

# **Xcel Energy's Proposed "Environmental Tariff"**

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# Tariff Basics

- What is a Tariff?
- How is it adopted?
- How is it challenged?

# History

- Xcel Policy (2008)
- First Xcel Tariff filing (5/2009)
- PUC proceedings (decided 3/29/2010)
- Legislation
- NAIOP/Developer Negotiations (ended with compromise on 7/30/2010)
- Government Negotiations (no compromise)
- Second Compromise Tariff Filing (12/2010)
- ALJ Decision
- PUC Deliberations (11/28/2011)

# Tariff Summary

- Applies to:
  - customer property (including dedicated rights-of-way for three years)
  - customer-controlled property
  - hazardous materials

# Tariff Summary (continued)

- Requires:
  - disclosure
  - clean corridors
  - management and disposal of hazardous materials
  - cessation of work
  - indemnification and release
  - environmental agreements
  - 7-week dispute resolution

# Negotiations with Governments

- July 2010 to December 2010
- Some progress made
- Sticking points:
  - Effect on Franchise Agreements
  - Rights of Way
  - Release from Liability

# Environmental Tariff – Round 2

- Filed December 3, 2010
- Protests/Interventions filed by:
  - Boulder
  - Denver
  - Westminster
  - Aurora
  - Arvada
  - Commerce City
  - Longmont
  - Walmart
  - Ski Companies

# Issues at Hearing

- No Need for Environmental Tariff
- Liability of Local Governments for Rights- of- Way
  - Right-of-way broader than “street”
- Potential Conflicts with Franchise Agreements
  - Franchise Agreements dated prior to July 2010 control
  - Tariff controls over Franchise Agreements dated after July 1, 2010



# Issues at Hearing

- Releases
  - Colorado Constitution Art. XI
- Site Specific Environmental Agreement

# Policy Issues

- Effect on Local Government's Police and Licensing Powers
- Ability to Negotiate Franchise Agreements
- Modification of Liability Under Federal Environmental Laws
- Appropriateness of Protections for Xcel

# ALJ's Recommended Decision

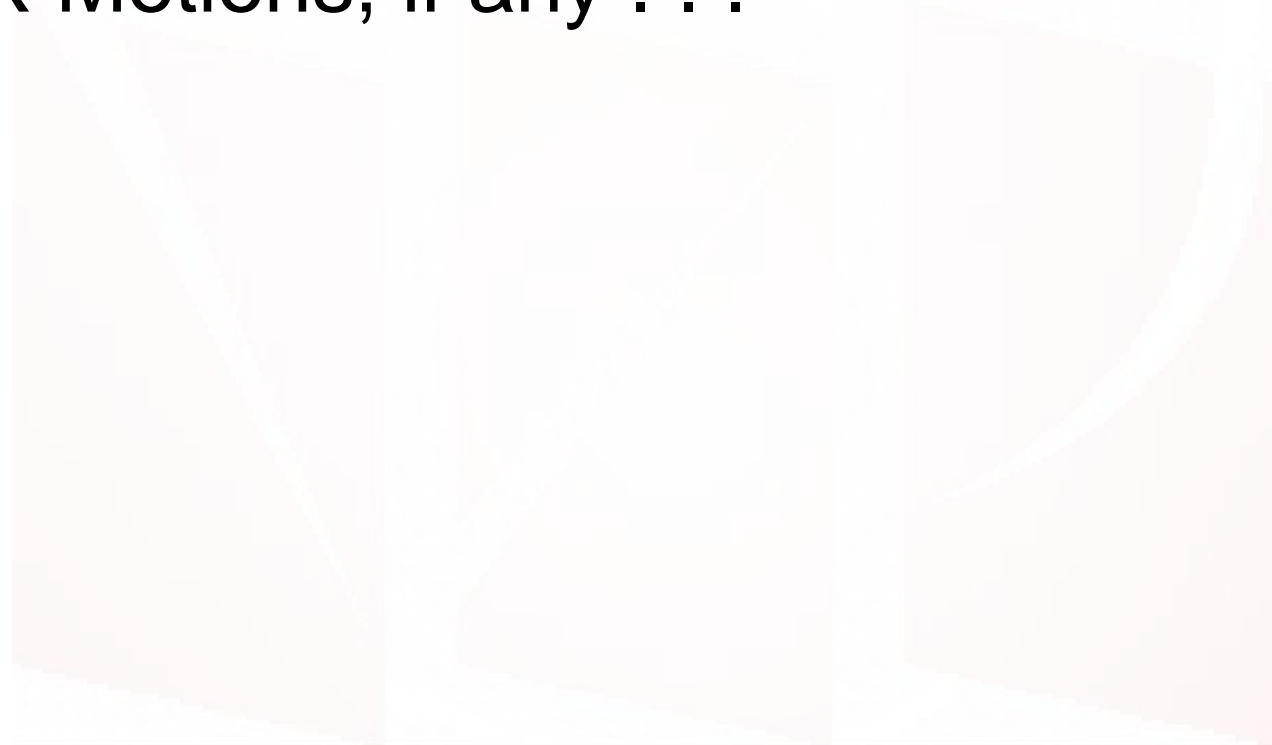
- Mandatory Disclosures
- Clean Corridors
- Cessation of Work
- Applicable Definitions

# Commission Deliberations—11/28

- PUC adopted the ALJ's recommended decision
- PUC invited further briefing on certain issues as part of RRR motions, including:
  - Xcel's justification supporting any environmental tariff
  - revisions appropriate for consistency with existing environmental laws
- Order has not yet been released

# Next Up?

- RRR Motions, if any . . .



# Implications for Developers

- Pick the right customer
- Cleanup and documentation
- Schedule
- Administration
- Recourse



# Implications for Government

- Understand the role of the PUC
- Watch dockets for issues that might affect you
- Talk to other governments!

# Questions?

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