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September 20, 1996

Colorado Oil and Gas  
Conservation Commission  
The Chancery Building  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

Attn: Patricia C. Beaver, Secretary *B*

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

Dear Ms. Beaver:

Enclosed please find the filing fee of \$70.00 that should have been submitted simultaneously with the RESPONSE OF PUBLIC SERVICE COMPANY OF COLORADO TO THE "COMPLAINT AND REQUEST FOR PUBLIC HEARINGS BEFORE THE OGCC AND WQCD" SUBMITTED BY RICHARD LOESBY filed by our office in the above-referenced matter.

Thank you for your help and courtesy in this matter. We apologize for any inconvenience we may have caused you.

Very truly yours,

Peggy S. Spurrier  
Secretary to Herbert C. Phillips

/pss  
Enclosures

9/20/96 - 2:39pm  
COMMISS1.L02



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September 16, 1996

Colorado Oil and Gas  
Conservation Commission  
Chancery Building  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

Attn: Tricia Beaver

Re: Cause No. 146

Dear Ms. Beaver:

Enclosed please find an original and nine photocopies of a RESPONSE OF PUBLIC SERVICE COMPANY OF COLORADO TO THE "COMPLAINT AND REQUEST FOR PUBLIC HEARINGS BEFORE THE OGCC AND WQCD" SUBMITTED BY RICHARD LOESBY for filing in the above-referenced matter.

Thank you for your help and courtesy in this matter. Please feel free to call with any questions you might have.

Very truly yours,

Peggy S. Spurrier  
Secretary to Herbert C. Phillips

/pss  
Enclosures

9/16/96 - 4:44pm  
COMMISS.L01



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

Cause No. 146

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RESPONSE OF PUBLIC SERVICE COMPANY OF COLORADO TO THE "COMPLAINT  
AND REQUEST FOR PUBLIC HEARINGS BEFORE THE OGCC AND WQCD"  
SUBMITTED BY RICHARD LOESBY

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PUBLIC SERVICE COMPANY OF COLORADO (the "Company"), by its attorneys Hayes, Phillips & Maloney, P.C., submits the following Response to the Complaint and Request for Public Hearings Before the OGCC and WQCD submitted by Richard Loesby on or about September 3, 1996 (the "Complaint"):

INTRODUCTION

In 1960 the Company filed an application with this Commission requesting an order from the Commission approving a proposed project for the storage of natural gas in an underground reservoir situated in the Laramie formations located in what is commonly known as the Leyden Coal Mine, Jefferson County, Colorado. This order was a prerequisite to petitioning a District Court for permission to exercise the right of eminent domain for the purpose of acquiring property for the storage of natural gas.

After the required notice was given, a hearing was held on the application before the Commission on September 30, 1960. The Company presented the required evidence and, also on September 30, 1960, the Commission entered its Report, Findings and Order granting the application (the "Order") a copy of which is attached hereto as Exhibit 1 for the Commission's convenience. The Company has been operating its Leyden Natural Gas Storage Facility (the "Leyden Facility") since shortly after the entry of the Order, a period of some thirty-six (36) years.

On or about September 3, 1996, Richard Loesby filed the Complaint with the Commission. While the Complaint is somewhat disjointed, it appears that Loesby seeks relief from the Commission as follows:

I request that the attorney general and the OGCC initiate immediate public proceeding upon two issues:

1. whether OGCC has jurisdiction over underground gas storage and whether OGCC has authority to pursue legal remedies against PSCo,
2. to prevent further damage to private property of all landowners near PSCo gas storage and enforce the OGCC ORDER of 1960 against PSCo to enjoin and restrain them from continuing violation of the ORDER.

Complaint at 4.

Thus, the Complaint seems to raise two issues, these being whether the Commission has jurisdiction to grant the relief requested and, if so, whether the Company has, as alleged, violated the Order. Both of these questions are answered in the negative.

#### ISSUES PRESENTED

1. Does the Commission have jurisdiction to grant the relief requested in the Complaint?
2. Has the Company violated the terms of the Order?

#### SUMMARY OF ARGUMENT

The Commission's regulatory authority is specifically prescribed by statute, and particularly Article 60 of Title 34 of the Colorado Revised Statutes. Nowhere in the statutes is it suggested, much less stated, that the Commission has authority to regulate or issue injunctions against operators of underground reservoirs such as the Leyden Facility as Loesby requests.

Even if the Commission was empowered to grant the relief requested in the Complaint, it would be inappropriate to do so for the simple reason that the Company has not violated the Order. The Order does not address the operation of the Facility but merely approves its location and the use of eminent domain. Loesby has failed to identify what provision of the Order has allegedly been violated. The burden is, of course, on the complainant in this regard.

## ARGUMENT

1. The Commission lacks jurisdiction to grant the relief requested in the Complaint.

It is well-settled that the Commission has only those powers expressly delegated to it by the General Assembly.

At common law there was, of course, no [Oil and Gas Conservation] Commission; the Commission is a creature of statute, and its authority and power is limited by the statute.

Union Pacific Railroad Company v. Oil and Gas Conservation Commission, 131 Colo. 528, 284 P.2d 242, 247 (1955).

Thus, in order for the Commission to grant the relief requested in the Complaint, it is incumbent upon Loesby to direct the Commission to some statutory provision empowering it to grant such a remedy. Loesby has failed to do so.

