for back-to-back rate increases;

2) Examine PSCo and Xcel Energy's financial integrity as represented in their Securities and Exchange Commission filings before granting unnecessary rate relief;

3) Reject the use of a Future Test Year;

4) Not require ratepayers to pay for the Unit 3 coal plant before it is "used and useful."

5) Not approve a depreciation rate based on a 60 year useful life for the Unit 3 coal plant in Pueblo until the Commission has examined the long term supply of coal for the coal plant.

6) Examine the expenses for the pollution upgrades at the Unit 1 and 2 coal plants in Pueblo and ensure that Xcel ratepayers are not paying more than 66% of the costs.

7) Not grant Xcel cost recovery on expenditures for the "Smart Grid City" in Boulder until the Commission has approved a CPCN for the project;

8) Protect ratepayers from paying for excessive rate case expenditures

9) Ensure proper accounting of money spent on the Integrated Gasification and Combined Cycle project;

10) Adjust the Return on Equity to reflect current economic conditions and to reduce Xcel's equity/debt ratio to more closely match other utilities as well as to limit bonuses and pay raises during the present economic crisis.

11) Review the ALJ's decisions on whether the issue of a coal supply for the Unit 3 coal plant is necessary for determining whether the Unit 3 coal plant will be used and useful and therefore properly within the scope of the Docket;

12) Review the ALJ's decisions on whether Ms. Glustrom is allowed to challenge the prudence of the Unit 3 coal plant in accordance with Rule 3613 (d).

III. THE COMMISSION SHOULD CAREFULLY EXAMINE THE NEED FOR AND THE CONSEQUENCES FOR COLORADO RATEPAYERS OF XCEL'S REQUESTED RATE INCREASE BEFORE GRANTING THE INCREASE

Before granting a rate increase to Public Service Company of Colorado, the Commission should review PSCo and Xcel Energy's Securities and Exchange Commission ("SEC") reports in order to assess the financial status of both PSCo and Xcel Energy. Available SEC reports indicate that both Xcel Energy and PSCo are in good financial shape and are not in need of extraordinary rate relief at this point in time.

A. Public Service Company of Colorado's Net Income Has Increased by Approximately \$100 Million—Or 40%--Between 2006 and 2008

Exhibit 77 in the record of this 08S-520E rate case includes excerpts of the "Form 10-K" filed by Public Service Company of Colorado filed with the Securities and Exchange Commission by PSCo on March 2, 2009 and which is described on its cover as an "Annual report which provides a comprehensive overview of the company for the past year."¹⁶

¹⁶ For the description of PSCo's 10-K filed on March 2, 2009, see the cover page of Exhibit 77 in this 08S-520E Docket.

Page 31 in Exhibit 77 provides a consolidated Statement of Income and Expenses for Public Service Company of Colorado and according to this SEC filing, PSCo's net income has increased by almost \$100 million (or about 40%) between 2006 and 2008. This is summarized in Table 1.

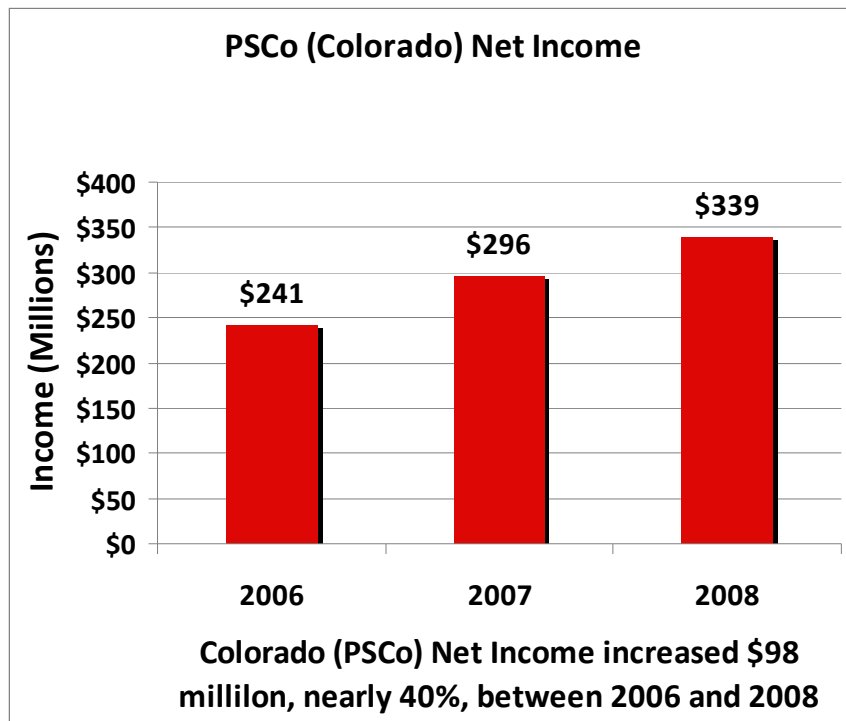
Table 1
Public Service Company of Colorado's Net Income
Reported to the Securities and Exchange Commission 2006-2008
(Data from page 31, Exhibit 77, Docket 08S-520E, Public Service Company of Colorado's 10-K filed March 2, 2009 with the Securities and Exchange Commission.
All numbers rounded down.)

	2006	2007	2008
PSCo Net Income	\$241 million	\$296 million	\$339 million

The increase in PSCo's net income from 2006 until 2008 of approximately \$98 million is about a 40% increase and is depicted graphically in Figure 1.

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Figure 1
Public Service Company of Colorado's Net Income
Reported to the Securities and Exchange Commission 2006-2008
(Data from page 31, Exhibit 77, Docket 08S-520E, Public Service Company of Colorado's 10-K filed March 2, 2009 with the Securities and Exchange Commission.)



With an increase in net income of approximately \$98 million or 40% over a two year period, it is not clear that PSCo is strongly in need of a significant rate increase in 2009.

B. Xcel Energy Inc.’s Net Income Increased Approximately 13% Between 2006 and 2008

Exhibit 76 in the record of this 08S-520E rate increase is excerpts from the Form 10-K filed by Xcel Energy Inc with the Securities and Exchange Commission (“SEC”) and has the title, “Annual report which provides a comprehensive overview of the company for the past year.”¹⁷ Xcel Energy Inc. is the parent holding company for four operating utility subsidiaries, including Public Service Company of Colorado (“PSCo”).

