July 13 1992

William L. Sasz, Esquire
Kelly, Stansfield and
O'Donnell 1225 17th
Street, Site 2600
Denver, CO 80202

Dear Mr. Sasz:

This is in response to your letter of June 9, 1992, regarding Applicability of FAR Part 135 to Public Service Company of Colorado Helicopter Operations, copy enclosed. Your question was whether Public Service of Colorado should operate its helicopters under FAR Part 135 if it transports Tri-State maintenance crews to and from construction and maintenance activities along lines either jointly owned with Tri-State or owned solely by Tri-State.

Our conclusion is that some transportation of Tri-State maintenance personnel should be conducted under the requirements of FAR Part 135.

Our conclusion begins from the perspective that uncompensated transportation directly connected with the business of Public Service is under Part 91, not Part 135. Transportation to jointly owned locations, without compensation, would not fall under Part 135. However, transportation of Tri-State maintenance personnel for compensation, or to exclusively Tri-State work sites, would be covered by FAR Part 135 unless otherwise excluded.

The exclusion of FAR Section 135.1(b)(4)(v) is inapplicable under its own terms since the transportation is specifically for the purpose of reaching the work site.

FAR Section 135.1(b)(4)(vi) would not remove the activity from Part 135 even if the transportation were otherwise a part of pipeline patrol. In our view, the exception of 135.1(b)(4)(vi) is limited to patrol activities exclusively. When patrol activities become mixed with non-excluded activities (so-called dual purpose flights), the exception is inapplicable, and the entire activity would be under Part 135. Rather than the patrol exception protecting the transportation activity, the transportation activity would negate the patrol exception.

National Transportation Safety Board decisions have applied the dual purpose standard to 135.1(d)(4)(iii). In Administrator v. Bryan, 4 NTSB 1166 (1983), and Administrator v. Reed, Order EA-3082, Docket SE-8649 (1990), the Board determined that interruption of otherwise excluded aerial photography and aerial survey flights negated the exception and caused the entire flights to fall under Part 135. Although no cases on dual purpose flights and pipeline patrols were found, we believe the rationale in these two cases would be applied.

There do not appear to be any other potentially relevant exceptions to Part 135 coverage of the transportation activity. If you would like to discuss this situation further, please feel free to contact Mr. Richard McCurdy of this office.

Sincerely,

GEORGE L. THOMPSON

Assistant Chief Counsel