Undoubtedly, Colorado law authorizes the Commission to consider applications such as the one submitted by the Company in 1960. That authorization is currently found in Article 64 of Title 34 governing underground storage of natural gas, which provides in pertinent part as follows:

**36-64-104. Application to commission - order.** Before the right of condemnation may be exercised for the acquisition of property or any interest therein for underground storage of natural gas, said natural gas public utility shall make application to the commission for an order approving the proposed storage project. No such order shall be issued by the commission unless it shall be based upon substantial evidence and shall contain findings that the underground storage of natural gas in the land sought to be condemned is in the public interest and welfare, and that the storage reservoir is suitable and practicable and that the formation or formations sought to be condemned are nonproductive of oil or gas in commercial quantities under either primary or secondary recovery methods.

It was the predecessor of this statute which the Commission applied in granting the original Order in 1960. In fact the Company anticipates that it will shortly file an application with the Commission seeking approval of the acquisition of an additional buffer

zone in the area surrounding the Leyden Facility so as to assure that pumping of water wells in the Laramie formation does not create the potential for migration of natural gas off site.

Once the Commission has exercised its approval power under Colo. Rev. Stat. § 34-64-104, its authority ends. The general powers of the Commission are set forth, in great detail, in Article 60 of Title 34, and particularly Colo. Rev. Stat. §§ 34-60-105 and 106. Nothing in that Article suggests or implies that the Commission is authorized to regulate underground natural gas storage reservoirs permitted under Article 64. Certainly there is nothing which authorizes the issuance of restraining orders or injunction against such operations, as Loesby requests. Even as to those extensive areas of oil and gas extraction over which the Commission has jurisdiction, the statute is clear that only the courts may enter restraining orders and injunctions as Loesby requests the Commission to do. Colo. Rev. Stat. § 34-60-109.

Loesby suggests that the Commission is empowered to regulate the Leyden Facility under the authority of Colo. Rev. Stat. § 34-60-106 (2) (d) which states that the Commission has the authority to regulate "oil and gas operations." The term "oil and gas operations" is defined by Colo. Rev. Stat. § 34-60-103 (6.5) as follows:

(6.5) "Oil and gas operations" means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and disposal wastes; and any construction, site preparation, or reclamation activities associated with such operations.

(Emphasis added).

The question thus becomes whether the reference to "gas storage wells" grants the Commission regulatory authority over the Leyden Facility. For several reasons it does not.

First, it is well settled that a statute must be read and construed in context. See Fogg v. Macaluso, 892 P.2d 271 (Colo. 1995); People v. Bergen, 883 P.2d 532 (Colo. App. 1994); Monfort v. Gonzalez, 855 P.2d 19 (Colo. App. 1993). The clause containing the reference to "gas storage well" is quite limited in its scope. It describes only "the siting, drilling, deepening, recompletion, reworking, or abandonment of . . . gas storage well[s]." Thus, even assuming for argument that the Leyden Facility is a "gas storage well," the Commission still

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lacks jurisdiction because the matters raised in Loesby's Complaint have absolutely nothing to do with the "siting, drilling, deepening, recompletion, reworking, or abandonment" of the Leyden Facility.

Second, even if the above-quoted language was not limited in scope it would still not apply to the Leyden Facility for the reason that, employing basic rules of statutory construction, the Leyden Facility is not a "gas storage well." Indeed, by granting the Order in 1960, the Commission has already implicitly determined that the Leyden Facility is an "underground reservoir," as that term is defined in Article 64 of Title 34, not a "gas storage well," as defined in Article 60. The term "underground reservoir" is defined in Title 64 as follows:

(4) "Underground reservoir" means any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

It is this definition which gave the Commission the authority to consider and grant permission for the siting of the Leyden Facility in 1960. It certainly better describes the Leyden Facility than the term "gas storage well."

The term "gas storage well" is not defined in the statutes. The general rule of statutory construction as to undefined terms is that the words are to be accorded their plain and ordinary usage.

2-4-101. **Common and technical usage.** Words and phrases shall be read in context and construed according to the rules of grammar and common usage. . . .

Colo. Rev. Stat. 2-4-101. See also State v. Hartsough, 790 P.2d 836 (Colo. 1990); American Respiratory Care Services v. Manager of Revenue, 835 P.2d 375 (Colo. App. 1992).

It takes no lengthy analysis to conclude that, according the term "well" its commonly accepted meaning, the Leyden Facility, an abandoned coal mine, is not a "gas storage well." It is, instead, an "underground reservoir," governed by Article 64 of Title 34 which does not empower the Commission to exercise regulatory authority over such facilities.

The Commission simply lacks jurisdiction to grant Loesby the relief requested in his Complaint. Thus, that relief must be denied.

2. The Company has not violated the Order.


While repeatedly asserting that the Company has violated the 1960 Order, Loesby completely fails to identify exactly what provision of the Order has been disobeyed. The Commission's regulations require that no notice of alleged violation ("NOAV") shall issue except upon a showing of "reasonable cause," and that "[r]easonable cause requires, at least, physical evidence of the alleged violation." 2 CCR 404-1, § 522. Not only has Loesby failed to provide the requisite "physical evidence," he has failed to even direct the Commission to the language of the Order allegedly violated. He has failed to met his burden and his Complaint should be denied.

CONCLUSION

For all the reasons set forth above, Loesby's Complaint must be denied.

DATED this 16th day of September, 1996.

HAYES, PHILLIPS & MALONEY, P.C.

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