



Xcel on trial for 5 deaths at Georgetown, Colo.

By P. SOLOMON BANDA, Associated Press – Tue May 31, 5:22 pm ET

DENVER – A criminal trial in the deaths of five workers at a Colorado hydroelectric plant began Tuesday in the rare prosecution of a company.

Xcel Energy and a subsidiary, Public Service Company of Colorado, are each charged in federal court with five counts of violating Occupational Safety and Health Administration regulations for the October 2007 fire inside a water tunnel at the Cabin Creek hydroelectric plant near Georgetown, Colo., about 40 miles west of Denver.

The workers were using flammable solvents inside the tunnel when it caught fire, trapping them inside.

No person is charged in this case. If convicted, each company could have to pay fines of up to \$2.5 million and be subject to strict post-conviction supervision.

Jury selection began Tuesday. The trial is expected to last through the end of June. Dozens of witnesses will likely testify and family members of some of the five workers plan to attend, prompting Chief U.S. District Judge Wiley Daniel to order no pictures of the deceased be worn on clothing inside the courtroom.

Xcel and prosecutors declined to comment, citing the ongoing trial.

Killed in the fire were Donald Dejaynes, 43, Dupree Holt, 37, James St. Peters, 52, Gary Foster, 48, Anthony Aguirre, 18 — all from California. They ultimately died from smoke inhalation, according to the report by the U.S. Chemical Safety Board. Three others were injured.

In August, the U.S. Chemical Safety Board, which investigates serious chemical accidents and makes safety recommendations, faulted the Minneapolis-based companies and their contractor, RPI Coatings Inc., for failing to adequately plan for hazardous work that included taking flammable solvents inside a 4,300-foot tunnel.

No rescue plan was in place despite concerns by both Xcel and RPI about only one exit.

Firefighters who first arrived at the scene desperately tried to rescue the workers by taking a small gas-powered all-terrain vehicle through the entrance and up the tunnel, but they were turned back by thick smoke. A rescue would have involved firefighters using ropes or ladders to go down a 20-foot vertical section of tunnel, then down a 1,000-foot section sloped 55 degrees to reach a horizontal section where the workers were.

The workers had **just finished sandblasting the inside of a portion of the tunnel** that serves as a pipe from a mountain reservoir to a hydroelectric generator. They **began spraying epoxy paint** inside the tunnel and were having problems keeping the mixture flowing through the hoses. They painted about 10 feet of the tunnel and had stopped for the day.

While cleaning their spraying equipment with a flammable solvent, a static spark from machinery inside the tunnel likely ignited the fire, according to the report.

The five trapped workers communicated via radio for 45 minutes with colleagues and rescue crews.

Board investigators said the workers did not have a fire extinguisher near the work area. The initial



flash fire had calmed down before other 5-gallon and 2-gallon buckets of solvent and epoxy began burning.

Cliff Stricklin, an attorney for Xcel, said in August the company would have stopped RPI from taking 15 gallons of flammable solvent into the tunnel had it known what was going to happen. In March 2008, OSHA proposed \$845,100 in penalties against RPI and \$189,900 against Xcel, saying the "catastrophe could have been avoided."

"The problem and why a grand jury decided that criminal charges were warranted is that the money (OSHA fines) is so low," said Kevin O'Brien, a business law professor at the University of Denver Daniels College of Business. "There's no way that Xcel intended for these people to die, but we do make provisions for violating standards normally expected of a usually prudent company to protect their workers."

Criminal prosecutions of companies are extremely rare, O'Brien said.

While RPI and two of its executives are also charged in federal court, they are scheduled to go on trial in the future. A civil lawsuit in the deaths was filed in state court in Denver against RPI and two other contractors not named in the federal cases.