COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

October 31, 2016

Quinn Kilty
Manager, Environmental Services
Public Service Company of Colorado
1800 Larimer St., 13th Floor
Denver, CO 80202

Certified Mail Number: 7014 2870 0000 7568 7646

RE: Order for Civil Penalty, Number: IP-161031-1

Dear Mr. Kilty:

Public Service Company of Colorado is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Michael Boeglin, EPA Region VIII
Clear Creek County Public and Environmental Health
Aimee Konowal, Watershed Section, CDPHE
Corrina Quintana, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Michelle Delaria, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE

COLORADO
Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY NUMBER: IP-161031-1

IN THE MATTER OF: PUBLIC SERVICE COMPANY OF COLORADO
UNPERMITTED
CLEAR CREEK COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of $10,000.00 against Public Service Company of Colorado for the violations cited in the September 23, 2016 Compliance Order on Consent (Number: IC-160923-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within 30 calendar days of the date of this Order for Civil Penalty as set forth in the Compliance Order on Consent.

"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530"

Dated this 31 day of October 2016.

Patrick J. Pfaltzgraff, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A

COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: IC-160923-1**

IN THE MATTER OF: **PUBLIC SERVICE COMPANY OF COLORADO**
UNPERMITTED
CLEAR CREEK COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Public Service Company of Colorado ("PSCo"). The Division and PSCo may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:

   a. To establish compliance requirements and criteria for the continued operation of PSCo's Cabin Creek Hydroelectric Generation Facility located at 5167 Guanella Pass Road, near the Town of Georgetown, Clear Creek County, Colorado (the "Facility"); and

   b. To resolve, without litigation, the civil penalties associated with the alleged violations cited herein by the Division.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and, C.R.S., the Division has made the following determinations regarding PSCo, the Facility and PSCo's compliance with the Act and its implementing permit regulations.

3. At all times relevant to the violations cited herein, PSCo was a Colorado Corporation in good standing and registered to conduct business in the State of Colorado.

4. PSCo is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. On September 3, 2013, PSCo disclosed to the Division via a letter that during an internal environmental audit on August 13, 2013, it discovered a light sheen, small in area, of cloudy color, on the Facility's tailrace, which is part of the Lower Cabin Creek Reservoir. Analytical results obtained by PSCo indicated that the substance was a lubricating oil. In addition, PSCo disclosed that the internal audit process and sampling data prompted a review of station logs, which noted the presence of a small sheen on the tailrace on nine separate occasions from October 2012 through August 2013.

6. Since 2013, the Facility has undertaken a comprehensive investigation, remediation and monitoring effort to identify the cause of the small sheens and to eliminate their intermittent presence in the tailrace. Despite these efforts, the small sheens have continued to be intermittently observed and addressed in the tailrace.

7. Oil, including lubricating oil, is a "pollutant" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).

8. The sumps and pipes associated with the Facility are a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).

9. Lower Cabin Creek Reservoir is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

10. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

11. PSCo's discharge of lubricating oil from the Facility into state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

12. Division records establish that PSCo does not have a permit authorizing the discharge of pollutants from the Facility into state waters.

13. PSCo's discharge of lubricating oil into state waters from the Facility without a permit constitutes an unauthorized discharge of pollutants into state waters from a point source in violation of §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a).

<u>PSCo's Position on Alleged Violations</u>

14. As detailed below, PSCo has undertaken extensive efforts to eliminate the small intermittent sheens. To date, PSCo has spent approximately $1.2 million to evaluate, clean, replace and modify equipment in order to mitigate and correct any oil issues that may contribute to the intermittent sheens.

15. Through its investigations, PSCo has concluded that the most likely cause of the small intermittent sheens is certain oil-drip lubricated equipment within the Facility. The Facility has replaced this equipment with water lubricated bearings. This has removed the potential source of oil that has any direct connection with the tailrace.

