



Public Service[®]



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Public Service
Company of Colorado

5909 E. 38th Ave.
Denver, CO 80207-1295

February 3, 1996

Karen Ostrander-Krug
Welborn, Sullivan, Meck, & Tooley
1775 Sherman Street, Suite 1800
Denver, Colorado 80203

1.62

Re: Leyden Natural Gas Storage Project/Natural Gas Migration

Dear Ms. Krug:

This letter is sent both, in response to your letter of January 30, 1996, to Public Service Company of Colorado, General Council, Patricia Smith, and as means to introduce myself as the individual who has been assigned this project. It will be my responsibility to try to negotiate a settlement between the property owner, Richard Loesby, and Public Service Company. Due to the varied aspects of this situation, it will also be my responsibility to coordinate the flow of information between the affected departments within the Company.

To begin, I would like to assure you that Public Service Company takes Mr. Loesby very seriously, and that this situation has been given priority level attention for the past ten weeks. Engineering, legal, and operational aspects have actually been under careful since 1993.

As you may already know, the Leyden Gas Storage Project has been in operation for over 30 years. It involves the use of an abandoned coal mine to store natural gas, by injection during off-peak periods, for use during peak demand, such as we are experiencing with this current cold spell. To that end, Leyden has been a very successful, and critical part our natural gas delivery system.

Since the project is unique in design and operation, there has been an ongoing evaluation of the stability of the cavern as well as the potential for migration through surrounding geologic formations. Some migration of natural gas, which is the subject of Mr. Loesby's inquiries, was discovered through this evaluation process. It's also known that the migrating gas is several hundred feet deep, and does not currently present any environmental or safety hazards. A problem for Public Service Company, to this point, has been access to properties adjacent to the project, which we do not have under lease. Public Service Company's further evaluation requires drilling and logging of observation wells at various locations along the known formations, which must now extended beyond our leased property. Your inquires are obviously accelerating this process.

It is my understanding that Mr. Loesby has sent two letters, made two visits, and, at least three telephone calls to Public Service Company, regarding the Leyden Gas Storage Project. I believe one letter and telephone call went to Nat Olowu on, and about, October 27, 1995, and the other letter to Charles Becker on November 29, 1995, with a follow-up telephone call. It is also my understanding that response to the letters and telephone calls was by telephone only. Our apparent slow formal response to the inquires is a combination of the holidays and the desire to properly coordinate an accurate response. This situation

obviously covers a wide spectrum of technical and legal issues, some of which you may have a better understanding than we do at this time. If you do have information that would be beneficial to both parties, we would greatly appreciate being in receipt of that information.

As previously stated, Public Service Company has been aware of the migration of natural gas, but not the extent to which it has migrated. There has been a continuous engineering effort, since that time, to determine the direction and extent of any migration. The drilling of observation Well No. 31 verified that the gas was migrating in a northerly direction. In 1995, Well No. 32 was drilled, which, in turn, determined how far the gas had not gone. Since the drilling of Well No. 31, Public Service Company, with the assistance of outside consultants, has been developing a program to determine the extent of migration and the probable volumes involved. Because of the potential expense involved with determining these aspects, careful consideration is being given the methodology.

To date, I have placed three telephone calls to Richard Loesby, and we are to meet today at 3:00 P.M.. My intent is to assess Mr. Loesby's concerns, and to begin the negotiation process to work toward a solution to our mutual concerns. A matter to be addressed immediately is the ground water. Removal of substantial amounts of this water has the potential of effecting the integrity of the Leyden operation. While we need to yet ascertain whether or not gas has migrated under the Loesby Property, we are certain of the consequences of removal of large volumes of water.

The initial proposal, being made to Mr. Loesby, will involve a long-term lease, very similar to leases we now have in place with other project landowners. If able to continue in this direction, we will order an appropriate appraisal for the water and our requested property uses. Once the appraisal is available, we will continue with the negotiation process to move toward monetary consideration and lease provisions acceptable to both parties.

Throughout this process, I will copy you on all correspondence and agreements presented Mr. Loesby as well as any other information which should appropriately be made available to you. In this spirit, you will find enclosed the lease agreement mentioned above. We would appreciate any reciprocal materials.

I look forward to resolving all issues and concerns regarding this situation. Please contact me if you any questions.

Sincerely,



James M. McClung
Senior Siting & Land Rights Agent.

Enclosure

cc Richard Loesby
Lisa Lett, PSCo Atty.
Donald Ostrander, Esq.
John Dingess, Esq.
Charles Becker, Engineering Mgr.
William Uding, PSCo Engineering
George Vonesh, Jr., PSCo Land Use
Nicholas Faes, PSCo Land Use



Public Service
Company of Colorado

5909 E. 38th Ave.
Denver, CO 80207-1295

February 7, 1996

Richard Loesby
1900 East Girard Place, # 409
Englewood, Colorado 80110

Re: Leyden Gas Storage Project

Dear Mr. Loesby:

This letter is prepared as a synopsis of my understanding of the issues and concerns discussed at our meeting of Friday, February 2, 1996, regarding relationships between Public Service Company's Leyden Gas Storage Project, and your property south of Rocky Flats.

The purpose of our meeting was to discuss, in limited detail, issues and possible solutions relative to the migration of natural gas from the cavern of the Leyden storage facility. I need, of course, to qualify this statement of purpose, by emphasizing that while we are aware of migration, we have yet to determine whether or not natural gas has migrated under your property.

I would like to first note that I appreciate both the time you have spent regarding the gas migration issues, and the understanding you have expressed regarding possible solutions. This is a complicated situation, requiring careful consideration on the parts of both you and Public Service Company.

As we discussed, removal of large volumes of ground water is of uppermost concern to Public Service Company. Items discussed relative to this aspect are as follows:

- Compensation for the loss of water
- Compensation for the loss of the energy that could possibly be harvested from the water as a heat and cooling source
- Tap fees for replacement water

Discussion also involved Public Service Company's understanding of and willingness to discuss these issues.

Other matters impacted by or having impact on proposed development of your property were:

- Perceived fear, by prospective tenants, of the location relative to the Leyden Gas Storage Project, and of the potential for explosion relative to the project, as well as on-sight monitoring wells, essential in determining and tracking gas migration
- Development of high quality topsoil production, and related equity investment or cost recovery partnership with Public Service Company
- Various liability aspects due to our presence, i.e., loss of prospective tenants following disclosure of nearby operations and migration study activities

- The potential for industrial/commercial development due to location, with recognition that the property is currently subdivided and zoned
- A general potential for the area to be subject to explosion, or as a target for sabotage or terrorism

Items very briefly discussed as possible solutions were:

- As mentioned previously, a cost recovery partnership or equity investment with Public Service Company in developing a topsoil packaging and sales project
- An outright purchase of the property with all water and mineral rights
- Purchase of property with an agreement to pay royalties
- Purchase of limited rights
- A long-term lease agreement with annual payments and escalation factors

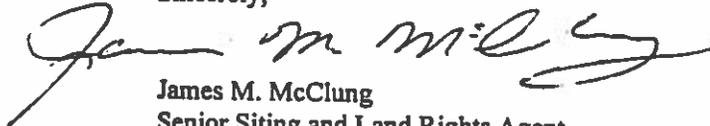
Hopefully, I have identified all significant issues discussed at the meeting. If not, please advise me of items overlooked, or if any items were misrepresented.

In addition to the discussion, I have also provided you with a proposed lease agreement for your review and consideration. I also provided a copy of a typical lease agreement, currently in place for the cavern and surface of the Leyden project. These items were provided for your information, without any specific request at this time. In addition, as indicated in the meeting, I will proceed with a request for an independent appraisal of both the property and the ground water.

In closing, I would like to reiterate Public Service Company's position, that is, we encourage you to proceed with any part of your development programs with the exception of the drilling of the deep water well involving the Laramie Fox-Hills formation. We cannot emphasize enough, that removal of large quantities of ground water can have a significant impact on the operations of the Leyden Gas Storage Project.

I will contact you next week to set a date for our next meeting.

Sincerely,



James M. McClung
Senior Siting and Land Rights Agent
329-1167

cc Karen Ostrander-Krug
Lisa Lett, Esq.
Donald Ostrander, Esq.
John Dingess, Esq.
Charles Becker
Bill Uding
Nicholas Faes

AUG 6 1996

NATURAL RESOURCE RECOVERY INC.

August 5, 1996

CERTIFIED MAIL #p589853799
RETURN RECEIPT REQUESTED

Richard Griebling
Director, CO&GCC
1120 Lincoln Street, Suite 801
Denver, CO 80203

PSCgrblt

1.62

Re: Public Service Company of Colorado Gas Migration from Leyden
Storage Facility

Dear Mr. Griebling:

In October 1995, as Director of the CO&GCC you assumed jurisdiction to order PSCO to retest well #31 to confirm whether storage gas had migrated. In about December 1995 you notified me by telephone and in your December 1995 Director's Report that the Attorney General had given you a verbal legal opinion that the CO&GCC did not have statutory authority in 1960 to issue the ORDER allowing PSCO to store gas underground nor to regulate PSCO in 1995 for violations of the 1960 ORDER including gas migration from underground storage.

