

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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RE: THE TARIFF SHEETS FILED BY)
PUBLIC SERVICE COMPANY OF) DOCKET NO. 09S-____E
COLORADO WITH ADVICE LETTER)
NO. 1535 – ELECTRIC.)

DIRECT TESTIMONY AND EXHIBITS OF TERRY D. STALEY

ON

BEHALF OF

PUBLIC SERVICE COMPANY OF COLORADO

May 1, 2009

LIST OF EXHIBITS

Exhibit No. TDS-1	Environmental Tariff Agreement
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I. INTRODUCTION AND QUALIFICATIONS

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Terry D. Staley. My business address is 4653 Table Mountain Drive,
3 Golden, CO 80403.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Xcel Energy Services Inc. ("XES"), the service company
6 subsidiary of Xcel Energy Inc. ("Xcel Energy"), as Manager, Waste and
7 Remediation in the Environmental Services Department. Xcel Energy is the parent
8 company of Public Service Company of Colorado ("Public Service" or "Company").

9 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

10 A. I am testifying on behalf of Public Service.

11 **Q. HAVE YOU PREPARED A STATEMENT OF YOUR EXPERIENCE AND**
12 **QUALIFICATIONS?**

13 A. Yes. That statement is included as Attachment A.

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II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to sponsor the Company’s request for the Colorado Public Utilities Commission (“Commission”) to approve certain changes and additions to the Company’s P.U.C. No. 7 – Electric tariff (“Electric Tariff”) to address the apportionment of liability for costs associated with the environmental remediation of hazardous materials that may be encountered by the Company when installing utility services and facilities. My testimony will generally describe why the Company is requesting approval of these tariff modifications and the proposed tariff changes. These proposed changes are found at Sheet Nos. R48, R49 and R50. The tariff changes I reference are included within Exhibit No. PNB-1 and PNB-2 sponsored by Company witness Ms. Priya Burkett. Exhibit No. PNB-1 is the “clean” version of the tariff sheets. The tariff changes in “legislative format” are set forth in Exhibit No. PNB-2.

In addition to the above changes, the Company is proposing: (1) an addition to the language of its “Easement” tariff section, Sheet Nos. R32 and R33, Exhibit No. PNB-1, to be consistent with the proposed “Environmental Matters” language; (2) modifications to the “Liability” tariff section, Sheet No. R51, Exhibit No. PNB-1; (3) an addition to Sheet No. R110 to the “Service Connection and Distribution Line Extension Policy” tariff section, which appears as Sheet No. R110A, Exhibit No. PNB-1, to complement and effectuate the changes to the proposed “Environmental Matters” language; and, (4) a change to the general easement language in the “Easement” section of the tariff to

1 address ancillary items that are not directly related to the new “Environmental
2 Matters” provisions of the tariff.

3 **Q. WHAT EXHIBITS ARE YOU SPONSORING IN YOUR TESTIMONY?**

4 A. I am sponsoring Exhibit No. TDS-1, the Company’s standard Environmental
5 Protection Agreement.

6 **III. DESCRIPTION OF THE ISSUES**

7 **Q. PLEASE PROVIDE A SUMMARY OF THE ISSUES THAT YOUR
8 TESTIMONY ADDRESSES.**

9 A. The primary issue the Company is attempting to address is who should bear the
10 risks, costs and liability associated with hazardous materials encountered by the
11 Company on a customer’s/applicant’s/owner’s (referred to collectively as an
12 “owner”) property when installing utility service. We believe the risks and
13 associated costs should be borne by the owner and not the Company and its
14 utility customers in general. There are numerous reasons justifying this
15 position, including the following:

- 16 • In most instances, when the property was purchased, the property owner
17 had the opportunity to perform due diligence, including environmental
18 assessments;
- 19 • The owner should have negotiated a price that reflected the
20 environmental condition of the property;
- 21 • The owner controls the property and is able to select who is allowed on
22 the property;

- 1 • The owner is in the best position to have knowledge of environmental
2 contamination and the current and former uses of the property;
- 3 • The Company is merely installing utility facilities; and
- 4 • The Company and its Colorado customers are not the appropriate
5 parties to absorb the costs related to environmental liability associated
6 with an individual owner's property.

7 This fundamental issue of risk allocation is important to address because
8 the potential exists for environmental liability and associated remediation costs
9 when the Company encounters pre-existing contamination on any property in
10 the state. The issue of risk allocation has recently become even more critical
11 due to emerging case law and the enactment of stricter environmental laws
12 regarding remediation and treatment of hazardous materials, which apply to
13 property throughout the state. Another factor contributing to the need for the
14 proposed tariff changes is the increased redevelopment of properties with a
15 history of environmental contamination. An example is the increased
16 redevelopment of former urban industrial or manufacturing sites to new uses,
17 such as small commercial and/or residential uses.

18 We are also proposing other changes to our tariffs that are not directly
19 related to the new "Environmental Matters" provisions of the tariff. These
20 changes are intended to address situations we deal with relating to easements
21 as well as limitations on Company liability when our facilities and equipment are
22 contacted or interfered within a variety of situations.