Exhibit 76 (page 82) shows that Xcel Energy Inc.’s income has increased from \$567 million in 2006 to about \$641 million in 2008. This is shown in Table 2. This is an increase of about 13% over the two year period. While the parent holding company has not seen as large an increase in net income as has PSCo, Xcel Energy’s increase has, nonetheless, been substantial—especially in light of the general economic conditions in 2007 and 2008.¹⁸

Table 2
Xcel Energy Inc.’s Net Income Reported to the Securities and Exchange Commission 2006-2008
(Data from page 82, Exhibit 76, Docket 08S-520E, Xcel Energy Inc.’s 10-K filed February 27,2009 with the Securities and Exchange Commission.
All numbers rounded down.)

	2006	2007	2008
Xcel Energy Inc. Net Income	\$567 million	\$573 million	\$641 million

C. PSCo’s Contribution to Xcel Energy’s Earnings Has Grown Substantially in the Last Two Years

¹⁷ See the cover page of Exhibit 76, Xcel Energy Inc.’s Form 10-K submitted to the SEC on February 27, 2009.

¹⁸ See for example the Direct Testimony of Xcel Witness Paul Moul who stated on page 30, lines 5-6 that “The 2008 situation represents the worst financial crisis since the Great Depression.”

The percentage contribution to Xcel Energy Inc.'s earnings by the four subsidiary operating utilities of Xcel Energy are presented on pages 53 and 54 of Exhibit 76 in this 08S-520E Docket which is the Form 10-K submitted by Xcel Energy Inc. to the Securities and Exchange Commission on February 27, 2009. The percentage contribution to Xcel Energy's earnings from Colorado (e.g. PSCo) has grown considerably since 2006 while the contributions of all the other subsidiaries has fallen during that same period. Combined with the fact that PSCo's reported net income has grown by about \$98 million or 40% over that same period further calls into question the need for Colorado ratepayers to provide significant rate relief to Xcel in 2008.

The percentage contribution to Xcel Energy Inc.'s earnings is presented in Table 3 and the results for the two largest utility subsidiaries (PSCo and NSP-Minnesota) are graphed in Figure 2.

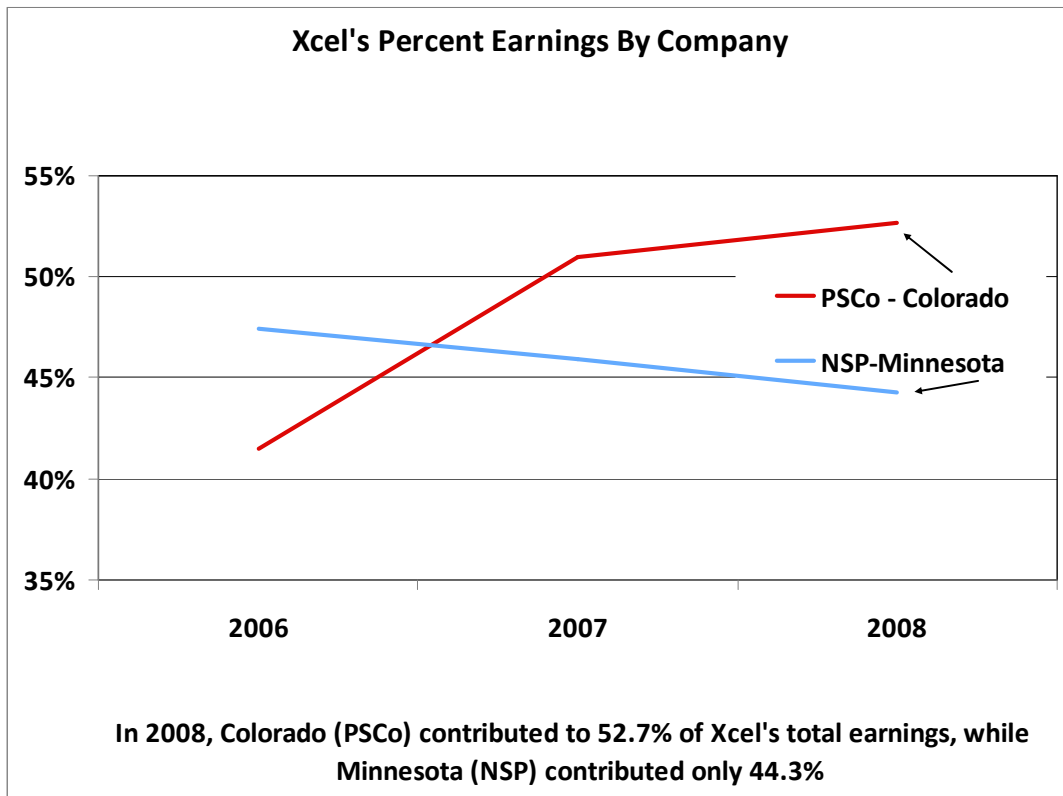
Table 3
Percentage Contribution to Earnings by Xcel Energy Inc.
by the Four Utility Subsidiaries as Reported to the
Securities and Exchange Commission 2006-2008

(Data from page54, Exhibit 76, Docket 08S-520E, Xcel Energy Inc.'s 10-K filed February 27,2009 with the Securities and Exchange Commission..)

Contribution to Xcel Energy Inc.'s Earnings	2006	2007	2008
Public Service Company of Colorado	41.5%	51.0%	52.7%
Northern States Power of Minnesota	47.4 %	45.9%	44.3%
Northern States Power-Wisconsin	7.4%	6.5%	7.1%
Southwestern Public Service (Texas)	8.1%	5.7%	4.9%

Figure 2
Percentage Contribution to Earnings by Xcel Energy Inc.
by the Two Largest Utility Subsidiaries as Reported to the
Securities and Exchange Commission 2006-2008

(Data from page54, Exhibit 76, Docket 08S-520E, Xcel Energy Inc.'s 10-K filed February 27,2009 with the Securities and Exchange Commission..)



Tables 1-3 and Figures 1 and 2 show that PSCo's net income has gone up about 40% and that PSCo's contribution to the increased earnings of Xcel Energy Inc. has gone up substantially (from 41.5% to 52.7%) between 2006 and 2008 while the percentage contribution to earnings from the other three operating utilities has gone down. In short, Colorado has already been contributing very substantially to Xcel Energy Inc.'s earnings

and both Xcel Energy and PSCo have seen substantial increases in their net income in the last two years. **Given the financial data reported by PSCo and Xcel in their SEC filings it is not at all clear that PSCo needs a large rate increase in 2009.**

IV. THE COMMISSION SHOULD REJECT THE “BLACK BOX” SETTLEMENT AGREEMENT

The Commission should reject the proposed “black box” Settlement Agreement as completely failing to provide the transparency that is essential to rational cost of service ratemaking.