Enclosed are the Colorado Statutes from before 1960 through 1995 relating to underground storage of natural gas. It seems clear to me that these statutes clearly gave the CO&GCC in 1960 the authority to issue the ORDER and now provide you with the authority in 1996 to pursue injunctive action and order cessation of violations of this 1960 ORDER and to assess penalties and fines for such violations. If you or the Attorney General have documentation which overrides or supersedes these statutes, would you please provide them to me as soon as possible. I have sent a similar request to Lori Coulter at the office of the State Attorney General for her response to CO&GCC authority as well as issues related to the WQCD.

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

Telephone: (303) 761-4187

FAX: (303) 781-8690

The testimony from the 1960 hearings, the Hearing Notices and the ORDER from 1960, make it clear that the ORDER allowing PSCO to store gas underground was issued with the following conditions:

1. no gas migration from storage boundaries (Leyden mine)
2. no water pollution
3. no operating pressures above hydrostatic
4. no damage to adjoining properties.

PSCO's own documents and recorded statements from PSCO personnel and Colorado statutes relating to water pollution make it obvious that these four conditions are being violated.

I have enclosed two letters from PSCO's Jim McClung of February 1996 to me and to attorney Karen Krug. These February letters are unequivocal in demonstrating PSCO's desire at that time to compensate me for damages caused by their gas migration. They also make it clear that if water is removed from wells on my property (NWIS), PSCO is certain that removal of the water will have adverse consequences on their gas storage which will compound the problems they already have with migration.

PSCO was first put on notice of this problem by me in October 1995 and it appeared they were going to resolve it. Since February 1996, PSCO has replaced the people initially assigned to resolve the problem for PSCO - attorney Ostrander and PSCO's senior right of way specialist, Jim McClung. McClung was removed and replaced by PSCO's Tim Atwater. Attorney Ostrander was removed and replaced by attorney Herb Phillips also in March 1996. For the 7 months from February to August 1996, PSCO has not provided any meaningful response despite numerous requests from my attorney Karen Krug.

In the time between October 1995 and August 1996 I have been unable to develop my property, unable to drill water wells and have had my liability insurance cancelled - making the entire property unusable and uninsurable.

The insurance was cancelled not because of PSCO's gas migration under my property but because of their gas migration on property "near" my site.

The issue of whether gas is actually migrating under the NWIS appears to be irrelevant with regard to PSCO's damage to my site.

On July 10, 1996, PSCO personnel assigned to this case gave a briefing to the Jefferson County Commissioners regarding Leyden gas storage. According to Jeffco personnel at that briefing, PSCO represented that their first area of concern was on the north side of the mine and that they intended to place 1200' deep gas monitoring wells right along highway 72 on the north perimeter. These boundaries place my property in the middle of PSCO's intended study area. Other lands nearby are all private property.

In order for PSCO to place gas monitoring wells on private property along Highway 72, it is my understanding that they would either have to secure ground leases from landowners or commence condemnation proceedings. When area landowners are notified of my experience with PSCO during the last ten months I do not believe they will be inclined to cooperate with PSCO in allowing gas wells on their property. PSCO personnel have acknowledged in writing that it has been very difficult for them to obtain leases for their gas monitoring wells from private landowners. In addition to the diminution in property values for simply having gas well heads located on a particular site, PSCO's handling of my case during the last 10 months has made it obvious to me just why PSCO has had trouble securing leases.

Other written records represent that although PSCO has no interest in controlling development of surface lands in the area, they do intend to control drilling of water wells. If that is the case, I believe the CO&GCC, the WQCC and the Attorney General may wish to speak to area property owners about whether they have been given notice of PSCO's intent and whether they consent to donate their properties to PSCO's use "in the public interest." I submit to you that PSCO's violation of the 1960 CO&GCC ORDER (violations which continue in 1996) and their storage of gas on the property of others while attempting to prevent the drilling of water wells which those landowners are entitled to drill is not in the public interest.

In about March 1996, PSCO's first attorney Donald Ostrander notified my attorney Karen Krug that one of PSCO's options was condemnation of my land. PSCO's McClung (who was dealing directly with me at that time)

heard about Ostrander's obvious threat and assured me that PSCO was not then considering, nor would they ever consider condemnation proceedings in this case. Attorney Ostrander was removed from this case by PSCO in March shortly after his comments to Krug regarding condemnation.

Would you please provide me with a letter regarding the circumstances under which the CO&GCC would grant the right of condemnation to an entity which first obtains an order from CO&GCC to store gas (1960), then knowingly and intentionally violates that order, in so doing damages the land of another and then seeks to condemn the same land it damages.

Would you also obtain from PSCO the location of where along Highway 72 they intend to place their monitoring wells, the number of wells, and deliver that information to me as soon as possible along with copies of the CO&GCC permits and permit applications filed by PSCO.

Please consider one further point. I am in possession of documentation from Jeffco which support statements from PSCO personnel to me in March 1996 that, among many other very disturbing statements by PSCO, I am able to document indisputably:

1. PSCO would not handle my case in good faith,
2. I should not trust PSCO management and lawyers in handling my case,
3. I should document and record all communications with PSCO personnel,
4. Delays past March in resolving the major issues in my case were not necessary,
5. Decisions to delay as long as possible the resolution of my case were being made at the "very top" at PSCO and were being done so in bad faith toward me.

The documentation from Jeffco which supports statements to me by PSCO personnel earlier this year (regarding PSCO's bad faith) were made by PSCO personnel at the July 10 briefing. PSCO statements were as follows:

1. no trace of PSCO's mine gas was found at PSCO's observation well drilled in 1993 (well #31),

2. some of the gas was naturally occurring "swamp" gas, (at #31)
3. the amount of gas found at the well was too small to measure.

These representations are, as you know, contrary to PSCO's own report on well #31 filed with your office in 1993 and also contrary to the USGS test results in December 1995 which clearly showed the gas at #31 was PSCO's storage gas.

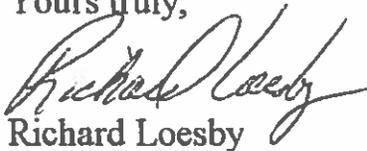
Until now, I believed there was some probability that PSCO would return to its early approach in February and have this problem resolved as it relates to my property so I have refrained from contacting environmental organizations such as the Sierra Club to participate along with my own attorneys against PSCO in settling not only my case but what now appears will be claims by many other private landowners in the area. It is now six months since my February contacts with PSCO and it is obvious that PSCO has every intention of continuing to use the tactics of delay and bad faith as described to me by their own personnel.

In summary, would you provide me documentation relating to the following:

1. CO&GCC's lack of statutory authority to regulate the Leyden underground gas storage facility
2. CO&GCC's position on condemnation as described herein
3. Location and information on PSCO's gas monitoring wells to be placed along Highway 72.

Although I am sending similar correspondence to the Attorney General and the WQCD, would you please respond to this letter as soon as you are able.

Yours truly,



Richard Loesby

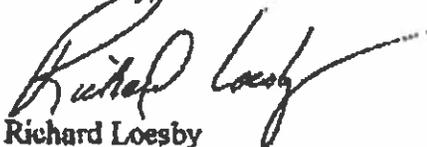
Enclosures: McClung letters of Feb. 3 & 7, 1996 & Statutes re: Gas Storage


NATURAL RESOURCE RECOVERY INC.**August 27, 1996****Via Fax : 303/866-3558
and via U.S. Mail****Lori Coulter
Assistant Attorney General
State of Colorado
1525 Sherman Street, 3rd Floor
Denver, CO 80203****Rc: CO&GCC and PSCo Leyden Gas Storage Facility****Dear Ms. Coulter:**

On Friday August 23, 1996 I called Richard Griebing who informed me that you would be responding, on behalf of the CO&GCC, to my August 5 letter which I sent to Griebing. If that is not the case would you please let me know what your plans are.

I have also sent you a letter of August 5 requesting the same information I asked for from Griebing with the addition of questions related to violations by PSCo of WQCD-related statutes.

In view of the fact that the statute appears to require action by you against PSCo within one year, I request that you expedite your response to me so that the statute of limitations not be allowed to expire.

Yours truly,**Richard Loesby
President**

PO Box 184, 5330 South Broadway, Englewood, Colorado 80151-0184

Telephone: (303) 781-4187

FAX: (303) 781-8590

RECEIVED
AUG 31 1996
CO&GCC

NATURAL RESOURCE RECOVERY INC.