1 Q. PLEASE DESCRIBE THE PROPOSED TARIFF PROVISIONS THAT
2 ADDRESS THESE CONCERNS.

3 A. The Company has proposed adding a new “Environmental Matters” tariff, Sheet
4 Nos. R48, R49 and R50, Exhibit No. PNB-1, to supplement its existing tariff
5 provisions regarding the “Indemnification and Release” section, Sheet Nos.
6 R49, Exhibit No. PNB-2. The Company believes the “Environmental Matters”
7 tariff addition is consistent with the current “Indemnification and Release”
8 provisions, but adds language that is necessary to address the practical realities
9 the Company encounters when working on an owner’s property. We also
10 propose adding Sheet No. 110A, Exhibit No. PNB-1, which complements the
11 proposed changes to the “Environmental Matters” section, as specifically
12 applies to service connections and distribution line extensions. In addition, the
13 Company has proposed certain changes to its tariff provisions regarding
14 customer-provided easements in the “Easements and Environmental
15 Agreement” tariff, Sheet Nos. R32 and R33, Exhibit No. PNB-1, to be
16 consistent with the proposed “Environmental Matters” language and to
17 incorporate the concept of the Environmental Protection Agreement. Finally,
18 one change is being proposed to the current wording of the Company’s
19 “Liability” tariff provisions, Sheet No. R51, Exhibit No. PNB-2, to eliminate
20 ambiguity in the current tariff wording that was brought to light in a recent
21 litigation matter.

1 Environmental Concerns

2 Q. CAN YOU PROVIDE ANY EXAMPLES OF POTENTIAL SITUATIONS
3 WHERE ENVIRONMENTAL LIABILITY MAY ARISE?

4 A. Yes. Listed below are some sample situations where environmental liability may
5 arise:

- 6 • Under broad environmental laws, it is possible that the Company could
7 be considered a liable party under certain environmental laws by simply
8 unearthing or causing a release of hazardous materials in its utility
9 service installation activities. Under the Comprehensive Environmental
10 Response, Compensation, and Liability Act (“CERCLA”), the Company
11 could be exposed to joint and several liability by such a release,
12 potentially placing the Company at risk for *all* site remediation expenses
13 – not just the remediation expenses associated with a utility corridor.
- 14 • In some instances the owner may not have sufficient assets to pay for
15 remediation, so the Company may be forced to pay for some or all of the
16 remediation costs. This is particularly true for commercial developers of
17 previously contaminated sites who create special limited liability entities
18 to own the property under development. These entities often have no
19 assets other than the contaminated property in question and only stay in
20 existence long enough to develop a project and to sell it.

1 **Q. HAS THE COMPANY ENCOUNTERED ANY OF THESE SITUATIONS**
2 **BEFORE?**

3 A. Yes. To date, the Company has incurred some environmental remediation costs
4 associated with the provision of utility service to contaminated properties. The
5 Company has also incurred increased transactional costs, including significant
6 administrative and legal expense, in negotiating site-specific agreements to
7 address known property contamination in advance of providing new utility
8 service. Incorporation of suitable protections in the Company's tariffs will avoid
9 the necessity for inefficient, site-by-site agreements, will result in fair and
10 uniform treatment of similarly situated customers and will save money for the
11 Company and its customers.

12 **Q. ARE THERE OTHER CONSIDERATIONS THAT SUPPORT THE PROPOSED**
13 **TARIFF CHANGES?**

14 A. Yes. Current law does not provide sufficient protection against the
15 environmental risks and liabilities described above. While the Small Business
16 Liability Relief and Brownfields Revitalization Act, 42 U.S.C. §§ 9601-9675,
17 provides protection for "innocent landowners," certain onerous requirements
18 must be met in order to qualify for the protections afforded by this Act. For
19 example, "all appropriate inquiries" into present and past uses of the property
20 and the potential presence of environmental contamination on the property must
21 be made before an easement to install utilities is acquired. In order to satisfy
22 this requirement, a qualified environmental professional must interview past and
23 present owners and operators of the property, review documents to determine

1 historic uses of the property, search for liens on the property, review
2 governmental records regarding disposal or releases of potentially hazardous
3 materials that have occurred on or near the property, visually inspect the
4 property, etc.

5 Typically, the Company does not undertake this level of detailed review
6 prior to acquiring an easement to install electric utility services. Requiring the
7 Company to undertake the time and expense associated with such a detailed
8 review would be unreasonable and there is no guarantee that other parties will
9 cooperate with the Company. Again, given that the owner of a contaminated
10 site has the best knowledge of site contamination, and in some cases may have
11 already conducted an “all appropriate inquiries” review of the property, it is fair
12 and equitable that the owner assume the environmental risks presented by
13 existing on-site contamination, rather than transferring that risk to the Company
14 and its customers in general. In addition, incorporating environmental
15 provisions into the Company’s tariffs will establish a non-discriminatory,
16 standardized practice applicable to all utility customers, and avoids the
17 development of time-consuming, costly, and potentially divergent case-by-case
18 and site-by-site agreement language. The proposed tariff additions will allow
19 owners to plan in advance for any compliance costs associated with providing
20 clean property and include such costs in project budgets and scheduling plans.
21 This tariff provision, therefore, will help avoid project delays and unanticipated
22 costs.