A. The Proposed “Black Box” Settlement Agreement Fails to Provide a Transparent, Rational Approach to Ratemaking

The proposed Settlement Agreement takes over 250 megabytes of testimony and exhibits filed by Xcel and the various parties and distills them down to a single “black box” number of \$112.2 million without making any effort to let the Commission or ratepayers know what is being included and what is being excluded in the “black box” number of \$112.2 million.¹⁹

If the proposed Settlement Agreement is accepted, there will be no possible way to test whether Xcel’s projections were accurate because there has been no attempt to provide an accounting of what the \$112.2 million is supposed to be used for.

B. The Proposed “Black Box” Settlement Agreement Fails to Protect Ratepayers At a Time When Ratepayers Are Especially In Need of Protection

The acceptance of a “black box” Settlement Agreement never provides for rational rate making, but it is particularly unacceptable at a time when the economy is in serious crisis and when ratepayers are struggling in a host of ways including declining

¹⁹ The proposed Settlement Agreement is Exhibit 50 in Docket 08S-520E.

property values and “upside down” mortgages, lost jobs, a stagnant economy, inadequate health care, increased cost-of-living and great financial uncertainty.

The acceptance of a “black box” Settlement Agreement is also unsupportable while both PSCo and Xcel Energy Inc. are in solid financial shape as demonstrated by their filings with the Securities and Exchange Commission.

C. The Proposed “Black Box” Settlement Agreement Fails To Fulfill the Commission’s Fundamental Duty of Ensuring that Rates are Just and Reasonable

The acceptance of a “black box” Settlement Agreement that takes money out of ratepayers pockets and gives it to Xcel for who knows what—just because Xcel asked for an increase—hardly fulfills the Commission’s fundamental duty of ensuring that all rates are just and reasonable in accordance with C.R.S. § 40-3-101.

D. Settlement Agreements May be Desirable for Parties That Have Hired Expensive Counsel, but They Leave Most Ratepayers Inadequately Represented and Protected

A driving force behind Settlement Agreements can be the parties’ desire to avoid the work and high level of stress associated with a formal adjudicated hearing. This driving force can be especially true in the case of intervenors who hire expensive attorneys to represent them. If the attorney can present a “Settlement Agreement” that reduces a rate increase without requiring the client to pay a large attorney’s fee for the hours spent sitting in the adjudicated hearing, then both the attorney and the client can feel that a “good days work was done.” The attorney gets a nice fee for negotiating the Settlement Agreement and the client feels that they did something to reduce utility rates without spending an excessive amount.

The desire of highly-paid attorneys to reach a negotiated settlement so that they can keep their clients bill lower can in turn put pressure on other parties who are also probably not looking forward to the work and stress of going through a formal hearing and writing one or more lengthy Statements of Position and possibly appeals. In addition, of course, highly paid attorneys tend to be persuasive arguers (which is why they are highly paid attorneys...)—and pretty soon the allure of a potential Settlement Agreement combined with the natural human desire to avoid large amounts of work and stress can lead a large number of parties to agree to a proposed Settlement as long as it appears that everyone can claim partial victory. This basic pattern has been repeated many times at the Colorado PUC.

The problem, of course, is that only very large ratepayers can afford to hire expensive attorneys to represent them at the PUC since attorneys fees are generally several hundred dollars an hour. As a result, small ratepayers tend to be underrepresented in PUC proceedings and in Settlement negotiations. In theory, the Staff of the PUC and the Office of Consumer Counsel are supposed to ensure proper representation for small ratepayers, but when Xcel has essentially bottomless pockets for testimony, witnesses and legal expenses (because ratepayers will pay essentially all of the expenses), it is essentially impossible for PUC Staff and the OCC to “hold the line,” especially if they have not received a strong signal of support from the Commission and if they have many other dockets also requiring large amounts of work—which is, of course, often the case and is certainly the case in early 2009. Without strong support from the Commission, a Settlement Agreement that appears to provide at least partial victory becomes increasingly attractive.

While a “Settlement Agreement” may appear to be a win-win situation, it fails to provide a transparent, rational rate making process and it also tends to leave the interests of small ratepayers inadequately represented.

E. Statements of Support for the Proposed Settlement Agreement by Staff and the OCC Appear to be Merely Hollow Statements of Resignation in the Face of an Opponent of Overwhelming Size

Attached to the Answer Testimony of OCC witness David Peterson is Exhibit DEP-1 which is Xcel’s response to Discovery Request CPUC 16-4 and which notes that “There are approximately 1,350 employees involved in the Xcel Energy company-wide budget process.”²⁰ While Xcel has over 1,300 employees working on the budgeting needed for the proposed rate increase, PUC staff and OCC have, at best, a handful of analysts and witnesses working on this docket. In the face of overwhelming odds, it is only normal for overworked and underpaid public servants to support a proposed “Settlement Agreement” that appears to allow everyone to claim partial victory.

While PUC Staff witnesses Charles Hernandez and Harry Di Domenico and OCC witness Senger testified that the proposed “Settlement Agreement” was in the public interest, these statements were not supported by extensive analysis or justification. They appear to be merely hollow statements of support for a Settlement Agreement that appears to have done something useful (e.g. reduce Xcel’s requested rate increase from \$174.7 million to \$112.2 million—or given Xcel about 64% of what it asked for.) Yet, as discussed in these witnesses testimony, and as summarized in this Statement of Position, there are many reasons to question the need for Xcel’s rate increase and there are numerous problems associated with the proposed “black box” “Settlement Agreement.

²⁰ See Exhibit DEP-1 attached to Exhibit 30, the Answer Testimony of OCC witness David Peterson.

As discussed above, the OCC’s rebuttal case called for an increase of \$11.1 million for PSCo and yet the OCC ended up signing a Settlement Agreement that provided over 10 times that amount of annual revenue to Xcel. Whatever the reasons for the OCC’s decision, signing a Settlement Agreement that provides Xcel with a rate increase that is 10 times larger than your largest previous proposal, can hardly be called a “victory.” Rather, the OCC’s position appears to be the result of the resignation that comes from facing a vastly larger and better funded opponent—particularly when the Commission appeared to signal in Decision C08-1260 that it was prepared to allow Xcel to proceed with a Future Test Year.

F. While the Proposed Black Box Settlement Claims to Be Silent on the Issue of Test Year, It is Essentially Impossible to See How a Settlement Agreement of \$112.2 Million Could Be Arrived At Using the Standard Historical Test Year

While the proposed Settlement Agreement does not specify a resolution of the Future vs. Historical Test Year issue, it would be very hard to get to a Settlement Agreement of \$112.2 million using the principles of a Historic Test Year since Xcel’s case for the Historic Test Year was only \$69.9 million.²¹ So, while the proposed “black box” Settlement Agreement is “silent” on the issue of test year, implied in the proposed Settlement is an amount that likely only could be achieved using a Future Test Year concept and as discussed below, the use of a Future Test Year has numerous risks for regulators and ratepayers alike.