1.62

August 27, 1996

PSCgrtr

Richard Griebling
Director, CO&GCC
1120 Lincoln Street, Suite 801
Denver, CO 80203

By Fax: 303/894-2109
and by U.S. Mail

Re: Public Service Company Gas Migration at Leyden Storage Facility

Dear Mr. Griebling:

On August 23, 1996 you informed me by telephone during my call to you that assistant Attorney General Lori Coulter would provide a response to my letter to you of August 5, 1996. Ms. Coulter is the person you told me in December 1995 had advised you that the CO&GCC had no statutory authority to issue the ORDER in 1960 to PSCo nor to regulate the PSCo underground gas storage facility after 1960 including through 1996.

My August 5 letter asked that you provide me documentation relating to the following:

1. CO&GCC's lack of statutory to regulate the Leyden underground gas storage facility
2. CO&GCC's position on condemnation
3. Location and information on PSCo's gas monitoring wells to be placed along Highway 72 as represented by PSCo to the Jefferson County Commissioners on July 10, 1996.

It is my understanding that the CO&GCC is not contesting the fact that PSCo must provide you with information regarding where and when they intend to place their gas monitoring wells.

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

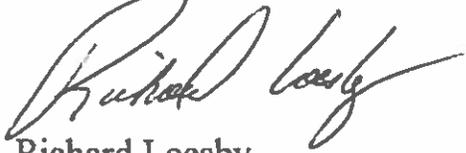
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FAX: (303) 781-8690

In view of the fact that PSCo has publicly stated (to Jeffco Commissioners on July 10) that they will be placing 1200' deep gas monitoring wells "right along Highway 72", would you please obtain that information either from your files or from PSCo and let me know by letter as soon as possible where, when and how many wells PSCo intends to construct?

In late 1995 you notified me that if PSCo storage gas was leaking that it would obviously be a problem. Now that we know that their storage gas is leaking and as Director of the State agency which is mandated to protect the public interest, I request that your office take the initiative to fulfill its mandate by obtaining this information from PSCo as soon as possible. Just as you ordered PSCo in October 1995 to retest well #31, it is certainly clear that you have the authority to obtain the information I am requesting.

Yours truly,

A handwritten signature in cursive script, appearing to read "Richard Loesby".

Richard Loesby
President



1.62

GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

August 30, 1996

Richard Loesby
P.O. Box 184
3330 South Broadway
Englewood, CO 80151-8690

BY FAX 781-8690

RE: Leyden Storage Facility

Dear Mr. Loesby:

The question of whether the Colorado Oil and Gas Conservation Commission (OGCC) has enforcement jurisdiction over the Public Service's Leyden Gas Storage Facility remains under consideration by this office and the OGCC. I will contact you with any pertinent information in this regard, as soon as the issue is resolved.

I would also like to state again that the OGCC does not have the authority to award you any fees or damages you may be claiming against the Public Service Co., nor does any potential action by the OGCC ensure that your civil claims will be brought to a speedier resolution.

Thank you for your attention in this regard.

Sincerely,

LORI J. COULTER
Assistant Attorney General
Natural Resources Section
(303) 866-5010
(303) 866-3558 (FAX)

cc: Karen Ostrander-Krug
Richard Griebeling

SEP 4 1996

NATURAL RESOURCE RECOVERY INC.

1.62

September 3, 1996

Lori Coulter
1525 Sherman Street - 3rd Floor
Denver, CO 80203

CERTIFIED MAIL #P805350746
RETURN RECEIPT REQUESTED

PSCgrt3

Dear Ms. Coulter:

This letter is in response to your August 30 letter to me. Attached is my written request for public hearing on the matters relating to gas migration from the PSCo storage facility.

In response to your notice to me that OGCC does not have the authority to award fees or damages or expedite my civil claims against Public Service Company, I have not in the past nor do I now rely on OGCC or on the Attorney General for either of these. I am aware of C.R.S. 34-60-114 regarding actions for damages and my rights thereunder.

With regard to my request that you provide me with documentation which shows that neither you nor the OGCC have statutory authority or jurisdiction to pursue legal remedies against PSCo for their admitted violations of the 1960 ORDER of the OGCC, I am puzzled by your response that you need more time to consider and investigate whether OGCC has enforcement jurisdiction over the PSCo Leyden Gas Storage Facility.

In December 1995 Director Griebing notified me that you had advised him unequivocally that the OGCC did not have authority to pursue legal remedies against PSCo. Griebing further told me that if I filed a complaint against PSCo that he would "guarantee" me that OGCC would not hear it. Griebing and I discussed this issue at length over several telephone calls from December 1995 to January 1996 and each time his advice was the same ie., OGCC did not have authority. The December 1995 Report of the OGCC Director (Griebing) specifically refers to your having advised him on this issue.

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My request from you now is quite limited in scope. It is to provide me with the statute(s) upon which you relied in December 1995 in order to advise Griebing that OGCC did not have authority or jurisdiction to regulate PSCo's underground gas storage for violations of the 1960 ORDER of OGCC nor to hear complaints from landowners damaged by PSCo gas migration. If you knew the law then and had the statute in hand to advise Griebing in December 1995, I do not understand what further research needs to be done to provide this same statute to me now.

1995 URGENCY vs. 1996 MORE TIME TO STUDY

I am also concerned by your apparent lack of urgency on this very serious matter. On October 26, 1995 when I notified OGCC that I had discovered gas migration caused by PSCo, Griebing asserted what he believed was his statutory authority and ordered PSCo to immediately retest their well #31. PSCo complied with Griebing's order on October 31. Within a few days, Griebing made it clear to me by telephone that, even though he had ordered PSCo to retest the well, he was quite sure the gas at #31 was not PSCo's storage gas but was naturally occurring "swamp/biogenic" gas. Griebing probably believed this because, as he repeated to me several times quite adamantly, he knew PSCo was operating their gas storage below hydrostatic pressure.

At a time when Griebing and OGCC believed there was little or no chance that PSCo gas was migrating and therefor little need for urgency, Griebing nevertheless invoked his authority and ordered PSCo to take certain measures without delay. In direct contradiction to this immediate demand by Griebing for results from PSCo and simultaneous to delivery of the report on #31 from USGS in December 1995 (that it was in fact PSCo storage gas and not swamp gas that was leaking/migrating to #31), Griebing notified me that PSCo gas was leaking (therefore extreme urgency would seem to be required) and that after advice from you, the OGCC actually did not have authority over underground gas storage in 1995 nor did OGCC have authority to *issue* the ORDER in 1960.

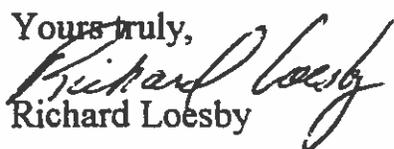
Griebling explained to me that there was a gap in the law, and that new legislation would probably be introduced in early 1996 because neither the OGCC nor any other government agency had been watching/regulating PSCo and PSCo has been policing and regulating itself for the last 36 years at the Leyden underground gas storage facility. Griebling's Report of December 1995 will confirm your advice to him.

I do not understand why there was a sense of urgency from Griebling at a time when he believed there was no gas migration but no sense of urgency when it was confirmed that gas was in fact migrating - particularly when Griebling had described to me that if PSCo gas was found at #31, it would be "... obviously a problem."

Griebling believed this leaking gas problem to be so serious that he would require PSCo to begin a program of more investigation wells if it was confirmed that gas was leaking and would further require PSCo to provide him with an accounting of PSCo lost and unaccounted-for gas from their historical records. C.R.S. 34-60-124 (5)(b) gives Griebling the authority to "... require responsible parties to conduct investigation or monitoring activities and to provide the commission with the results;"

At a time when you now know without question there is gas migration as confirmed in writing by OGCC, USGS and PSCo, when you know there is actual (not simply threatened) damage to private property next to the gas storage and when you know this gas migration is in violation of an ORDER by OGCC in 1960, you and OGCC now take the position of no urgency whatsoever and that you need more time to research whether OGCC has jurisdiction.

I look forward to your response.

Yours truly,

Richard Loesby

cc: Richard Griebling, Ronald Schmela & enclosures to OGCC



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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September 12, 1996

Richard Loesby
Natural Resource Recovery, Inc.
PO Box 184
3330 South Broadway
Englewood, CO 80151-0184

BY FAX 781-8690

RE: Leyden Gas Storage Facility

Dear Mr. Loesby:

Enclosed please find a copy of a Notice of Hearing, which you should soon be receiving via mail from the Colorado Oil and Gas Conservation Commission (OGCC), if you haven't received it already. You will note a hearing has been scheduled before the Colorado Oil and Gas Conservation Commission for October 15 and 16, 1996. At that hearing, the OGCC will determine whether or not its enabling statute will be interpreted by it to include gas storage facilities. You will be provided the opportunity at that hearing to make any relevant statements you wish and present any relevant exhibits, as will any other party who appears. Since a jurisdictional determination is largely a legal issue and does not involve disputes of fact, it is very unlikely that direct or cross examination of parties will be allowed at this hearing. Also, I would suggest you call the OGCC a few days before the hearing to find out if the matter has been scheduled for a specific date and time. Obtaining that information will allow you to avoid sitting through two days of hearings on other matters, while you wait for this matter to be called. Please note that any potential OGCC action against the Public Service Co. will not be determined at this hearing, since only the question of jurisdiction will be decided, and therefore you should limit your presentation accordingly.

If the OGCC determines that it has jurisdiction over gas storage facilities, OGCC Rule 522 will apply to this matter. I have attached a copy of Rule 522 for your review. You will note that Rule 522 provides that the Director of the OGCC must first investigate any matter which would involve a potential violation. The Director then makes a determination as to whether he will issue a Notice of Alleged Violation (NOAV) against the violating

Richard Loesby
Page 2

party. Once the Director's determination is made as to whether to issue the NOAV, you have the right to file for a hearing and request the OGCC issue an Order Finding Violation (OFV), if you are unsatisfied with the Director's decision. Both an NOAV and OFV may provide for corrective action and penalties.

I would also like to quickly point out that the OGCC's order issued in 1960 was issued pursuant to C.R.S. § 34-64-104, which provides a procedure for allowing public utilities to exercise the right of condemnation. This statute does not give the OGCC specific authority to regulate gas storage fields. The Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101, et seq. generally will be the statutory authority referred to when arguments are made with respect to OGCC jurisdiction over gas storage facilities, although other law may also be considered.

I hope this information proves useful to you. Thank you for your attention in this regard.

Sincerely,



LORI J. COULTER
Assistant Attorney General
Natural Resources Section
(303) 866-5010
(303) 866-3558 (FAX)

cc: Rich Griebing

resident counsel is submitted. Any notice, pleading, or other paper may be served upon the resident attorney with the same effect as if personally served on the non-resident attorney within this State. Resident counsel shall be present before the Commission unless otherwise ordered by the Commission.

c. At administrative hearings before the Director, attorneys shall not be required.

518. SUBPOENAS

The Commission may, through the Secretary, issue subpoenas requiring attendance of witnesses and the production of books, papers, and other instruments to the same extent and in the same manner and in accordance with the procedure provided in the Colorado Rules of Civil Procedure which authorizes issuances of subpoenas by Clerks of District Courts.

519. APPLICABILITY OF COLORADO COURT RULES

The Commission adopts the rules of practice and procedure contained in the Colorado Rules of Civil Procedure insofar as the same may be applicable and not inconsistent with the rules herein set forth. In general, the rules of evidence applicable before a trial court without a jury shall be applicable, providing that such rules may be relaxed, where, by so doing, the ends of justice will be better served.

520. TIME OF HEARINGS AND HEARING AGENDA

Regular monthly hearings will be held before the Commission on such days as may be set by the Commission. The Secretary shall place on the consent agenda those matters recommended by a Hearing Officer for approval, those matters in which an Administrative Order by Consent ("AOC") has been negotiated, and those uncontested matters for which a decision has been requested based on the verified application. The consent agenda shall be voted on without deliberation and without the necessity of reading the individual items; however any Commissioner may remove a matter from the consent agenda prior to voting thereon.

521. VARIANCES TO ORDERS OF THE COMMISSION

Variations to orders of the Commission may be granted only by order of the Commission.

522. PROCEDURE TO BE FOLLOWED REGARDING ALLEGED VIOLATIONS

a. **Notice of Alleged Violation.**

(1) A complaint requesting the issuance of an Notice of Alleged Violation ("NOAV") may be made to the Director by the mineral owner, surface owner or tenant of the lands upon which the alleged violation took place, by other state agencies, by the local government within whose boundaries the lands are located upon which the alleged violation took place, or by any other person who may suffer direct harm as a result of the alleged violation. Whenever the Director, on the Director's own initiative or by reason of a such complaint, has reasonable cause to believe that a violation of the act, or of any rule, regulation, or order of the Commission, or of any permit issued by the Commission, has occurred, the Director shall issue a NOAV to the operator. Reasonable cause requires, at least, physical evidence of the alleged violation, as verified by the Director.

(2) The NOAV shall be served on the operator's designated agent, or on the operator if no agent has been designated, by personal delivery or by certified mail, return receipt requested. The NOAV shall not be placed on the Commission docket, except as part of an application filed pursuant to subsection c. of this Rule. The NOAV does not constitute final agency action for purposes of judicial appeal.

(3) The NOAV shall identify the provisions of law allegedly violated and the facts alleged to constitute the violation. The NOAV may propose appropriate corrective action and an abatement schedule, if any, that the Director elects to require. The NOAV shall also describe the penalty, if any, which the Director may propose, to be determined in accordance with Rule 523.

b. **Resolution of a Notice of Violation.**

(1) Informal procedures to resolve issues raised by an NOAV with the Director are encouraged. Such procedures may include, but are not limited to, meetings, phone conferences and the exchange of information. If, as a result of such procedures, the Director determines that no violation has occurred, the Director shall revoke the NOAV in writing.

(2) NOAV'S which do not include a proposed penalty may be resolved by written agreement of the operator and the Director as to the appropriate corrective action and abatement schedule. Such agreements do not require commission approval and shall not be placed on the Commission docket, except at the request of the operator.

(3) NOAV'S which include a proposed penalty may be provisionally resolved by negotiation between the operator and the Director. If such negotiations result in a proposed agreement, an Administrative Order By Consent ("AOC") containing such agreement shall be prepared and noticed pursuant to Rule 507 for review and approval by the Commission, at its discretion. Upon such approval, the AOC shall become a final order, and the agreed penalty imposed. Such approval may be granted without hearing, unless a protest thereto is filed. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.

(4) Any person making the complaint shall have the right to notice of and to participate in any informal procedures utilized by the Director and the operator for resolution of the matter, and if such person objects to revocation or settlement of the NOAV, such person shall have the right to file an application for an Order Finding Violation ("OFV"). Such application shall be filed within forty-five (45) days of the Director's decision and shall be served on the operator and any other Interested Party.

c. Order Finding Violation.

(1) If the operator contests the NOAV, as to the existence of the violation, the appropriate corrective action and abatement schedule, or as to any proposed penalty, the Director shall make application to the Commission for an OFV and shall place the matter on the next available Commission docket, providing that at least twenty (20) days notice of such application is provided to the operator.

A. Upon at least twenty (20) days notice to the affected operator, a hearing to consider whether to issue an OFV may be held on the Commission's own initiative if it believes that the Director has failed to enforce a provision of statute, rule, regulation, order, or permit subject to Commission jurisdiction.

B. Upon at least twenty (20) days notice to the affected operator, a hearing to consider whether to issue an OFV may be held on the application of a interested party, provided that such interested party has first made a written request to the Director to issue an NOAV and the Director has determined in writing not to do so, and that such application is filed within forty-five (45) days of the Director's determination.

(2) Upon an operator's request a settlement conference shall be held with the Director no less than five (5) days before the hearing on an OFV. If an agreement is reached, an AOC containing such agreement shall be prepared and noticed for review and approval by the Commission, at its discretion. Upon such approval, the AOC shall be entered into by the Commission and the operator, and the agreed penalty shall be imposed. Such approval may be granted without hearing, unless a hearing thereon is requested by an interested party. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.

(3) A hearing to consider whether to issue an OFV shall be a de novo proceeding, unless the parties stipulate as to the facts, or as to the appropriate corrective action and abatement schedule, in which case the hearing may be accordingly limited.

(4) The Director is always a necessary party to a hearing on an OFV. The operator against which an OFV is sought is always a necessary party but need not present a case. An interested party which is not the applicant for an OFV, but whose complaint initiated the enforcement proceeding, shall be granted intervenor status if so requested, pursuant to Rule 509, except that the filing fee shall be waived.

- d. **Cease and Desist Orders.**
- (1) The Commission or the Director may issue a cease and desist order whenever an operator fails to take corrective action required by final AOC or OFV.
 - (2) Whenever the Commission has evidence that a violation of any provision of the act, any rule, permit, or order of the Commission has occurred under circumstances deemed to constitute an emergency situation, the Commission may issue a cease and desist order. Such order shall be considered a final order for purposes of judicial review.
 - (3) The order shall be served by personal delivery or by certified mail, return receipt requested, to the operator's designated agent, or on the operator if no agent has been designated, for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the Commission or the Director elects to require of the operator. Any protest by an operator for a cease and desist order issued by the Director shall automatically stay the effective date of the order, in which case the order shall not be considered final for purposes of judicial review until such protest is heard.
 - (4) In the event an operator fails to comply with a cease and desist order, the Commission may request the attorney general to bring suit pursuant to §34-60-109, C.R.S.