1 indemnification and release provisions in favor of the Company. The Covenant
2 also included provisions that require the owner to provide property information,
3 to provide clean fill and/or to perform trenching work. The Covenant covers the
4 entire property in question, not just the easement corridors, and is to be
5 recorded in the public records. It was important for the Covenant to cover the
6 entire property for various reasons, including: (1) the fact that the exact location
7 of needed utility installation and other utility work is not always known in
8 advance and may change over time (particularly for new service installations);
9 (2) the fact that hazardous materials may migrate; and, (3) the fact that the
10 property may be further subdivided in the future. It was also important that the
11 Covenant be recorded. Recordation binds any future owners to the Covenant
12 terms, including successors in interest via future property subdivision, which is
13 common for larger parcels of property or parcels that are being redeveloped.
14 Binding future owners is important to protect the Company when it performs
15 additional utility installation and maintenance work in the future.

16 In addition to a Covenant, the Company typically requested financial
17 assurances to ensure that the customer could perform its obligations under the
18 Covenant. The Company generally requested a guaranty from a creditworthy
19 person or entity ("Guaranty"). In the past, the Company has accepted
20 environmental insurance policies in place of the Guaranty. In addition to the on-
21 going liability coverage that the Covenant affords, it also protects the Company
22 in situations where contamination levels and locations change over time, by
23 imposing upon the owner on-going obligations for environmental remediation.

1 Although the Covenant has been successfully used in association with the
2 Denargo Market redevelopment in Denver, as well as with several other
3 developments in Denver where the Covenant was not recorded, it is not an ideal
4 solution for various reasons that I explain below. The Covenant has only been
5 used in association with commercial redevelopment projects on “brownfield”
6 properties. A brownfield property is an abandoned or under-utilized industrial or
7 commercial site where expansion or redevelopment is complicated by real or
8 perceived environmental contamination.

9 **Problems with the Covenant and The Need For Specific Tariff Language**

10 **Q. IS THE COVENANT APPROACH ADEQUATE?**

11 A. It is not. The Covenant approach has not been an ideal solution to the problem
12 because it must be recorded against the property to bind future owners.
13 Owners have resisted the request that they record the Covenant arguing that,
14 because it is recorded, it: (1) negatively impacts property values; (2) potentially
15 impacts resale; and, (3) causes financing problems. The Company disagrees
16 with these arguments because the Covenant itself does not cause the stigma
17 associated with a brownfield site; however, the proposed tariff changes rectify
18 this situation because they do not require the proposed standard Environmental
19 Protection Agreement (the “Environmental Agreement”) to be recorded. Under
20 the proposed tariff changes, the Environmental Agreement will only be required
21 before the Company extends any facilities and service to a property, if the
22 Company deems it necessary. It is anticipated that the Environmental

1 Agreement will generally be used for brownfield sites or other properties with
2 contamination or a history of contamination.

3 Note that despite the flaws with the Covenant that I have described, it
4 has been the best available option to date to address those issues due to the
5 lack of existing legislative and/or express tariff protections that address specific,
6 practical environmental concerns.

7 **Q. IS THE CURRENT TARIFF LANGUAGE BROAD ENOUGH TO ADDRESS**
8 **THE GROWING PROBLEMS THE COMPANY IS ENCOUNTERING WITH**
9 **ENVIRONMENTAL ISSUES?**

10 A. No, not expressly. Currently, customers have an obligation to provide the
11 Company with "...*satisfactory* easements for suitable location of Company's
12 wires, conduits, poles, transformers, metering equipment, and other
13 appurtenances on or across lands owned or controlled by customer..."
14 (Emphasis supplied.) Sheet No. R32, Exhibit No. PNB-2. While it can be
15 argued that this language may reasonably be interpreted to mean that a
16 "*satisfactory*" easement across land known to have environmental
17 contamination must contain environmental indemnification provisions, the tariff
18 language does not provide specific detail. This lack of detail can raise
19 interpretation questions that cause expensive and time-consuming case-by-
20 case negotiations such as those described above. The Company believes that
21 the tariff modifications proposed directly address the issue.

IV. SPECIFIC TARIFF MODIFICATIONS

New Service and Applicants

1
2 **Q. PLEASE DESCRIBE EACH OF THE TARIFF MODIFICATIONS YOU**
3 **PROPOSE REGARDING SERVICE APPLICANTS AND DESCRIBE HOW**
4 **THESE MODIFICATIONS RELATE TO TARIFF SHEET NO. 110A.**

5 A. I will begin by describing tariff provisions that apply to new service applicants.
6 The Company has formulated proposed tariff language that allows it to require
7 an applicant for new utility service or an extension of existing service to: (1) sign
8 a non-recorded Environmental Agreement (with terms similar to the Covenant),
9 if deemed necessary by the Company; (2) provide financial assurances; and, (3)
10 provide clean utility corridors and/or perform trenching and backfill work. These
11 provisions should be preferable to the existing Covenant provisions from the
12 service applicant's standpoint because nothing has to be recorded against the
13 property. Despite the proposed language in the tariff, the Environmental
14 Agreement may be needed because it is more detailed than the tariff language
15 and addresses initial installation/expansion concerns that are not as prominent
16 for on-going maintenance work.

17 Tariff Sheet No. 110A incorporates the above-referenced requirements
18 for applicants and existing customers. In addition, Tariff Sheet No. 110A
19 provides that an applicant or an existing customer seeking service connections,
20 relocations and distribution line extensions must ensure that the areas on their
21 property, where the necessary Company activities occur, are free of
22 environmental monitoring and remediation equipment. The tariff sheet also

1 requires that applicants and existing customers requesting service connections,
2 relocations and extensions shall be financially responsible for the costs and
3 expenses to repair and/or replace damaged Company equipment and facilities.
4 This is consistent with the changes we are proposing on Sheet Nos. R48, R49,
5 and R50.