²¹ For the Historical Test Year amount see for example, the Answer Testimony of Charles Hernandez , page 3, lines 4-7.

G. PUC Staff and OCC Witnesses Acknowledged That They Had Not Reviewed Xcel’s SEC Filings in Detail Before Signing the Settlement Agreement

Under cross examination, PUC Staff witness Hernandez and Di Domenico and OCC witness Senger all testified that they had not carefully reviewed Xcel’s SEC reports before signing the Settlement Agreement.²² As a result, the witnesses were not well aware of the financial status of PSCo or Xcel Energy Inc. as reported to the SEC and as discussed above.

H. The Proposed Settlement Agreement Requires Ratepayers to Pay for the Unit 3 Coal Plant Before It Is In Service and “Used and Useful”

Under the proposed Settlement Agreement (page 9), it is assumed that the Unit 3 coal plant goes into service on November 1, 2009 and that 2/13ths of the plant in service balance for Unit 3 (“Comanche 3” to Xcel) “has been included in the rate base upon which the settled rate increase was determined.” At best, this is a gross violation of the fundamental principle of utility ratemaking that ratepayers should not pay for utility assets unless they are “used and useful.”²³

Under the proposed Settlement Agreement, ratepayers would begin paying for the Unit 3 coal plant in July 2009 while at best it might go into service in November 2009. If there is slippage in the schedule or there are other issues (such as the “case-by-case

²² See the Cross Examination of PUC Staff witness Charles Hernandez and OCC witness Dennis Senger by Leslie Glustrom on Friday April 24, 2009 (Volume II of the Hearing Transcripts, pages 123-124 and pages 115, 117, respectively) and the Cross Examination of PUC Staff witness Harry Di Domenico by Leslie Glustrom on Monday April 27, 2009 (Volume II of Hearing Transcripts, page 71+).

²³ The “used and useful” principle is discussed on page 5 of PUC Staff Witness Harry Di Domenico’s Answer Testimony, which is Exhibit 43.

mercury MACT” issue discussed below), ratepayers will be paying for an asset regardless of if or when it comes into service.

H. PUC Staff and OCC Witnesses Acknowledged That They Had Not Been Informed of the Mercury Air Permit Issues Before Signing the Settlement

Agreement

As discussed further below, there is a question related to whether the Unit 3 coal plant will be able to obtain what is referred to as a case-by-case mercury Maximum Achievable Control Technology (“MACT”) permit²⁴ in time for the Unit 3 coal plant to go into service on November 1, 2009 as assumed on page 9 of the proposed Settlement Agreement. This is one of the many reasons why it is inappropriate to have ratepayers begin to pay for a coal plant in July 2009 when it is unlikely the coal plant will come on line before November 1, 2009—and there is significant reason to question whether it will come on line then. PUC Staff Witness Hernandez and OCC witness Senger both testified that they had not been told by Xcel that this issue might exist before agreeing to the proposed Settlement Agreement.

I. The Public Testified Strongly on Two Occasions About Not Accepting “Back-Room, Black-Box” Settlement Agreements

On April 20, 2009 and April 27, 2009, many members of the public testified strongly against the acceptance of the proposed “back-room, black-box” Settlement Agreement. A Settlement Agreement that has been negotiated behind closed doors and which fails to enumerate what the \$112.2 million in increased revenue will be used for is

²⁴ See for example Exhibits 54 and 56 discussing the need for a case-by-case mercury MACT permit for the Unit 3 coal plant.

an anathema to transparent regulation and makes a mockery of the name *Public Utilities Commission*. No one at the public hearings testified in favor of the proposed Settlement Agreement.

V. THE COMMISSION SHOULD REJECT THE USE OF A FUTURE TEST YEAR

Given the present financial integrity of both PSCo and Xcel Energy Inc. as well as the multitude of problems associated with the use of a Future Test Year including the fundamental inability for projected costs to be “known and measurable,” the incentive for PSCo to inflate projected costs, the loss of transparency and the increase in rate-making expenses associated with a Future Test Year, the Commission should reject Xcel’s proposal to use a Future Test Year. Rather the Commission should use the Historic Test Year, as the Colorado PUC has long done.²⁵

The issues related to the use of a Future Test Year (FTY) instead of the standard Historic Test Year (“HTY”) used traditionally in Colorado were well briefed by Office of Consumer Counsel witness David Peterson.²⁶ In addition, the problems associated with acceleration of cost recovery under the Future Test Year and the difficulties aligning with

²⁵ In this 08S-520E Docket, the Historic Test Year would cover the fiscal year ended June 30, 2008 while the Future Test Year is a 13 month period from December 1, 2008 through December 30, 2009.

²⁶ See the Answer and Surrebuttal Testimonies of OCC witness David Peterson.

traditional rate-making principles were well described by PUC Staff Witnesses Charles Hernandez,²⁷ and Harry Di Domenico,²⁸ respectively.

A. The Office of Consumer Counsel Strongly Recommended Not Using a Future Test Year

Mr. Peterson's Answer Testimony noted the following:

- The use of a Future Test Year makes it impossible to verify that rates are based on “the utility’s actual and verified costs that are prudently incurred.”²⁹
- “Any claim that rates established using the forecasted test year will more closely match costs to be experienced in the rate effective year is presumptuous and cannot be proven until after the rate effective year has been completed. This is particularly troubling in this case where PSCo has already announced that it will soon be filing another base rate increase to become effective on or shortly after January 1, 2010. ”³⁰
- “For Dr. Fox-Penner’s conclusion concerning the matching of rates with costs to be true, the utility would have to possess perfect prescience on sales and costs to be incurred during the prospective rate effective period. That is, if future service costs are known rather than forecasted there would be no controversy as to the appropriate test year. Prescience, however, is not reality. No one can definitively prove that the projections embodied in PSCo’s forecasted test year will accurately reflect the cost of providing service during the rate effective period or

²⁷ See the Answer Testimony of PUC Staff Witness Charles Hernandez, especially pages 1-12.

²⁸ See the Answer Testimony of PUC Staff Witness Harry Di Domenico, especially pages 4-7.

²⁹ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 4, lines 11-12.

³⁰ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 4, lines 13-18.

that rates based on PSCo's forecasted costs will actually provide accurate price signals to ratepayers.”³¹

- “Thus the real question that should be asked relative to the type of test year that should be used is: Are the revenues and costs that are to be considered in the rate setting process accurate, reliable and verifiable? By their very nature, forecasts cannot be verified until after the fact.”³²
- “An actual test year, on the other hand, is based on accurate, reliable, and verifiable operating conditions and costs. The results of an actual test period already have been recorded on the Company's books and can be verified. There can be disagreements over whether costs incurred during the historic period were reasonable, necessary, prudent, and are recurring, but there is little room for debate that such costs were actually incurred.”³³
- “That is, there is no mention by Dr. Fox-Penner as to the Commission, the Commission Staff, the OCC, and other intervenors having adequate time, capability and resources (both financial and information) that are necessary to critically evaluate all of the assumptions and projections made by over 1,300 utility personnel that are incorporated into PSCo's 2009 forecasted test year revenue requirement calculation.”³⁴
- “Dr. Fox Penner's confidence [regarding the Commission's ability to monitor actual outcomes and flag questionable data] is not so reassuring; at least not to

³¹ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 9, lines 4-12.