523. PROCEDURE FOR ASSESSING FINES

a. **Fines.** An operator who violates any provision of the Act or any Rule, permit, or order issued by the Commission shall be subject to a fine which shall be imposed only by order of the Commission, after hearing, or by an administrative order by consent approved by the Commission. All fines shall be calculated using the base fine amount for the particular violation as set forth in the fine schedule in subparagraph c. of this Rule 523, subject to the following:

- (1) The Commission may in its discretion find that each day a violation exists constitutes a separate violation; however, no fine shall exceed one thousand (\$1,000) dollars per day.
- (2) All fines shall be subject to adjustment based upon the factors listed in subparagraph d of this Rule 523.
- (3) For a violation which does not result in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety or welfare, the maximum penalty shall not exceed ten thousand (\$10,000) dollars regardless of the number of days of such violation.
- (4) Fines for violations for which no base fine is listed shall be determined by the Commission at its discretion subject to subparagraphs (1), (2), and (3) of this Rule 523.a.

b. **Voluntary disclosure.** Any operator who conducts a voluntary self-evaluation as defined in the 100 Series of the Rules and makes a voluntary disclosure to the Director of a significant adverse impact on the environment or of a failure to obtain or comply with any necessary permits, shall enjoy a rebuttable presumption against the imposition of a fine for any violation relating to such impact or failure, under the following conditions:

- (1) The disclosure is made promptly after the operator learns of the violation as a result of the voluntary self-evaluation;
- (2) The operator making the disclosure cooperates with the Director regarding investigation of the issue identified in the disclosure; and
- (3) The operator making the disclosure has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER TO GOVERN OPERATIONS IN)
THE LEYDEN GAS STORAGE FIELD, JEFFERSON)
COUNTY, COLORADO)

CAUSE NO. 1

DOCKET NO. 10-12

NOTICE OF HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

On September 4, 1996, Richard Loesby filed with the Commission a complaint/application for hearing to: 1) determine whether the Oil and Gas Conservation Commission has jurisdiction over underground gas storage and whether the Oil and Gas Conservation Commission has authority to pursue legal remedies against Public Service Company of Colorado, and 2) to prevent further damage to private property of all landowners near Public Service Company gas storage and enforce the Colorado Oil and Gas Conservation Commission Order of 1980 against Public Service Company to enjoin and restrain them from continuing violations of the Order.

Therefore, the Commission will hold a hearing to determine whether the Commission has the authority to regulate gas storage fields in the State of Colorado, thus determining whether the Commission has the jurisdiction to take enforcement actions against gas storage fields. If the Commission determines that it has jurisdiction to regulate gas storage fields then the complaint/application of Mr. Loesby will be investigated by Commission staff under the provisions of Rule 522 of the Oil and Gas Conservation Commission.

NOTICE IS HEREBY GIVEN, that the Oil and Gas Conservation Commission of the State of Colorado, pursuant to the above, has scheduled the above-entitled matter for hearing on:

Date: Tuesday, October 15, 1996
Wednesday, October 16, 1996

Time: 8:30 a.m.

Place: Suite 801, The Chancery Building
1120 Lincoln Street
Denver, Colorado 80203

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Mara Jauch 894-2100 ext. 114, prior to the hearing and arrangements will be made.

Pursuant to said hearing in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Commission will enter such orders as it deems appropriate to prevent the waste of oil and gas, either or both, in the operations of said field, and to carry out the purposes of the statute.

Any interested party desiring to protest the granting of the application or to intervene should file with the Commission a written protest or a notice to intervene, including nine (9) copies, no later than October 8, 1996, briefly stating the basis of the protest or intervention. Such interested party shall, at the same time, serve a copy of the protest or notice to intervene to the person filing the application. A fee of seventy dollars (\$70.00) shall accompany each document filed with the Commission.

IN THE NAME OF THE STATE OF COLORADO

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 
Patricia C. Beaver, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
September 10, 1996

Applicant:
Richard Loesby
3330 S. Broadway
Englewood, CO 80151-0184
(303)781-4187


NATURAL RESOURCE RECOVERY INC.

September 13, 1996

Lori Coulter
Assistant Attorney General
Natural Resources Section
1525 Street - 5th Floor
Denver, CO 80203

PSC0196
Via Fax: 303/866-3558
and US Mail

Re: Leyden Gas Storage Facility

Dear Ms. Coulter:

Thank you for your September 12 letter notifying me of the October 15 and 16 hearing dates regarding the single issue of OGCC jurisdiction over PSCo underground gas storage. I will be present on the date of the hearing and will obtain the agenda from OGCC.

At this hearing would you please ask that the following documents be incorporated by reference into the October 15-16 hearing record for the Leyden gas storage facility:

1. all testimony, exhibits and the complete record of the 1960 Hearings,
2. all OGCC records and files on the PSCo-Leyden gas storage facility since 1960,
3. all of the correspondence between Natural Resource Recovery, Inc., OGCC, your office and WQCD.

It is my understanding from OGCC that these hearings are recorded and transcribed by a court reporter with written transcripts available directly from the reporter and that there is no objection or prohibition to my having the hearing recorded on audio tape.

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

Telephone: (303) 761-4187

FAX: (303) 781-8690

-2-

2/4 Coulter
9/13/96

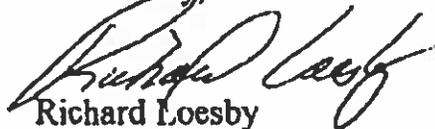
In order that the members of the OGCC have all of the information for their consideration, would please provide them with copies of our correspondence at least a few weeks in advance of the October 15-16 hearing. I believe these letters will be helpful with the extensive statutory references to the specific points of law which will be raised at the hearing. The documents are:

1. August 5 letter to Richard Griebing along with enclosures of McClung letters of February 3 and 7, 1996 and statutes
2. August 5 letter to you
3. August 27 letter to Griebing (I am faxing this to you today 9/13)
4. August 27 letter to you
5. Your August 30 letter to me
6. My September 3 letter to you with my 6-page Complaint and exhibits 34-60-104.5 & 105 and 1960 ORDER
7. My September 13 letter to you with exhibit

Would you please also give each of the OGCC members one of the 7 enclosed color aerial photos which provide a descriptive graphic of where the Leyden gas storage is located in relation to my property.

I have included the attached observations and questions for you which I would like to have made a part of the hearing record along with this letter.

Yours truly,



Richard Loesby
President

cc: Richard Griebing, OGCC Director
Via Fax: 303/894-2109

**OBSERVATIONS AND QUESTIONS REGARDING OGCC
JURISDICTION OVER UNDERGROUND GAS STORAGE**

1. Item no. 2 in the FINDINGS attached to the September 30, 1960 ORDER of the OGCC provides that the OGCC "... has jurisdiction over the subject matter embraced in said Notice, and of the parties interested therein,.."

Referring back to the July 8, 1960 NOTICE OF HEARING issued by the OGCC and also to identical language in the August 9, 1960 NOTICE OF CONTINUANCE OF HEARING, the "subject matter" provided in those two documents is "... *underground storage of natural gas in the land sought to be condemned...*" and "...*all protective measures against any type of danger or adverse effect connected with the project, such as, but not limited to, pollution problems or escape of natural gas.*"

2. If a public utility wants to store gas underground and if it also does not want to be regulated by OGCC, in order not to be regulated by OGCC, is it the only statutory requirement that the utility apply to the agency (OGCC) which will not be regulating it so that the utility may condemn the land for that unregulated use, ie., underground gas storage?
3. Does it seem reasonable to conclude that OGCC held extensive hearings in 1960 for PSCo's application to store gas underground (at which hearings PSCo was required to provide "substantial evidence" to the OGCC) and that neither the Legislature, nor OGCC nor PSCo intended that PSCo would thereafter be subject to regulation by OGCC for underground gas storage?
4. According to the transcript of the 1960 hearings, attorney A.J. Hamburg appeared on behalf of PSCo and PSCo submitted to the jurisdiction of OGCC for the "subject matter" described in the two hearing notices and for the purpose of providing "substantial evidence" to the OGCC on that subject matter - including pollution and migration/escape of natural gas.

4/4 Coulter
9/13/96

Also, in October 1995, OGCC again asserted its jurisdiction over PSCo (to which PSCo submitted) by ordering PSCo to retest well #31 for migration of underground storage gas. Well #31 is specifically dedicated and solely related to monitoring of underground storage gas.

5. On the cover page for Title 34, both 34-60-101 (101-125) and 34-64-104 appear under the sub-heading "Conservation and Regulation." All of the twenty five sections of C.R.S. 34-60-101 (101-125) regarding OGCC authority (including jurisdiction over underground gas storage) precede the three sections on condemnation 34-64-104.