6 **Existing Service and Customers**

7 **Q. WHAT IS THE NEXT MODIFICATION BEING PROPOSED?**

8 A. Regarding existing service and customers, the proposed tariff language requires
9 customers who own their property to release *and* indemnify the Company for
10 existing hazardous materials that are not first brought onto the property by the
11 Company and allows the Company to stop all utility installation work if it
12 discovers contamination on the property. These provisions apply consistent
13 requirements to all customers and customer-owned properties, not only
14 commercial customers and brownfield sites. The logic behind this provision is
15 that a utility should treat all customers in a similar fashion and environmental
16 risks may exist on any properties, including those that are not identified as
17 brownfield sites. For customers who do not own the property in question, *e.g.*, a
18 customer who is a renter, the customer is only required to release (but not
19 indemnify) the Company from liability related to hazardous materials that are not
20 first brought onto the property by the Company.

21 **Q. IS PUBLIC SERVICE PROPOSING ANY ADDITIONAL TARIFF CHANGES**
22 **TO ADDRESS THESE ISSUES?**

1 A. Yes. Since we are proposing to amend the Company's electric tariff to address
2 specific environmental issues, we decided that this is an appropriate time to
3 update the current "Easement" tariff provisions.

4 **"Easement" Modifications**

5 **Q. WHAT ARE THE EASEMENT MODIFICATIONS YOU PROPOSE?**

6 A. We have proposed revisions that are necessary to provide the Company with
7 additional protections in areas where we have determined that our current tariff
8 language is lacking. Specifically, we have encountered issues in the past where
9 a customer asserts that the Easement provisions of the tariff do not apply
10 because we have installed additional facilities to provide redundancy that
11 benefits the customer. Additionally, although our facilities may benefit a
12 particular customer, some customers have argued that the Easement provisions
13 of the tariff do not apply because the facilities on the customer's property also
14 benefit other customers. The Company disagrees with these arguments, but
15 wants to modify the provision to provide clarity and eliminate the above
16 arguments.

17 **Q. WHAT CHANGES ARE YOU PROPOSING?**

18 A. We propose to add language that clarifies that the equipment installed in the
19 easement need not be *necessary* to render service, but the proposed tariff
20 protections also apply if the facilities are *related* to our ability to render service.
21 Further, we have clarified that the Company may require and obtain an express
22 easement from the customer, on our standard easement form, even if service
23 has already been connected. Often times we are asked to relocate facilities for

1 existing customers and have had problems in the past obtaining an easement
2 because the current tariff language indicates that we can ask for an easement
3 *before* service is connected. Certain customers have argued that we cannot do
4 so *after* service has been connected. Finally, although the current Easement
5 language provides that if a customer subdivides property in a way that will
6 isolate our facilities, the customer must grant or reserve an easement in the
7 Company's favor, in the majority of instances customers fail to abide by this
8 requirement and the Company is left without recourse other than initiating costly
9 condemnation proceedings. In light of this problem, we have revised the tariff
10 language to provide for an implied grant or reservation of an easement. The
11 remainder of the changes to the Easement section are related to environmental
12 matters, including renaming the "Easement" section "Easement and
13 Environmental Agreement."

14 **Q. DO THE PROPOSED TARIFF PROVISIONS ADDRESS THE COMPANY'S**
15 **CONCERNS?**

16 A. Yes. The proposed tariff changes, which include the requirement of an
17 Environmental Agreement if the Company deems it necessary, incorporate
18 many of the requirements of the Covenant, including financial assurances. The
19 changes are preferable to the Covenant for the following reasons:

- 20 • No agreement will be recorded against any property;
- 21 • No inefficient and costly case-by-case negotiations are required;

- 1 • The changes apply to all customers and applicants for service, not
2 just owners of known brownfield sites, thereby promoting the
3 equal and non-discriminatory treatment of all customers; and
- 4 • The Company is protected to a large extent for initial installation
5 work and subsequent work anywhere on a customer's property,
6 without having to record an instrument against the property.

7 **“Liability” Modifications**

8 **Q. ARE YOU PROPOSING ANY OTHER MODIFICATIONS OR AMENDMENTS?**

9 A. Yes. In addition to the modifications I have described, we propose additional
10 protections in areas of the Company's general Liability section of the tariff where
11 we have determined that our current tariff language needs to be clarified.

12 **Q. WHAT ARE THOSE PROPOSED MODIFICATIONS?**

13 A. The current paragraph in the Liability tariff section, Sheet No. R51, Exhibit No.
14 PNB-1, provides the Company with some protection against liability in litigation
15 where various objects come into contact with our power lines and other
16 equipment and facilities. However, the last sentence of the existing tariff
17 provision seems to dilute the intention of the paragraph and could be
18 interpreted to mean that the Company is liable no matter what the cause of the
19 damage might be. Under the existing tariff language, if Company lines or
20 equipment are “defective” in any way, no matter how insignificantly, the
21 Company may be considered liable. The tariff currently reads:

22 “The Company shall not be held liable for injury to persons or
23 damage to property caused by its lines or equipment when contacted or
24 interfered with by ladders, pipes, guy wires, ropes, aerial wires,

1 attachments, trees, structures, airplanes or other objects not the
2 property of Company, which cross over, through, or are in close
3 proximity to Company's lines and equipment, *unless said lines and*
4 *equipment are in a defective condition.*" (Emphasis supplied). Sheet
5 No. R51, Exhibit No. PNB-2.
6

7 A specific example of how this tariff language has been interpreted by
8 litigants occurred in a case that arose out of the 2004 wildfires near Boulder.
9 During a thunderstorm, a tree blew into a Company electric distribution line and
10 caused it to break, which subsequently resulted in a fire. The referenced
11 statement in Sheet No. R51, "*unless said lines and equipment are in a*
12 *defective condition,*" played a significant role in the litigation and presented a
13 question of liability. Based upon this tariff wording, the focus turned to why the
14 line broke when the tree came into contact with it.

15 **Q. PLEASE DESCRIBE THE TARIFF MODIFICATION THE COMPANY IS**
16 **PROPOSING TO ADDRESS THE ISSUE RAISED IN THE BOULDER**
17 **WILDFIRE LITIGATION.**

18 A. We are proposing to delete the language "unless said lines and equipment are
19 in a defective condition."

20 **Q. DOES THE PROPOSED DELETION ADDRESS THE ISSUE?**

21 A. Yes, it does.

22 **Q. PLEASE EXPLAIN.**

23 A. In cases where an object comes into contact with one of the Company's electric
24 lines, the first line of a plaintiff's attack is typically to find an expert who will say
25 that some defect in the Company's facilities caused the damages and therefore
26 the protections from liability contained in the current tariff do not apply. In the

1 Boulder wildfire case, there was clear evidence that a treetop blew into a phase
2 of the distribution line. The plaintiff's expert, however, opined that a more
3 sensitive fuse or a recloser set to trip at a lower fault current would have
4 avoided the accident. This expert opinion presented a "material issue of fact"
5 for the court and foreclosed the opportunity for the Company to file an effective
6 summary judgment motion to obtain speedy relief from the asserted claims.
7 This, in turn caused us to incur greater legal expense than we should have
8 incurred.

9 **Q. IS IT REASONABLE TO DELETE THE CLAUSE YOU PROPOSE?**

10 A. Yes, it is, because in the context of this tariff provision, which applies to
11 circumstances where an object comes into contact with our power lines, the
12 issue of defective equipment should never arise. In addition, there is hardly
13 ever an electrical incident where an argument could not be made that the
14 incident would not have occurred, or that the incident would not have been as
15 serious, if protective equipment on the line either operated faster or was more
16 sensitive. In short, because of the existing clause that we seek to delete, an
17 argument can almost always be made that the Company's equipment was in
18 some type of "defective" condition. If the clause is deleted, the Company's
19 exposure to meritless claims and unnecessary legal costs will decrease.

20 **V. CUSTOMER IMPACTS**

21 **Q. HAS THE COMPANY CALCULATED THE OVERALL COST IMPACTS OF**
22 **THE PROPOSED TARIFF CHANGES ON CUSTOMERS?**

1 A. No. Because of the variety of factors involved in the tariff changes we are
2 proposing, calculating a cost impact would be very difficult. However, the
3 proposed tariff changes remove from the Company and its customers, or
4 lessen, the burden of remediation costs, transactional costs, and potential future
5 liability. The proposed amendments will place these costs on the proper
6 parties, which in the case of environmental contamination is the owner. The
7 proposed changes will also reduce the transactional costs for owners and
8 developers of contaminated properties. Future remediation and/or site
9 preparation costs will be no higher under the Company's proposed tariff
10 modifications than those currently incurred.

11 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

12 A. Yes.

Attachment A

Statement of Qualifications

Terry D. Staley

I graduated from Rose Hulman Institute of Technology located in Terre Haute, Indiana in 1976 with a Bachelor of Science Degree in Mechanical Engineering. I obtained a Master of Environmental Policy & Management degree from the University of Denver in 2000. I have received further training in various environmental regulation courses and seminars, am 40-Hour HAZWOPER certified, am a registered Professional Engineer in Colorado (PE#24288), and a Certified Hazardous Materials Manager (#12638).

I began my employment with Public Service Company of Colorado in February 1987, as a Systems Engineer at Fort St. Vrain Nuclear Station. In June 1988, I was promoted to Systems Engineering Supervisor. From 1992 through 1994 during the plant's decommissioning phase I served as the Station's Hazardous Material Engineer. In September 1995, I transferred into the Company Environmental Services department as a Senior Environmental Analyst. In May 1999, I was promoted to the Manager of Waste & Remediation in this department, the position I still hold. Following the mergers between Public Service Company of Colorado and Southwestern Public Service Company in August 1997, and then the merger between New Century Energies, Inc. and Northern States Power Company in August 2000, the Environmental Services department became part of Xcel Energy Services, Inc.

In my current position, my responsibilities include the management of hazardous, industrial, and special wastes, coal combustion product utilization and disposal,

emergency spill response, remediation and facility decommissioning efforts, environmental due diligence efforts, regulated storage tank management, facility compliance associated with these issues, employee environmental training, and environmental support, permitting, and agency interface for various company capital or O&M projects. My area of responsibility covers all Public Service Company of Colorado facilities and issues as they relate to either our Energy Supply or Utilities Group operations.