³² See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 9, lines 15-20.

³³ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 10, lines 4-9.

³⁴ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 11, lines 8-13.

me. There is no such process currently in place to monitor outcomes after the fact. Nor am I aware that PSCo is even proposing such a monitoring process.³⁵

- “Forecasted test years are also inherently costly because they are difficult to prepare, document, investigate and verify- not just for the utility but for regulators and intervenors as well. Thus the total cost of processing a rate case can be expected to increase significantly. This is an unnecessary cost increase that ultimately will be borne by ratepayers.”³⁶
- “Regardless of how much effort the parties and the Commission expend attempting to verify the validity and reasonableness of the assumptions relied on by PSCo in projecting revenues and costs for a future period, the task is simply unachievable. This elevates PSCo to an undesirable position of virtually allowing the utility to set its own revenue requirement. And, since presently there is no meaningful reconciliation of PSCo’s forecasts to actual results with consequences for unfavorable forecasting errors, PSCo has a built-in incentive to overstate its revenue deficiency in each and every rate proceeding. This is contrary to the notion that regulation should be transparent and that public utility rates should be based on provable costs.”³⁷
- “...mere budgeted items should not be considered sufficient to meet the known and measurable test.”³⁸
- “Regulatory lag is often maligned by utilities when it works against them.

Nevertheless, regulatory lag is an intended incentive-based feature of cost of

³⁵ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 12, lines 1-3.

³⁶ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 13, lines 4-8.

³⁷ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 14, lines 5-14.

³⁸ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 16, lines 6-7.

service/rate of return regulation and serves an important function. In fact, the incentive provided to utilities by regulatory lag is one of regulators most powerful tools.”³⁹

- “...regulatory lag is one of the hallmarks of cost of service regulation, not an unintended consequence of that form of regulation.”⁴⁰
- “Moreover, the Colorado Commission already has taken significant steps for PSCo to alleviate attrition which can result from regulatory lag...[including] the special rate riders the Colorado Commission has approved for PSCo which provide more current cost recovery than what is otherwise available through a base rate proceeding.”⁴¹
- “Together, the special rate riders, the Service and Facilities charges, and the lamp fixture charges account for approximately 65 percent of PSCo’s annual revenues...Therefore, the Colorado Commission already has gone a long way to protect PSCo against earnings attrition, which Dr. Fox-Penner claims was the original motivation for using forecasted test years.”⁴²
- “To that end, I cannot think of a single industry other than regulated public utilities where the producer has pricing mechanisms in place that provide recovery for 65 percent of its annual revenue requirement, regardless of customer usage!”⁴³

³⁹ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 18, lines 11-15.

⁴⁰ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 19, lines 10-11.

⁴¹ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 19, lines 12-16.

⁴² See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 20, line 10 through page 21 line 2 .

⁴³ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 21, lines 15-18.

- “Dr. Fox-Penner’s conclusion that this is an especially appropriate time to adopt a forecast test year also ignores the economic and regulatory climate that PSCo’s ratepayers face. Effective regulation requires regulatory transparency. Ratepayers deserve rates that are based on provable costs and not those that are based on the utility’s notion of its own revenue requirement.”⁴⁴
- “Given this much uncertainty at this time, one has to question whether PSCo, or anyone else for that matter, can accurately predict, even in the near term, the fallout from the current recession and its effect on the prices PSCo will pay for supplying services to its customers and the customers’ response to rising utility rates in the midst of the economic crisis.”⁴⁵
- “Again, with this much uncertainty, my conclusion is the exact opposite of Dr. Fox-Penner’s. This is an especially appropriate time for regulators to provide more transparency in the regulatory process by requiring that utility rates reflect actual, reliable and verifiable service costs. This can be accomplished by using an actual test year with selective adjustments for known and measurable changes.”⁴⁶

Mr. Peterson’s Surrebuttal Testimony responds to the claims of Xcel witnesses Dr. Peter Fox-Penner and Mr. Scott Wilensky that “a forecasted test year results in a better matching of utility rates with the costs of providing service during that period and that the Commission should trust that PSCo’s budgeting and forecasting processes are reasonable, reliable and accurate by noting that “Essentially all of the

⁴⁴ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 22, lines 1-5.

⁴⁵ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 22, lines 9-13.

⁴⁶ See Exhibit 30, the Answer Testimony of OCC witness David Peterson, page 22, lines 14-18.

arguments raised by those two witnesses concerning forecasted and actual test years were considered and discussed in my earlier testimony.”⁴⁷

Mr. Peterson’s Surrebuttal Testimony goes on to state:

In fact, many of the same arguments raised by PSCo witnesses in this proceeding were considered and rejected by the Commission in PSCo’s 1993 rate proceeding, Docket No. 93S-001EG, when PSCo had also requested a rate increase based on a forecasted test year.⁴⁸

After responding to other claims made by PSCo witnesses, Mr. Peterson concluded:

The Colorado Commission should continue to set rates based on the utility’s actual and verifiable costs using an actual test year adjusted for known and measurable post-test year changes. Rates set on this basis are fair to both utility and to ratepayers.⁴⁹

B. While Not Opposing a Future Test Year, PUC Staff Expressed Strong Concerns Associated with Using a Future Test Year

The issues related to using a Future Test Year were also outlined by PUC Staff Witnesses Charles Hernandez and Harry Di Domenico. While the Staff Testimony was sprinkled with almost *non-sequitur* statements indicating that Staff “did not oppose” the Future Test Year, a significant amount of PUC Staff Testimony described the Staff’s concerns with the Future Test Year concept.

PUC Staff Witness Charles Hernandez noted:

- “PSCo’s rate case filing represents a significant departure from previous rate cases that used historic test year (“HTY”) information to set base rates.”⁵⁰
- “In this docket, PSCo is requesting to change from a HTY to a FTY, which will have a significant impact in determining the cost of service and the

⁴⁷ See Exhibit 31, the Surrebuttal Testimony of OCC witness David Peterson, page 2.

⁴⁸ See Exhibit 31, the Surrebuttal Testimony of OCC witness David Peterson, page 2, lines 3-7.

⁴⁹ See Exhibit 31, the Surrebuttal Testimony of OCC witness David Peterson, page 7, lines 16-19.