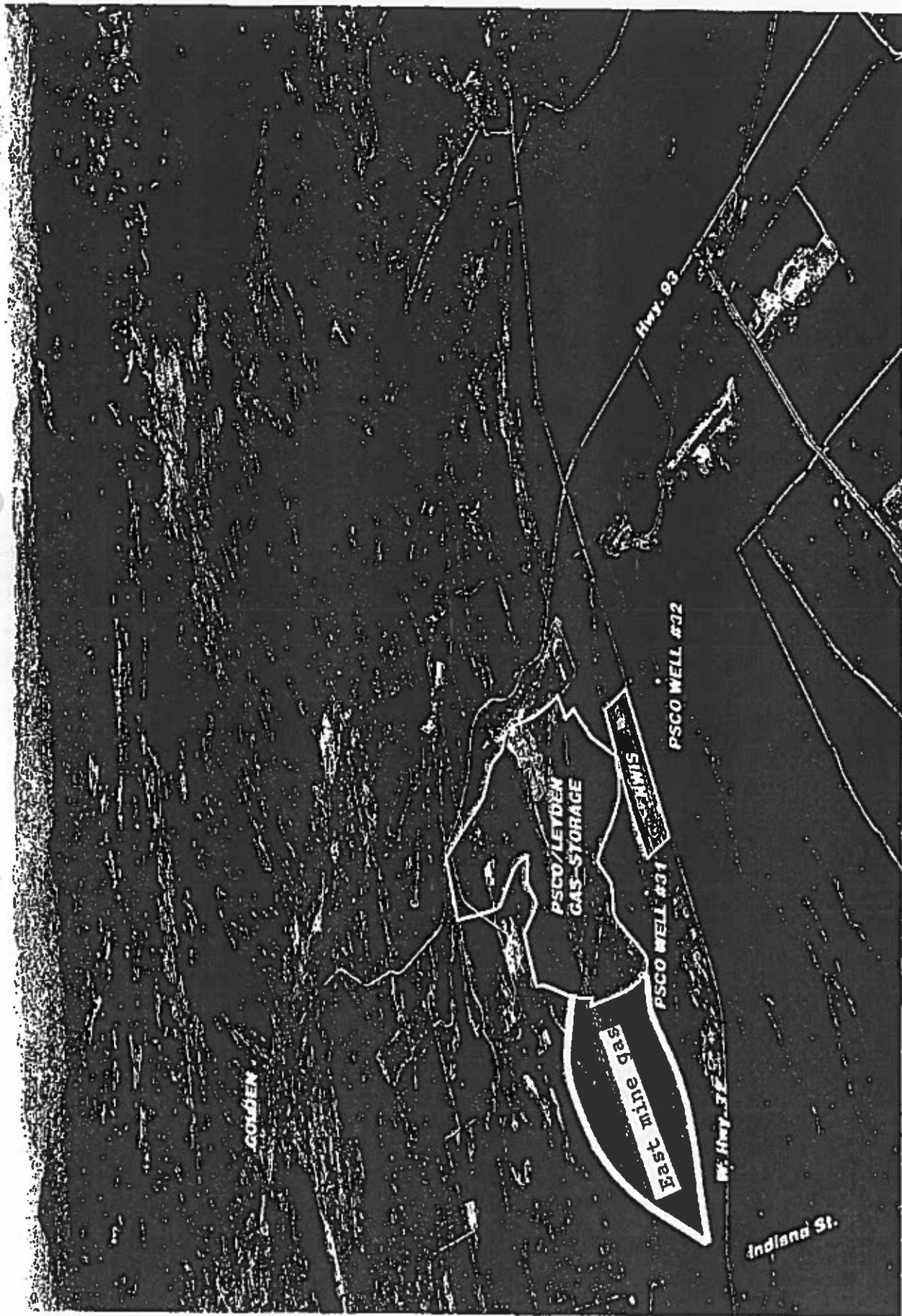
Is it reasonable to assume that the Legislature intended that any utility could simply apply for the right to condemn and then not be subject to oversight by OGCC for any of the other statutory requirements for underground storage in the preceding sections of 34-60-101 (101-125)?

6. Did the Legislature enact underground gas storage and condemnation laws in order that a public utility should not be regulated?

Did the Legislature intend that PSCo not be regulated by OGCC for the last 36 years?

7. The testimony and exhibits from 1960 which were provided to me by OGCC do not indicate opposition from landowners to condemnation.
8. There does not appear to be documentation in OGCC records that any condemnation proceedings were ever initiated or completed by PSCo directly against landowners.
9. Recent efforts (Sept. 96) to obtain records at OGCC offices have also indicated that certain records are either missing or lost ie., the file on PSCo well #31 was not available.

Boundaries of Leyden/PSCO gas storage are approximate



FILE NO. 001010050 SEP 13 1996 14:37 P.07

NATURAL RESOURCE RECOVERY INC.

August 27, 1996

REC-118

Richard Griebling
Director, CO&GCC
1120 Lincoln Street, Suite 801
Denver, CO 80203

By Fax: 303/894-2109
and by U.S. Mail

Re: Public Service Company Gas Migration at Leyden Storage Facility

Dear Mr. Griebling:

On August 23, 1996 you informed me by telephone during my call to you that assistant Attorney General Lori Coulter would provide a response to my letter to you of August 5, 1996. Ms. Coulter is the person you told me in December 1995 had advised you that the CO&GCC had no statutory authority to issue the ORDER in 1960 to PSCo nor to regulate the PSCo underground gas storage facility after 1960 including through 1996.

My August 5 letter asked that you provide me documentation relating to the following:

1. CO&GCC's lack of statutory to regulate the Leyden underground gas storage facility
2. CO&GCC's position on condemnation
3. Location and information on PSCo's gas monitoring wells to be placed along Highway 72 as represented by PSCo to the Jefferson County Commissioners on July 10, 1996.

It is my understanding that the CO&GCC is not contesting the fact that PSCo must provide you with information regarding where and when they intend to place their gas monitoring wells.

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

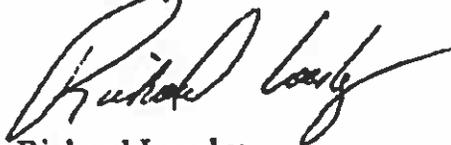
Telephone: (303) 781-4187

FAX: (303) 781-8690

In view of the fact that PSCo has publicly stated (to Jeffco Commissioners on July 10) that they will be placing 1200' deep gas monitoring wells "right along Highway 72", would you please obtain that information either from your files or from PSCo and let me know by letter as soon as possible where, when and how many wells PSCo intends to construct?

In late 1995 you notified me that if PSCo storage gas was leaking that it would obviously be a problem. Now that we know that their storage gas is leaking and as Director of the State agency which is mandated to protect the public interest, I request that your office take the initiative to fulfill its mandate by obtaining this information from PSCo as soon as possible. Just as you ordered PSCo in October 1995 to retest well #31, it is certainly clear that you have the authority to obtain the information I am requesting.

Yours truly,



Richard Loesby
President



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

September 18, 1996

Richard Loesby
Natural Resource Recovery, Inc.
PO Box 184
3330 South Broadway
Englewood, CO 80151-0184

BY FAX 781-8690

RE: Leyden Gas Storage Facility

Dear Mr. Loesby:

Thank you for your letter dated September 13, 1996.

In your letter, you request that I submit for you a number of exhibits to the OGCC at the hearing scheduled October 15 and 16, 1996, where in the OGCC will be determining the jurisdictional issue involving Leyden gas Storage Facility.

As attorney for the OGCC, I am not able to represent you at the hearing and cannot submit exhibits for you or on your behalf. You will need to obtain your own information and must present your own exhibits to the OGCC and request the OGCC accept the exhibits into the record. I would suggest you bring ten copies of each exhibit you wish to submit. Exhibits may not be submitted to or reviewed by the Commissioners prior to the hearing. Please attempt to limit your exhibits to legal authorities pertaining to the jurisdiction issue. For instance, the record of former hearings or any OGCC files on Leyden will most likely not be pertinent to the jurisdictional issue, since the OGCC issued the 1960 permit pursuant to very specific statutory authority, § 34-64-104, C.R.S., which is already recognized by the OGCC. The current jurisdictional issue concerns whether or not the OGCC can regulate gas storage facilities pursuant to §34-60-101, C.R.S., et seq.

As attorney for the OGCC, I will be advising them of the legal authority which may or may not allow them to accept jurisdiction over gas storage facilities. They will look to that authority to determine whether their enabling statutes would support an interpretation that the OGCC has such jurisdiction and they will already have the Oil and Gas Conservation Act before them. I may

Richard Loesby
Page 2

also reference other legal authorities, but I will not be submitting exhibits pertaining to factual disputes.