ENVIRONMENTAL AGREEMENT

This Environmental Agreement (“**Agreement**”) is entered into as of the ____ day of _____, ____ by and among [_____] (“**[Guarantor]**”), _____ (“**[Owner]**”), and Public Service Company of Colorado, a Colorado corporation (“PSCo”). [Owner] and PSCo may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS:

- A. [Owner] is the owner of the Property, as that term is defined below.
- B. [Guarantor] is [_____] *Describe the relationship between Owner and Guarantor, e.g., Guarantor is the parent entity of Owner* _____].
- C. [Guarantor] has entered into a separate Performance Guaranty Agreement that is attached hereto as **Exhibit A**.
- D. The Property is the site of _____ and portions of the Property that may contain Hazardous Materials, as that term is defined below.
- E. [Owner] intends to develop the Property for _____ use(s) on the Property [in accordance with a General Development Plan approved by _____ (“City”)].
- F. PSCo is a utility company that has been requested to provide gas and/or electric utility service to the Property and/or Public Property and to relocate certain of its facilities on the Offsite Property and/or Public Property, as those terms are defined below, and may be requested to provide such utility service to the Property, Public Property, and Offsite Property in the future.

The Parties are entering into this Agreement to confirm the understanding that PSCo shall not incur any liability in connection with providing utility service to the Property, Public Property, and Offsite Property which relates to, or arises out of, the environmental condition of the Property, Public Property and Offsite Property.

DEFINITIONS:

- “**Backfilling Activities**” shall have the meaning set forth in Section 3 below.
- “**Benefited Parties**” shall have the meaning set forth in Section 6 below.
- “**Claims**” shall have the meaning set forth in Section 6 below.
- “**Owner**” shall mean and include [Owner] and its respective successors and assigns. Owner shall be liable for the performance of all covenants, obligations and undertakings

applicable to the Property, Public Property, and Offsite Property that accrue during the period of Owner's ownership of the Property.

“Environmental Laws” shall mean any federal, state, or local laws (including common law), regulations, ordinances, orders or decrees of any applicable authority relating to, or claiming jurisdiction over, the Property, Public Property or Offsite Property or the Parties concerning protection or preservation of human health, the environment or natural resources including, without limitation, laws, regulations, ordinances, orders or decrees relating to (i) any spill, discharge, release or emission to the environment (including, but not limited to, air, surface water, groundwater, sand, soils, sediment); (ii) the quality of any environmental medium; (iii) the generation, treatment, recycling, storage, disposal, transportation or other handling or management of Hazardous Materials; (iv) the contamination or pollution of any environmental medium; or (v) responsibility for environmental condition or activities affecting the environment, including, without limitation, the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. § 9601, et seq.) (“CERCLA”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et. seq.) the Hazardous Material Transportation Act, (49 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act, (33 U.S.C. § 1251, et seq.), and the Clean Air Act, (42 U.S.C. § 7401, et seq.), and applicable state counterparts, and their implementing regulations, all as amended from time to time.

“Hazardous Materials” shall mean any substance, material or waste (regardless of physical form or concentration) that is regulated, listed, or identified under any Environmental Laws, and any other substance, material or waste (regardless of physical form or concentration) which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive or radioactive materials; hazardous materials; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing material; and any excavated soil, debris, or groundwater that is contaminated with such materials.

“Offsite Property” shall mean any private property or private right-of-way not located within the boundaries of the Property on which PSCo relocates existing Utility Facilities in order to accommodate Owner's request(s) to install or relocate existing Utility Facilities on the Property.

“Property” shall mean and include certain real property located in the _____ and described on **Exhibit B**, attached hereto and incorporated by this reference.

“Public Property” shall mean and include certain real property in a public street, right of way, or other public place, park or property of such nature that is located inside the boundaries of the Property or Offsite Property.

“Utility Construction” shall have the meaning set forth in Section 2 below.

“**Utility Facilities**” shall mean any facilities serving the Property, Public Property or Offsite Property, as applicable, used in the distribution of gas and electricity located on the Property, Public Property or Offsite Property.

“**Utility Trenching**” shall have the meaning set forth in Section 2 below.

Wherefore, Owner and PSCo agree as follows:

1. At least six (6) weeks prior to the commencement of any utility service, Owner shall provide to PSCo a comprehensive disclosure of any known or suspected soil and/or groundwater contamination, and any remediation/monitoring equipment, located on, or underlying, or adjacent to, or that could impact the requested area of installation, relocation, maintenance, and repair of Utility Facilities, along with any and all supporting information (for example, any surveys, plans, reports, test results, permits or tank registrations, and title policies) that Owner has within its control regarding the Property, Public Property or Offsite Property, including the environmental condition and/or any subterranean structures which may be present on the Property, Public Property or Offsite Property. Providing this information does not limit or affect any other obligations set forth in this Agreement, including but not limited to the release provided for in Section 6 below.