⁵⁰ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 2, lines 21-22.

ability for Staff and the other intervenors to recommend just and reasonable rates based on PSCo's projections.”⁵¹

- “By analogy, my assessment is that PSCo is placing the ‘cart before the horse.’ PSCo’s pancaking back-to-back FTY rate cases is placing the Commission (and Staff and the other intervenors) in an awkward position of deciding the merits of PSCo’s forecasting processes, yet not affording the Commission (and Staff and other intervenors) the opportunity to test the accuracy of the projections provided in this case ‘after-the-fact’ or in 2010.”⁵²
- “Comparing the HTY to the FTY, PSCo achieves 29 months of accelerated rate relief.”⁵³
- “The 2009 books and records are not available for inspection until May 2010; accordingly, Staff will not be able to assess the accuracy of the projections provided in this case until mid-2010, which assessment will follow the implementation of FTY rates in the succeeding rate case.”⁵⁴
- “Staff’s ability to review PSCo’s HTY results was limited due to the time frame and magnitude of the entire application....In short, Staff opted not to expend an exorbitant amount of resources reviewing PSCo’s HTY results in light of the Commission’s guidance in Decision C08-1260.”⁵⁵
- “PSCo’s application is overwhelming given the mass of prefiled direct testimony and exhibits. The task of assessing, absorbing, questioning, challenging, and understanding the processes is daunting. Complex, intricate

⁵¹ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 4, lines 1-5.

⁵² See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 4, lines 14-21.

⁵³ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 5, lines 15-17.

⁵⁴ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 5, lines 18-22.

⁵⁵ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 9, lines 6-12.

worksheets from system generated reports, in addition to the layers of personnel and counsel involved were all condensed into testimony and exhibits submitted by twelve seasoned executives with a plethora of regulatory experience.”⁵⁶

While Staff testimony claims to “not oppose” the FTY, Staff’s concerns about use of a FTY are obvious from passages such as those of Mr. Hernandez. In addition, as noted by Mr. Hernandez on page 9 of his testimony, the “Commission’s guidance in Decision No. C08-1260” led staff to limit its review of the HTY and instead focus on the FTY. It appears that the Commission “guidance”—which, rightly or wrongly, was interpreted as support for using a FTY—led Staff to focus on and “not object to” a FTY, despite Staff’s considerable concerns about the FTY and that the “pancaking” of back-to-back rate increases was a case of putting the “cart before the horse,” in the words of Mr. Hernandez.

PUC Staff witness Harry Di Domenico provided an excellent summary of ratemaking principles⁵⁷ and also described the challenges of using a FTY including the risk of using potentially inaccurate cost projections and the inability to examine the quality of the budgeting process until actual data becomes available.⁵⁸

In the present case, the actual data for Xcel’s 2009 costs won’t be available until approximately May 2010, at which point the second of the back-to-back rate increases could be in effect. The result is likely to create a maze that no one will be able to

⁵⁶ See Exhibit 57, PUC Staff Witness Charles Hernandez Answer Testimony, page 10, lines 3-9.

⁵⁷ See Exhibit 43 the Answer Testimony of PUC Staff Witness Harry Di Domenico, pages 5-6.

⁵⁸ See Exhibit 43 the Answer Testimony of PUC Staff Witness Harry Di Domenico, page 7, lines 2-6.

penetrate very effectively, and the ability of Colorado regulators and ratepayers to ensure that rates are based on known, measurable and verifiable expenses will be essentially lost.

C. Confusion, Even Among Xcel Witnesses Regarding Budget Details Underscores the Problems With Using a Future Test Year

The difficulties of using a Future Test Year were also highlighted in cross examination of several Xcel witnesses. For example:

- Xcel witness Teresa Madden who is Vice President and Controller for Xcel Energy Services was unable to provide details on the exhibit she sponsored TSM-4.⁵⁹
- Xcel witness Amy Stitt was unable to answer several questions on an exhibit she sponsored, ALS-1, because the issues belonged in the area of expertise of another witness.⁶⁰
- Exhibits sponsored by Xcel witness Tim Brossart were extremely confusing and difficult to follow.⁶¹
- Exhibits sponsored by Xcel witness Mark McCloskey were extremely confusing and difficult to follow.⁶²

Xcel's Direct Testimony alone included approximately 60 exhibits—many of which were 50-100 pages long. If these exhibits are not perfectly transparent and if even Xcel witnesses cannot answer simple questions clearly at the time that the exhibits are first before the Commission, it appears likely that it will be essentially impossible to

⁵⁹ See Cross Examination of Xcel witness Teresa Madden by Ms. Glustrom on Friday April 24, 2009, Volume II of Hearing Transcripts, page 130.

⁶⁰ See the Cross Examination of Xcel witness Amy Stitt by Ms. Glustrom on Friday April 24, 2009, Volume II of the transcripts, pages 184-187.

⁶¹ See the Cross Examination of Xcel witness Tim Brossart by Ms. Glustrom on Monday April 27, 2009, Volume III of the Hearing Transcripts, pages 121-135.

⁶² See the Cross Examination of Xcel witness Mark McCloskey by Ms. Glustrom on Monday April 27, 2009, Volume III of the Hearing Transcripts, pages 138-147.

untangle the web of accounts and transactions 12-24 months from now in a review of the accuracy of Xcel's Future Test Year projections presented in this Docket. All of this will be compounded by the rate increase and rate changes filed on May 1, 2009 by Xcel in what is referred to presently as the 09AL-299E Docket.

Layers upon layers of data and confusion certainly does not provide for the maximum transparency that OCC witness Peterson called for and creates great risk that the rates charged to ratepayers will not accurately reflect Xcel's true cost of service. While such an outcome is never desirable, it is particularly troubling given that we are, according to several witnesses including Xcel witness Moul, going through the "worst financial crisis since the Great Depression."⁶³

D. While Xcel Desires a Future Test Year, Using a Future Test Year Holds Great Risks for Regulators, Intervenors and Ratepayers and Does Not Appear to Hold Any Benefit for Ratepayers—Particularly in These Difficult and Uncertain Economic Times

In summary, the FTY holds many risks for regulators and ratepayers and while Xcel prefers the FTY at this point in time, it does not appear to provide any benefit for ratepayers—particularly given both the uncertain economic times and PSCo and Xcel Energy Inc.'s basically solid financial position as presented in their reports to the Securities and Exchange Commission.

VI. THE COMMISSION SHOULD NOT REQUIRE RATEPAYERS TO PAY FOR THE UNIT 3 COAL PLANT BEFORE IT IS "USED AND USEFUL"

A fundamental principle of utility ratemaking is that ratepayers should not have to pay for a utility asset until the asset is in service and "used and useful."⁶⁴ The earliest that the Unit 3 coal plant is likely to go into service is October or November 2009 according

⁶³ See the Direct Testimony of Xcel witness Paul Moul, page 30, lines 5-6.