The OGCC's ability to regulate in the field of oil and gas is limited by its statutory authority and the specific terms of the statutes. Most likely, one of the key provisions discussed will be the definition of "oil and gas operations" under § 34-60-102(6.5). You may note that gas storage wells are referenced in that definition, but that gas storage fields or facilities are not specifically referenced. Thus, the OGCC will have to decide whether the term "gas storage well" includes gas storage fields and facilities. Other aspects of the law may also be used to assist them with its decision.

Also, I just received a fax from you referencing SB 95-017. Please note the use of the word "storage" is in reference to the disposal of exploration and production wastes, which are solid wastes generated during oil and gas production activities. The bill does not say that the OGCC has jurisdiction over gas storage facilities.

Thank you for your attention in this regard.

Sincerely,



LORI J. COULTER
Assistant Attorney General
Natural Resources Section
(303) 866-5010
(303) 866-3558 (FAX)

cc: Rich Griebeling

NATURAL RESOURCE RECOVERY INC.

September 17, 1996

Lori Coulter
Assistant Attorney General
Natural Resources Section
1525 Sherman Street - 5th Floor
Denver, CO 80203

FACSIMILE
Via Fax: 303/866-3558

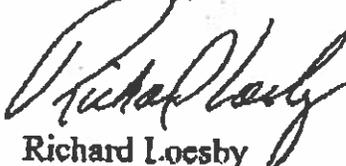
Re: Cause No. 1, Docket No. 10-12, PSCo-Leyden Gas Storage

Dear Ms. Coulter:

Enclosed is Senate Bill 95-017 which was signed by Governor Romer in March 1995. The legislative declaration for the bill provides that the legislature, through enactment of C.R.S. 34-60-101 et seq., has granted to the OGCC comprehensive, complete and absolute jurisdiction over gas storage operations.

Please include this letter and Senate Bill 95-017 in the record of the October 15-16 hearing for this case. Would you please also read into the record that they should be included or if you prefer I would be glad to have it done.

Yours truly,


Richard Loesby
President, NRR

Enclosure: Senate Bill 95-017

cc: Richard Griebing, OGCC Director
Via Fax: 303/894-2109

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

Telephone: (303) 761-4187

FAX: (303) 781-8890


NATURAL RESOURCE RECOVERY INC.

September 19, 1996

Lori Coulter
Assistant Attorney General
1525 Sherman Street - 5th Floor
Denver, CO 80203

PSClery

Via Fax: 303/866-3558

Re: Cause No. 1, Docket No. 10-12, PSCo-Leyden Gas Storage

Dear Ms. Coulter:

In response to your September 18 letter, I apologize for failing to clearly define the purpose of delivering to you Senate Bill 95-017 regarding gas storage operations. My purpose was to provide you with what is yet another clear demonstration of legislative intent to use C.R.S. 34-60-101 et seq., to grant exclusive and comprehensive statutory authority to OGCC to regulate operations related to natural gas including underground storage.

Director Griebing asserted OGCC authority over PSCo underground gas storage in October 1995 by ordering PSCo to retest well #31. Griebing further described in detail to me an extensive program of testing and remediation he would require of PSCo if storage gas was determined to be leaking. The procedures Griebing would require of PSCo pursuant to OGCC jurisdiction came not from an OGCC subordinate who might be expected to misconstrue the law. However, this came from the Director of the State agency which, Griebing believed, should assert jurisdiction - along with plans for extensive remediation and then reverses itself when it finds that it is dealing with the adverse ramifications of leaking storage gas and not leaks of naturally occurring biogenic gas.

PO Box 184, 3330 South Broadway, Englewood, Colorado 80151-0184

Telephone: (303) 761-4187

FAX: (303) 781-8690

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2/2 Coulter
9/19/96

According to Griebing and you, you advised him in December 1995, that OGCC unequivocally did not have authority. You told me by telephone in August 1995 that you had given Griebing this advice after only a cursory study of the law and after a brief conversation with him. In view of the manner in which it has now been determined that OGCC does not have jurisdiction, I certainly understand the position you must continue to take and the arguments you will use at the October hearing in trying to remain consistent with that same position.

I would simply refer you to the citations I have provided you which demonstrate statutory authority and legislative intent to the contrary and to the inherent conflicts of interest when any regulated entity is in a position to exert influence over the regulators - conflicts which are obvious now and will be obvious at the hearing.

Your belief that "...the record of former hearings or any OGCC files on Leyden will most likely not be pertinent to the jurisdiction issue..." appears to be an effort to limit the information available for consideration by OGCC members. Why would you not seek to make available to the commissioners and to the public any information whatsoever which could assist in the decision making process, particularly when the attorney general and the OGCC are charged with protecting the public? Is the office of the attorney general the sole arbiter of what is relevant for the commissioners to consider? I submit to you that all testimony, documents, well records, correspondence and exhibits related to PSCo and the Leyden Gas Storage Facility from 1960 through 1996 and Articles 60 and 64, are all pertinent to the jurisdiction issue.

However, I have no illusion about the deck being procedurally stacked at the administrative level against any member of the general public who wishes to contest the relationship between the Attorney General, OGCC and those in the oil and gas business and the facade that all of them exist to protect the health, safety and welfare of the general public against the hazards of leaking high pressure natural gas.

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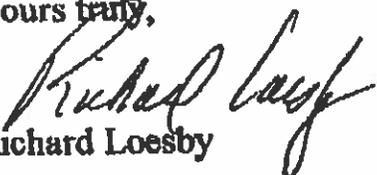
3/3 Coulter
9/19/96

Your September 18 letter provides that exhibits may not be submitted to or reviewed by the Commissioners prior to the hearing and exhibits should be limited to legal authorities pertaining to the jurisdiction issue. Griebing has been privy to the legal authorities sent to him by me. Does your letter intend that Griebing be excluded from attending or voting at the hearing because of the prior knowledge he has gained or is it your position that some commissioners may have advance knowledge while others must consider only what they are given at the hearing?

You cite C.R.S. 34-60-102 (6.5) regarding "oil and gas operations." I was unable to find this language at 102. However, I did find this language in 34-60-103 (6.5) Definitions.

Pursuant to your inability to represent the general public while representing the OGCC as you described in your September 18 letter, along with the difficulty you have in submitting exhibits on behalf of any party (including the general public) other than OGCC, would you please return the 7 color aerial photos I delivered to you as soon as possible before October 15.

Yours truly,



Richard Loesby

cc: Richard Griebing, Director OGCC via fax 894-2109



October 7, 1996

Oil & Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

RE: Cause No. 1, Docket No. 10-12

Dear Clerk:

Enclosed is one original and 10 copies of Colorado Interstate Gas Company's Notice of Intervention in the captioned docket and check no. 355026 in the amount of \$70.00 for the filing fee.

Please file to correct number of copies and return one file stamped copy in the enclosed, self addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me at (719) 520-4675.

Sincerely,

Helen L. Lindsey
Secretary to M.A. Minich



BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER TO GOVERN OPERATIONS IN) CAUSE NO. 1
THE LEYDEN GAS STORAGE FIELD, JEFFERSON)
COUNTY, COLORADO) DOCKET NO. 10-12

COLORADO INTERSTATE GAS COMPANY'S
NOTICE OF INTERVENTION

Colorado Interstate Gas Company ("CIG"), pursuant to the Notice of Hearing issued by this Commission, hereby petitions to intervene in the above-referenced proceeding.

CIG is a natural gas company under the Natural Gas Act and is subject to the jurisdiction and regulations of the Federal Energy Regulatory Commission. CIG owns and operates natural gas storage fields located within the State of Colorado under the regulation of the Federal Energy Regulatory Commission. In the "Notice of Hearing" issued by the Commission it is stated that the purpose of the hearing is to determine whether the Commission has the authority to regulate gas storage fields in the State of Colorado. CIG respectfully submits that this stated purpose is overbroad and suggests that the Commission's determination in this proceeding should be limited to the question of whether the Commission has regulatory jurisdiction over the Leyden Gas Storage Field.

To the extent this proceeding is intended to resolve the question of the Commission's jurisdiction over all gas storage fields located in the State of Colorado, including those storage fields already subject to the jurisdiction of the Federal Energy Regulatory Commission, CIG hereby petitions for leave to intervene in this proceeding. CIG anticipates that its participation in this proceeding would be limited to the issue of the ability and need for this Commission to exert regulatory authority over the operation of FERC - regulated gas storage fields. Alternatively, CIG requests an order from the Commission clarifying that the scope of this proceeding is limited to a determination of the Commission's regulatory jurisdiction over the Leyden Gas Storage Field.