2. Owner acknowledges that construction, installation, relocation, maintenance, and repair of requested Utility Facilities necessarily requires disturbance of the surface and subsurface of the Property, Public Property and the Offsite Property, as applicable. Owner acknowledges that trenching necessary for the installation, relocation, maintenance and repair of Utility Facilities (“**Utility Trenching**”) also involves production of excess fill dirt that must be relocated following refilling and compaction of the trench, commonly referred to as “spoils.” Owner also acknowledges that contaminated spoils and contaminated groundwater may be encountered during trenching activities. All of the earth disturbance, construction, Utility Trenching, Backfilling Activities, compaction, and mobilization/demobilization activities that otherwise arise out of, or in connection with, the installation, relocation, maintenance, and repair of Utility Facilities are defined herein as “**Utility Construction.**”

3. Owner agrees to assume the following obligations with respect to the Utility Construction and with respect to the management of any Hazardous Materials encountered during Utility Construction:

- (a) If requested by PSCo, Owner shall assume responsibility for performing all Utility Trenching on the Property pursuant to the dimensions and other specifications provided to Owner by PSCo. Owner shall not be relieved of any other obligations set forth in this Agreement, including without limitation the other obligations set forth in this Section 3, if PSCo elects to perform Utility Trenching on the Property, Public Property or Offsite Property.
- (b) If requested by PSCo, after PSCo places its Utility Facilities, Owner shall be responsible for backfilling the Utility Trenching area with clean soil (“**Backfilling Activities**”) or, in the alternative, Owner shall be responsible for providing clean soil to PSCo for

Backfilling Activities to be performed by PSCo in accordance with all compaction and other safety specifications. PSCo shall have the right to have a representative on site during all Backfilling Activities that are performed by Owner to ensure that such activities are conducted in accordance with PSCo's compaction specifications and to ensure the safety of the Utility Facilities. Owner shall not be relieved of any other obligations set forth in this Agreement, including without limitation the other obligations set forth in this Section 3, if PSCo elects to conduct its own Backfilling Activities.

- (c) Owner shall assume responsibility for the excavation/removal, management, transport, use/reuse or disposal of any contaminated spoils and/or contaminated groundwater produced on the Property in connection with the installation, relocation, maintenance or repair of Utility Facilities. All activities related to the excavation/removal, management transport, use/reuse, or disposal of contaminated spoils or contaminated groundwater shall be conducted in accordance with applicable Environmental Laws. Owner hereby releases the Benefited Parties from any liability arising out of, or related to the production, management, transportation, storage, or disposal of contaminated spoils or groundwater from the Property, Public Property and/or Offsite Property. If any Hazardous Materials are present or encountered on the Property, Offsite Property or Public Property in connection with PSCo's installation, relocation, maintenance or repair of Utility Facilities, PSCo may cease all activities related to such installation, relocation, maintenance or repair until Owner has provided PSCo written notification that such Hazardous Materials have been properly excavated/removed, managed or disposed of in accordance with applicable Environmental Laws. If requested by PSCo, owner shall provide Company with written documentation evidencing the same. Owner shall not be relieved of any other obligations set forth in this Agreement, including without limitation the other obligations set forth in this Section 3, if PSCo elects not to cease activities related to such installation, relocation, maintenance or repair.
- (d) Owner shall ensure that an industrial hygienist or similarly qualified environmental professional is present on the Property, Public Property and/or Offsite Property to consult regarding the Utility Construction and any activities related to the excavation/removal, management, use/reuse, transport and disposal of contaminated spoils and/or contaminated groundwater.
- (e) Owner shall reimburse PSCo for any costs or expenses related to delays in PSCo's scheduled installation of Utility Facilities that are caused by Owner, including without limitation delays in Owner's performance of Utility Trenching or delays related to Owner's obligations for the excavation/removal, management, transport or disposal of contaminated spoils and groundwater as set forth herein.
- (f) With respect to any portion of the Property that is transferred to the City, the Regional Transportation District or any other governmental or quasi-governmental entity, and with respect to any Utility Facilities installed in or on Public Property or Offsite Property during Owner's ownership of, or interest in, any portion of the Property, Owner shall be responsible for the obligations set forth in Sections 3(a), 3(b), 3(c), 3(d), and 3(e) to the extent any governmental or quasi-governmental owner or the owner of the Public

Property or Offsite Property, as the case may be, shall decline to assume such obligations.

4. Owner shall ensure that each area of requested installation, relocation, maintenance and repair of Utility Facilities is free from any surface or subsurface environmental monitoring and/or remediation equipment. Owner shall assume sole responsibility for the proper closure/abandonment and/or relocation of any environmental monitoring/remediation equipment that is located in an area of requested installation, repair or maintenance of Utility Facilities. Should any monitoring/remediation equipment remain in the area of requested installation, relocation, maintenance or repair of Utility Facilities at the time of such installation, relocation, maintenance or repair, Owner shall be responsible for all costs and expenses related to the damage of such monitoring/remediation equipment including, but not limited to, the costs to repair or replace damaged equipment. With respect to any portion of the Property that is transferred to the City, the Regional Transportation District or any other governmental or quasi-governmental entity, and with respect to any Utility Facilities installed in or on Public Property or Offsite Property during Owner's ownership of, or interest in, any portion of the Property, Owner shall be responsible for the obligations set forth in this Section 4 to the extent any governmental or quasi-governmental owner or the owner of the Public Property or Offsite Property, as the case may be, shall decline to do so.

5. If PSCo is required to relocate Utility Facilities requested by Owner due to an environmental concern, the cost shall be borne by the Owner. With respect to any Utility Facilities that are located on or in any Public Property or Offsite Property during Owner's ownership of, or interest in, any portion of the Property, Owner shall be responsible for the relocation of Utility Facilities as contemplated by the preceding sentence, to the extent any governmental or quasi-governmental owner or the owner of the Public Property or the Offsite Property, as the case may be, shall seek to impose such costs on PSCo. If PSCo is required to relocate Utility Facilities for any reason, the protections provided in Sections 3 and 4 above shall apply.