⁶⁴ See the Answer Testimony of PUC Staff Witness Harry Di Domenico, page 5, lines 16-19.

to Xcel Witness Steve Hjermsstad's Revised Exhibit SH-8, dated April 15, 2009. Given that Xcel has just filed another rate increase request in what is now Docket 09AL-299E with a requested Future Test Year of 2010, it would be much more logical for the issue of cost recovery for the Unit 3 coal plant to be addressed in the next rate case after it is known if and when the Unit 3 coal plant has come on line.

In addition to Xcel's acknowledgement that the Unit 3 coal plant is not likely to come on line until late in 2009 at the earliest, there are several other reasons to postpone consideration of cost recovery until the next rate increase request is reviewed. These include:

1) The Unit 3 coal plant is completely unneeded to meet even the peak load in 2009 according to Xcel's February 2009 Loads and Resources Table found in Exhibit 63. According to Exhibit 63, Xcel will have 122 MW of excess capacity on top of the 16% reserve margin above the projected 2009 peak load. Peak load typically occurs in mid-summer (e.g. July) and loads in October and November (when Xcel is proposing to bring on the Unit 3 coal plant) can be expected to be substantially lower than the peak load. Since the Unit 3 coal plant will be completely excess capacity in 2009, there is no need to begin charging ratepayers for the Unit 3 coal plant in July 2009.

2) Decision C05-0049 approving the Certificate of Public Convenience and Necessity for the Unit 3 coal plant noted that the coal plant was approved to be "in service" in 2010. In footnote 2 on page 4 of Decision C05-0049 the Commission stated:

As represented in Attachment D, the in-service date for Comanche 3 will be during 2010.⁶⁵

⁶⁵ See footnote 2, page 4, Decision C05-0049 approving the CPCN for the Unit 3 coal plant.

Since the Decision granting the CPCN for the Unit 3 coal plant specified that the Unit 3 coal plant in-service date was to be in 2010 and the Unit 3 coal plant is certainly not needed to meet Xcel's load in 2009, then there is no reason to believe that the Commission should approve ratepayers paying for the Unit 3 coal plant in 2009.

3) The schedule for the Unit 3 coal plant has been slipping at a regular rate since the rate increase was filed on November 14, 2008. This slippage is documented in Exhibits 58 and 59 as well as in Xcel witness Steve Hjermstad's revised Exhibit SH-8 dated April 15, 2009. When the rate case was filed in November 2009, first fire on coal was expected in mid-June 2009. As of April 15, 2009 first fire on coal is expected in mid-September 2009. It is impossible to know what further slippage there may be in the schedule for the Unit 3 coal plant—but since it is not needed in 2009 and not authorized to be in-service in 2009, there does not appear to be any reason why ratepayers should begin paying for the coal plant as early as July 2009.

4) Hearing Exhibits 54 and 56 document the need for Xcel to obtain what is referred to as a "case-by-case mercury Maximum Achievable Control Technology ("MACT")" permit for the Unit 3 coal plant. Given the contentious nature of air permits for coal plants (and since the Unit 3 coal plant is presently permitted to emit over 2 pounds of mercury a week⁶⁶) it is possible that the need to obtain a case-by-case mercury MACT permit could further delay the in-service date of the Unit 3 coal plant—yet another reason why ratepayers should not be asked to begin paying for the Unit 3 coal plant in July 2009.

⁶⁶ See Attachment 78 to the Answer Testimony of Leslie Glustrom detailing all of the hazardous air pollutants that the Unit 3 coal plant is expected to admit on page 7.

VII. THE COMMISSION SHOULD NOT APPROVE A 60-YEAR DEPRECIATION LIFE FOR THE UNIT 3 COAL PLANT

Xcel has requested and the proposed Settlement Agreement has included a provision for approving a depreciation rate for the Unit 3 coal plant in Pueblo (“Comanche 3” to Xcel) based on a useful life of 60 years.⁶⁷

Exhibit 84 is Xcel witness Lisa Perkett’s response to Discovery Request LWG 11-12 and notes that:

The depreciation rate is established based on the expected useful life of the asset.⁶⁸

Ms. Perkett’s response goes on to detail the FASB (Financial Accounting Standards Board) and FERC (Federal Energy Regulatory Commission) rules related to depreciation rate and the useful service life of an asset.

In order for the Commission to establish a depreciation rate for the Unit 3 coal plant it needs to ensure that the coal plant will be useful for the requested 60 year life. In order for a coal plant to be useful as a coal plant it needs to have a long term supply of coal. Xcel has provided no information on the long-term coal supply for the Unit 3 coal plant and freely admitted so during the adjudicated hearing in this Docket.⁶⁹

Before approving a depreciation rate for the Unit 3 coal plant that, by accounting practice and FERC regulation is to be based on the useful life of the coal plant, the Commission should undertake an investigation of the availability of coal supplies for the Unit 3 coal plant for its requested 60 year life span.

⁶⁷ See the Direct Testimony of Xcel witness Lisa Perkett, page 16, lines 17-18.

⁶⁸ See Exhibit 84 for Ms. Perkett’s description of depreciation rate.

⁶⁹ See the Cross Examination and Redirect Examination of Xcel Witness Lisa Perkett on Monday April 27, 2009, Volume III of the Hearing Transcripts, pages 166-175.

VIII. THE COMMISSION SHOULD REVIEW EXPENSES RELATED TO UNIT 1 AND 2 POLLUTION CONTROL EXPENDITURES TO ENSURE XCEL RATEPAYERS ARE NOT BEARING MORE THAN THEIR SHARE

The amount that the Unit 3 partners (Intermountain Rural Electric Association or “IREA” and Holy Cross Energy or “HCE”) have paid for the pollution upgrades at the Unit 1 and 2 coal plants in Pueblo is a confidential number.⁷⁰ Since the pollution control upgrades at Units 1 and 2 were an integral part of building the Unit 3 coal plant, and since Xcel will only own 2/3 or 500 MW of the Unit 3 coal plant, Xcel ratepayers should not be expected to pay more than 2/3 or 66% of the costs of the pollution upgrades at Units 1 and 2. The Commission should review the cost arrangement on paying for the Units 1 and 2 pollution control upgrades and ensure that Xcel ratepayers are only paying for their 66% share of the pollution upgrades.