If CIG's petition is granted it is requested that all pleadings, documents and discovery materials be served upon CIG by mailing or delivering such materials to James G. Greenwood, Director of Regulatory Affairs and Mark A. Minich, Senior Attorney, as follows:

Delivery Address

Colorado Interstate Gas Company
2 North Nevada Avenue
Colorado Springs, Colorado 80903

Mailing Address:

Colorado Interstate Gas Company
P.O. Box 1087
Colorado Springs, Colorado 80944
Fax: (719) 520-4848

Dated: October 7, 1996

Respectfully submitted:

COLORADO INTERSTATE GAS COMPANY

By:



Mark A. Minich, # 20645

Attorney for: Colorado Interstate Gas Company
P.O. Box 1087
Colorado Springs, Colorado 80944
(719) 520-4269

CERTIFICATE OF MAILING

I hereby certify that on this 7th day of October, 1996, a true and correct copy of the foregoing COLORADO INTERSTATE GAS COMPANY'S NOTICE OF INTERVENTION was served via United States Mail, postage prepaid to the following:

Richard Loesby
Natural Resource Recovery, Inc.
P.O. Box 184
3330 South Broadway
Englewood, CO 80151-0184

Herbert C. Phillips
Corey Y. Hoffmann
Hayes, Phillips & Maloney, P.C.
1350 17th Street, Suite 450
Denver, CO 80202-1517



Filing Fee for Hearings before the Commission

Date Received 10/08/96

Applicant Colorado Interstate Gas Co.

Respondant
(Protester) _____

Intervenor _____

Date of Check _____

Check No. 355026 Amt. 70 -

Maker of Check Colorado Interstate Gas Co.

Bank issued on The Chase Manhattan Bank
NY Syracuse, NY

HAYES, PHILLIPS & MALONEY, P.C.

Attorneys at Law
 Suite 450, The Market Center
 1350 Seventeenth Street
 Denver, Colorado 80202-1517
 (303) 825-6444
 Telecopier: (303) 825-1269

RECEIVED

NOV 01 1996

OFFICE OF THE
 ATTORNEY GENERAL
 NATURAL RESOURCES SECTION

John E. Hayes
 Herbert C. Phillips
 James S. Maloney

Bradley N. Shefrin
 Corey Y. Hoffmann
 Kendra L. Carberry

825-1269

October 30, 1996

Colorado Oil and Gas Conservation Commission
 c/o Lori Coulter, Esq
 Assistant Attorney General
 State of Colorado
 1525 Sherman Street, 5th Floor
 Denver, CO 80203

Re: In the Matter to Govern Operations in the Leyden Gas Storage Field,
 Jefferson County, Colorado, Cause No. 1, Docket No. 10-12

Dear Ms. Coulter:

This office represents Public Service Company of Colorado ("Public Service") in the above-captioned proceeding. As you know, the Colorado Oil and Gas Commission (the "Commission"), on October 15, 1996, determined that it had jurisdiction in this matter. While Public Service respectfully disagrees with the Commission's conclusion, it is fully cooperating with the Commission's staff in providing information regarding the operation of the Leyden Gas Storage Field.

No written order was ever entered by the Commission as to its initial determination of the jurisdictional issue. The determination that the Commission has jurisdiction in this matter would seem to be preliminary in nature and not a "final agency action" subject to judicial review pursuant to Colo. Rev Stat. § 24-4-106. See e.g. Moore v. District Court in and for the County of Denver, 184 Colo. 63, 518 P.2d 1139 (1974). In order to avoid any argument that Public Service has waived its right to a judicial review of the jurisdictional finding, however, we wish to make sure that the Commission agrees that no final agency action for purposes of judicial review has yet been taken in this case.

10/30/96 - 3:46pm
 COULTER.L01

Lori Coulter, Esq
October 30, 1996
Page 2

If you and the Commission staff agree that the preliminary jurisdictional determination is not a final agency action for purposes of judicial review, would you please have the appropriate person sign this letter in the space provided and return same to me. Given the time limits established by Colo. Rev. Stat. § 24-4-106(4), I would appreciate it if I could receive a response no later than November 7, 1996.

Thank you for your continued help and courtesy in this matter.

Very truly yours,



Herbert C. Phillips

c: Lisa A. Lett, Esq. (Re: PSCo File No. 01-0107.084)

COLORADO OIL AND GAS
CONSERVATION COMMISSION

By: _____
Title: _____
Date: _____

10/30/96 - 5:37pm
COULTER.L01

Welborn Sullivan Meck & Tooley, P.C.



1.62



Attorneys at Law

1775 Sherman Street
Suite 1800
Denver, Colorado
80203
Telephone 303-830-2500
Facsimile 303-832-2366

John F. Welborn
Stephen J. Sullivan
John F. Meck
Keith D. Tooley
Kendor P. Jones
Molly Sommerville
Karen Ostrander-Krug
Marla E. Valdez
Brian S. Tooley
Hugh V. Schaefer
Scott L. Sells
Brian S. Tobias
William B. Bain

December 27, 1996

Mr. Richard Griebing
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Of Counsel
Robert F. Welborn

Special Counsel
Jan G. Laitos

RE: Leyden Gas Storage

Dear Mr. Griebing:

Enclosed for your review and files is the free air gas test results.

We are continuing to conduct tests and will forward their results as we obtain them.

Sincerely,

WELBORN SULLIVAN MECK & TOOLEY, P.C.

Karen Ostrander-Krug

KOK/pfg
Enclosure

cc: Richard Loesby
Patricia Beaver ✓
The Commissioners

CERTIFICATE OF MAILING

I do hereby certify that on this 16th day of September, 1996, I deposited into the United States Mail, postage prepaid, a true and correct copy of the foregoing RESPONSE OF PUBLIC SERVICE COMPANY OF COLORADO TO THE "COMPLAINT AND REQUEST FOR PUBLIC HEARINGS BEFORE THE OGCC AND WQCD" SUBMITTED BY RICHARD LOESBY to:

Richard Loesby
Natural Resource Recovery, Inc.
P.O. Box 184
3330 South Broadway
Englewood, CO 80151-0184

Peggy S. Apurrier

Filing Fee for Hearings before the Commission

Date Received 09/23/96

Applicant Naves Phillips & Maloney

Respondant _____
(Protester)

Intervenor _____

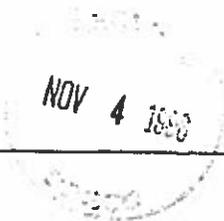
Date of Check 09/17/96

Check No. 14442 Amt. 70 -

Maker of Check Naves Phillips & Maloney

Bank issued on G. Warranty Bank & Trust Co.

nk



ATOKA GEOCHEMICAL SERVICES
CORPORATION
103 INVERNESS DRIVE EAST, SUITE 160
ENGLEWOOD, COLORADO 80112

PHONE: 303 799-5113
FAX: 303 799-7973
1-800-853-5113

October 30, 1996

Mr. Richard Loesby
NATURAL RESOURCE RECOVERY
1900 East Girard Place # 409
Englewood, Colorado 80110

Dear Richard:

Two groups of samples were collected from your 70 acre property located on the northern edge of Public Service Company of Colorado's Leyden underground gas storage facility. The first group of eight samples were collected by you and analyzed by Atoka. Two of the samples indicated anomalous amounts of iodine which indicates the presence of hydrocarbons in the soil. The anomalies were consistent with similar type results that have led to the discovery of several petroleum deposits in the Denver Basin.

The second group of twenty-two samples was collected by iBex Surveying and analyzed by Atoka. The results were similar to the first group.

The cause of the anomalies are, in Atoka's opinion, related to the gas storage immediately to the south of the property. The gas is stored at approximately a depth of 800 feet in an abandoned mine. Based on the limited data provided, the gas is stored in drifts and mains located in multiple coal seams with interbedded sands and shales. The fracturing in the coals would provide a conduit for gas to migrate out of the facility into the adjacent property. In addition, the interbedded sandstones, depending upon porosity and permeability, could provide pathways for migrating gas to the leave facility. The iodine anomalies, which are found on your property, are related to hydrocarbon microseepage from depth, the gas storage is the most likely cause.

Please call me if you have any questions. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Steven A. Tedesco".

Steven A. Tedesco
President

SAT/kks

cc: Karen Krug

Natural Resource Recovery
Iodine Report
Samples 1-17, 1a, 1b, 3a, 3aa, 6b

NOV 4 1996

Lab Number	Sample Designation	Sample Number	Iodine ppm
59176	RIC	1	1.4
59177	RIC	2	0.6
59178	RIC	3	0.7
59179	RIC	4	4.7
59180	RIC	5	2.1
59181	RIC	6	4.7
59182	RIC	7	1.5
59183	RIC	8	1.0
59184	RIC	9	1.8
59185	RIC	10	6.0
59186	RIC	11	8.5
59187	RIC	12	4.1
59188	RIC	13	9.5
59189	RIC	14	11.3
59190	RIC	15	3.5
59191	RIC	16	1.9
59192	RIC	17	1.5
59193	RIC	1A	1.2
59194	RIC	1B	9.0
59195	RIC	3A	1.4
59196	RIC	3AA	1.3
59197	RIC	6B	3.5