6. Owner, its officers, directors, partners, shareholders, members, managers, employees, agents, family members, tenants, guests, and invitees and their respective heirs, personal representatives, successors, and assigns hereby release PSCo and its subsidiaries, affiliated parties, officers, directors, partners, contractors, subcontractors, shareholders, employees, agents, successors, and assigns (collectively the "**Benefited Parties**"), or any of them, from and against any and all claims, damages, losses, demands, liabilities, obligations, costs, expenses, actions, or causes of action whatsoever ("**Claims**") and agree not to institute any action or suit at law or in equity, or to make, seek, institute, or prosecute any claims, demands, or compensation from or against the Benefited Parties, or any of them, which relate to or arise out of, either directly or indirectly, the presence, handling, management, transport, storage or disposal of Hazardous Materials located in, under, near or on the Property, Public Property, or Offsite Property, or any other claim or liability under Environmental Laws, to the extent such Claims arise out of or relate to the Owner's request for Utility Construction on the Property, Public Property, or Offsite Property or provision of utility service to such Owner. The foregoing shall apply to all claims, losses, demands or compensation of whatever kind or nature arising or resulting from the environmental condition of the Property, Public Property or Offsite Property

whether or not specifically enumerated herein, including, without limitation, (i) governmental cleanup claims; (ii) claims for personal injury or property damage; (iii) claims for natural resource damage; (iv) claims for diminution of property value or lack of marketability; and (v) any consequential, indirect, special, punitive, incidental, or other non-compensatory or similar damages. The effectiveness of the release contained in this Section 6 is given and intended to be effective irrespective of whether work or activities of PSCo in connection with the installation, relocation, maintenance or repair of Utility Facilities causes, contributes to or exacerbates the release of any Hazardous Materials that results in any claim against Owner, liability for Owner, or imposes liability under Environmental Laws.

7. Owner shall indemnify, protect, defend, and hold harmless the Benefited Parties, or any of them, from and against any and all Claims (including any reasonable attorney and consultant fees), including without limitation any claim or liability related to or arising out of the presence, handling, management, transport, storage or disposal of Hazardous Materials located in or on the Property, Public Property or Offsite Property, or any other claim or liability under Environmental Laws incurred by the Benefited Parties, or any of them, to the extent that such Claims arise out of or relate to the Owner's request for Utility Construction on the Property, Public Property or Offsite Property or the provision of utility service to such Owner. This indemnification obligation extends to post-installation operation, relocation, maintenance and repair of Utility Facilities on the Property, Public Property or Offsite Property. The foregoing shall apply to all claims, losses, demands or compensation of whatever kind or nature arising or resulting from the environmental condition of the Property, Public Property or Offsite Property whether or not specifically enumerated herein, including without limitation, (i) governmental cleanup claims; (ii) claims for personal injury or property damage; (iii) claims for natural resource damage; (iv) claims for diminution of property value or lack of marketability; and (v) any consequential, indirect, special, punitive, incidental or other non-compensatory or similar damages. The effectiveness of the indemnification contained in this Section 7 is given and intended to be effective irrespective of whether work or activities of PSCo in connection with the installation, relocation, maintenance or repair of Utility Facilities, causes, contributes to or exacerbates the release of any Hazardous Materials that results in any claim against PSCo, liability for PSCo or imposes liability under Environmental Laws. With respect only to an owner that is a governmental entity, this indemnity is subject to any limitations imposed by law and is not intended to waive any provisions of the Colorado Governmental Immunity Act. To the extent this Agreement is construed as a "Construction Agreement" pursuant to C.R.S. § 13-21-111.5(6), the obligations of Owner under this Section 7 shall not be applicable to any liability or claim arising solely from the negligence of PSCo.

8. The rights, conditions, agreements and provisions of this Agreement shall insure to the benefit of, and be binding upon, Owner and PSCo and their respective successors and assigns.

9. This Agreement is not intended and shall not be construed to confer upon any person or entity other than the Parties hereto any rights or remedies hereunder.

10. This Agreement, the rights and obligations of the Parties hereto and any claims or disputes relating thereto, shall be governed by and construed under and in accordance

with the laws of the State of Colorado excluding the choice of law rules thereof. The Parties agree to consent to jurisdiction in the State of Colorado in any suit to enforce the terms of this Agreement.

11. This Agreement, including the Exhibits hereto, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such matters. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification or discharge is sought.

12. No delay or failure on the part of either Party hereto in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against either Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

13. This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof, and all of which, taken together, shall constitute one and the same instrument.

14. If any provision or part of this Agreement is found to be illegal, invalid, or unenforceable, that illegality, invalidity, or unenforceability shall not affect any other provision or part of this Agreement. If any provision or part of this Agreement is found to be illegal, invalid or unenforceable because of its application to a specific set of facts, that illegality, invalidity, or unenforceability shall not affect the enforceability of that provision to other factual situations.

15. Each of the undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.

OWNER

By: _____

Its: _____

AGREED AND ACKNOWLEDGED:

[GUARANTOR]

By: _____

Its: _____

PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation

By: _____

Its: _____

Exhibit A

[See Attached]

Exhibit B

[See Attached]