IX. THE COMMISSION SHOULD NOT ALLOW COST RECOVERY FOR SMART GRID EXPENSES UNTIL A CPCN HAS BEEN GRANTED

Xcel has made expenditures on the “Smart Grid City” in Boulder, Colorado and is beginning to seek cost recovery for those expenses in this 08S-520E Docket.⁷¹ There are many issues related to what does and does not constitute a truly “Smart Grid” and Xcel has acknowledged that it has never done a “Smart Grid” application in Colorado before and yet is does not have a CPCN for the Smart Grid City work.⁷²

To ensure that the equipment being installed by Xcel will be of appropriate quality and have the “interoperability” characteristics that are critical to the long term

⁷⁰ See the Cross Examination of Xcel witness Karen Hyde by Ms. Glustrom on Tuesday April 28, 2009. Hearing Transcript Volume IV, page 161-182.

⁷¹ See the Direct Testimony of Xcel witness Scott Wilensky, page 14, lines 17-20.

⁷² See the Cross Examination of Xcel witness Scott Wilensky by Ms. Glustrom on Friday April 24, 2009, Hearing Transcript Volume II, pages 50-53.

function of a “smarter grid,” the Commission should not allow Xcel to gain cost recovery on its Smart Grid expenses until the Commission has approved a formal CPCN for this work.

X. THE COMMISSION SHOULD NOT ALLOW EXCESSIVE RATE CASE EXPENSES

Given the concern about the increased costs of a Future Test Year approach and the OCC testimony that rate case expenses are 55% higher than in 2006,⁷³ the Commission should review the rate case expenses carefully and ensure that ratepayers are not being required to pay for excessive costs related to rate cases. Again, when the Company has over 1,300 employees working on the company-wide budgeting process and the Company appears to have bottomless legal pockets, fielding a large team of witnesses, attorneys and legal assistants to execute a rate increase that it isn’t even clear is needed, then the Commission should take extra precautions to protect ratepayers from excessive rate case expenses.

XI. THE COMMISSION SHOULD ENSURE PROPER ACCOUNTING TREATMENT OF EXPENSES FOR “IGCC” RESEARCH

The treatment of the expenses incurred for the Integrated Gasification and Combined Cycle (“IGCC”) work is unclear.⁷⁴ The Commission should ensure that these expenses are handled in accordance with Generally Accepted Accounting Principles as outlined by PUC Staff witness Bridget McGee-Stiles in her Answer Testimony.

XII. OTHER ISSUES FOR COMMISSION REVIEW

Other issues that the Commission should consider before approving any requested rate increase in this Docket include:

⁷³ See the Surrebuttal Testimony of OCC witness Dennis Senger, page 4, lines 14-15.

⁷⁴ See the Cross Examination of PUC Staff Witness Bridget McGee-Stiles on Tuesday April 28, 2009.

- A Return on Equity that reflects the present economic conditions and the fact that as much as 65% of Xcel's income is covered by various riders and other mechanisms, greatly reducing its risk.
- A equity/debt ratio that is more in keeping with the rest of the utility industry, including Xcel Energy Inc. and Northern States Power of Minnesota.
- The disallowance of excessive bonuses and pay raises for Xcel employees during these difficult economic times.

XII. THE COMMISSION SHOULD REVIEW THE ALJ'S DECISIONS ON THE IMPORTANCE OF ENSURING A COAL SUPPLY

The proposed rate increase in this Docket is driven in significant part by Xcel's desire to bring the Unit 3 coal plant in Pueblo ("Comanche 3" to Xcel) on line in 2009. A large component of a coal plant is its boiler and in order to function properly a coal plant boiler needs a coal supply.

Ms. Glustrom entered extensive information on the long term availability of coal supplies⁷⁵ and on numerous occasions the Administrative Law Judge ruled that the issue of coal supply was outside the scope of the Docket. Most importantly, the ALJ issued a ruling from the bench on Monday April 27, 2009 striking Ms. Glustrom's Cross Answer Testimony regarding coal supplies and the issue of the Unit 3 coal plant being "used and useful." The ALJ stated that a written order would follow, but as of noon on May 12, 2009 (the day this Statement of Position is due) a written order had not been issued.

⁷⁵ See for example Attachments 1-20 to the Answer Testimony of Leslie Glustrom which is Exhibit 38 as well as the Cross Answer Testimony of Ms. Glustrom. The Attachments were stricken by Interim Order R09-0293-I with follow up in Interim Order R09-0373 and Interim Order R09-043-I. Ms. Glustrom's Cross Answer Testimony was stricken by oral decision of the ALJ on Monday April 27, 2009.

It is obvious that a coal plant needs a long term supply of coal and that ratepayers should not have to pay for a coal plant that will not be able to function as a coal plant for its intended life for lack of a coal supply. This issue was discussed in further detail in the “Response of Leslie Glustrom to the Motion of Public Service Company of Colorado to Strike Cross Answer Testimony of Leslie Glustrom,” filed by Ms. Glustrom on Monday April 27, 2009.

The Commission is respectfully requested to review the ALJ’s decisions on coal supply and to issue an order recognizing that the issue of a coal supply is critical to determining whether the Unit 3 coal plant will be used and useful for its intended life span.

XIII. THE COMMISSION SHOULD REVIEW THE ALJ’S DECISIONS ON THE APPLICABILITY OF RULE 3613 (d)

The Administrative Law Judge issued several Interim Orders preventing Ms. Glustrom from challenging the prudence of the Unit 3 coal plant in accordance with Rule 3613 (d) of 4 Code of Colorado Regulations 723-3 (4 CCR 723-3). These Interim Orders included Interim Order R09-0293-I, R09-0373-I and R09-043-I. Yet, in each of these Interim Orders the Administrative Law Judge failed to cite verbatim specific legal authority in support of the ALJ’s decisions denying Ms. Glustrom to file testimony in accordance with Rule 3613 (d). To issue an Interim Order without citing specific legal authority is to issue an arbitrary and capricious decision.

In filings (e.g Motions or Responses to Motions) served on or about March 11, 2009, March 20, 2009, April 6, 2009 and April 10, 2009, Ms. Glustrom discussed the application of Rule 3613 (d) at length and noted that nowhere in Colorado Statute, PUC

Rule or previous PUC Rule was Xcel granted a guarantee of prudence for the Unit 3 coal plant and that Rule 3613 (d) should apply.

The Commission is respectfully requested to review the ALJ's Interim Orders on Rule 3613 (d) and Ms. Glustrom's filings on this issue and to issue an order upholding the right of Ms. Glustrom to challenge the prudence of the Unit 3 coal plant under Rule 3613 (d).

XIV. CONCLUSION

For all the reasons stated in this Statement of Position, the Commission is respectfully requested to reject the proposed Settlement Agreement in this 08S-520E Docket, to address the issues related to the requested rate increase raised in this Statement of Position and to review the Interim Orders of the Administrative Law Judge discussed in this Statement of Position.