16. The Facility also replaced the sump discharge piping from the four discharge pumps to the butterfly isolation valve located in the Facility wall. The Facility conducted a dewatering and removal of the existing sludge that was located in the bottom of the Facility sump on two separate occasions rendering the sump clean.

17. The Facility also added specialty oil-collection booms in the sump to remove the very small residual concentrations remaining in the sump. Monitoring systems have been installed in the separator/interceptor to monitor the amount of any oil that may be collected in the interceptor and, when required, oil is pumped to the waste oil tank.

18. The Facility further hired a third-party engineering firm to evaluate potential sources of oil paths to the tailrace. All of the engineering firm's recommendations have been addressed on schedule. The Facility also investigated the underwater piping with a remote operated vehicle ("ROV") equipped with a camera to observe the discharge of the sump piping located in the tailrace wall. The ROV video feed indicated no presence of visible oil residue contributing to the small intermittent sheens in the tailrace.

19. The small intermittent sheen is apparent in a light concentration and is limited to a very small area and contained from leaving the tailrace to other bodies of water. PSCo conducts routine inspections and cleanings when the sheen is present in the tailrace.

20. The Facility has installed a sea curtain where the tailrace meets the Lower Cabin Creek Reservoir to ensure that the small intermittent oil sheen, when present, does not extend into the reservoir. There has been no release of any oil beyond the boundary of the tailrace into the main part of the reservoir. The Lower Cabin Creek Reservoir is a bottom discharging system, which further provides protection of downstream waters.

ORDER AND AGREEMENT

21. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein, the Division orders PSCo to comply with all provisions of this Consent Order, including all requirements set forth below.

22. PSCo agrees to the terms and conditions of this Consent Order. PSCo agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. PSCo also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by PSCo against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

23. Notwithstanding the above, PSCo does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by PSCo pursuant to this Consent Order shall not constitute evidence of fault and liability by PSCo with respect to the conditions of the Facility. PSCo expressly reserves its rights to deny any of the Division's factual or legal

determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements and Temporary Authorization to Discharge

24. Within 15 calendar days of the effective date of this Consent Order, PSCo shall submit an application for Facility coverage under an individual Colorado Discharge Permit System ("CDPS") permit. The application will specify one outfall, designated as outfall 001.

25. Within 30 calendar days of the effective date of this Consent Order, PSCo shall initiate installation of an oil-water separator at the Facility with the goal of preventing the discharge of lubricating oil or other oils to the tailrace of Lower Cabin Creek Reservoir. The oil-water separator shall discharge through Outfall 001 and be in-service by December 31, 2016. PSCo shall monitor all discharges from the oil-water separator through Outfall 001 into state waters at the frequencies and for the pollutant parameters outlined below:

Effluent Parameter	Monitoring Requirements		
	Frequency	Sample Type	Reporting
Flow (MGD)	Continuous	Recorder	30-day Average
pH (su)	3 days/week	Grab	Daily Maximum
TSS (mg/l)	Weekly	Grab	30-day Average
Oil and Grease	3 days/week	Visual	Y/N

26. Until the issuance of the CDPS Permit, PSCo shall report the analytical results of the discharge monitoring described in paragraph 25 above to the Division on a monthly basis. The data shall be submitted so that it is received by the Division no later than the 28th day of the month following the monitoring period and be reported consistent with the averaging period for each effluent parameter, as identified above.

27. The temporary authorization to discharge from the oil-water separator is effective on the effective date of this Consent Order and shall expire upon the issuance and effective date of CDPS permit, or upon written notification from the Division.

28. If the installation of the oil-water separator described in paragraph 25 above proves to be ineffective in preventing the discharge of lubricating oil or other oils to state waters, PSCo shall, within 90 calendar days of the effective date of this Consent Order, submit to the Division a detailed written description and time schedule outlining PSCo's plan and schedule for the long term management of oil sources and discharges from the Facility to state waters. Any such discharges through Outfall 001 to the tailrace shall be temporarily authorized under this Consent Order until PSCo implements the plan in compliance with the time schedule. The submitted plan and time schedule shall become a condition of this Consent Order and PSCo shall comply with the plan and time schedule, as submitted, unless notified by the Division in writing that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Consent Order, subject to the Dispute Resolution provisions herein.

29. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

CIVIL PENALTY

30. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, PSCo shall pay $10,000.00 in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the $10,000.00 civil penalty for the above violation(s) and PSCo agrees to make the payment within 30 calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Michael Harris
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CWE-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

31. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein.

32. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a 30 day public comment period. The Division and PSCo each reserve the right to withdraw consent to this Consent Order if comments received during the 30 day period result in any proposed modification to the Consent Order.

33. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by PSCo, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

34. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

35. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

36. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of PSCo's compliance history.

37. PSCo shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to

approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

38. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

39. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

40. PSCo reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order.

41. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

42. PSCo releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of PSCo, or those acting for or on behalf of PSCo, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. PSCo shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by PSCo in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

FORCE MAJEURE

43. PSCo shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of PSCo, and which cannot be overcome by due diligence.

44. Within 72 hours of the time that PSCo knows or has reason to know of the occurrence of any event which PSCo has reason to believe may prevent PSCo from timely compliance with any requirement under this Consent Order, PSCo shall provide verbal notification to the Division. Within seven calendar days of the time that PSCo knows or has reason to know of the occurrence of such event, PSCo shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

45. The burden of proving that any delay was caused by a force majeure shall at all times rest with PSCo. If the Division agrees that a force majeure has occurred, the Division will so notify PSCo. The Division will also approve or disapprove of PSCo's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of PSCo's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to PSCo. Pursuant to the Dispute Resolution section, within 15 calendar days of receipt of the explanation, PSCo may file an objection.

46. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, PSCo shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

47. If the Division determines that that a violation of this Consent Order has occurred; that a force majeure has not occurred; or that the actions taken by PSCo to mitigate the delay caused by a force majeure are inadequate, the Division shall provide a written explanation of its determination to PSCo. Within 15 calendar days of receipt of the Division's determination, PSCo shall:

    a. Submit a notice of acceptance of the determination; or
    b. Submit a notice of dispute of the determination.

    If PSCo fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

48. If the Division disapproves or approves with modifications any original or revised plan submitted by PSCo pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within 15 calendar days of receipt of the Division's approval with modifications or disapproval of the plan, PSCo shall:

    a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
    b. In the case of a disapproval only, submit a revised plan for Division review and approval. PSCo may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by PSCo; or
    c. Submit a notice of dispute of the disapproval or approval with modifications.

    If PSCo fails to do any of the above within the specified time, PSCo shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

49. If PSCo submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify PSCo in writing of its approval, approval with modifications, or disapproval of the revised plan. If the

Division disapproves the revised plan, it may include in its disapproval a plan for implementation by PSCo. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§24-4-101 through 108, C.R.S. (the "APA"), unless PSCo submits a notice of dispute, pursuant to paragraph 42 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

50. If PSCo files any notice of dispute pursuant to paragraph 45, 47, or 48 the notice shall specify the particular matters in the Division's determination that PSCo seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by PSCo. The Division and PSCo shall have 30 calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this 30 calendar day period, the Division shall confirm or modify its decision within an additional 14 calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

51. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-3598
E-mail: michael.harris@state.co.us

For PSCo:

Quinn Kilty
Manager, Environmental Services
Public Service Company of Colorado
1800 Larimer St., 13th Floor
Denver, CO 80202
Telephone: 303-294-2165
E-mail: quinn.v.kilty@xcelenergy.com

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

52. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by PSCo of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. PSCo agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the

obligations imposed by this Consent Order are necessary for PSCo and the Facility to achieve and maintain compliance with State law.

MODIFICATIONS

53. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

54. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 32. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

55. This Consent Order is binding upon PSCo and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. PSCo agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR PUBLIC SERVICE COMPANY OF COLORADO:

_____ Date: 9/15/2016

David Eves, President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 9/23/16

Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION