BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08A-532E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2009 RENEWABLE ENERGY STANDARD COMPLIANCE PLAN

STATEMENT OF POSITION OF WESTERN RESOURCE ADVOCATES

COMES NOW Western Resource Advocates (WRA), by and through its attorneys, and for its Statement of Position in this docket, states the following:

WRA urges the Commission to make policy decisions in this docket that maximize renewable energy development, while complying with the 2% statutory retail rate impact constraint. The positions WRA advocates here are more closely aligned with the intent of Colorado's renewable energy standard, in compliance with the Commission's rules, and in conformity with previous Commission decisions. WRA requests that the Commission adopt these positions in the Order issued in this docket.

I. A Carbon adder should be included in the calculation of the retail rate impact cap.

WRA supports the Company's proposal to include the estimated cost of carbon emissions regulation in the calculation of the retail rate impact limit. Public Service, in conformity with the Commission's order in its most recent resource planning docket,[1]

[1] Decision No. C08-0929, mailed date September 19, 2008, Docket No. 07A-447E. Paragraphs 269 and 270, "However, new legislation enacted under Section 40-2-123(1)(b), C.R.S., explicitly allows the Commission to consider future carbon cost, and political acceptance of carbon legislation appears to be gaining momentum. Further, we agree with Public service that CO2 costs are likely to increase, and that

included a carbon adder in its modeling of the No-RES plan. The renewable energy standard compliance docket is a long-term resource acquisition plan, and is part of the Company's long-term resource procurement process. To account for likely future carbon emission regulation in one part of a utility's resource acquisition strategy, the resource planning process, but not in the RES compliance process would be inconsistent. It is practical and realistic that for planning purposes both dockets use conforming modeling inputs.

A. Colorado statutes and rules support the inclusion of the carbon adder.

Inclusion of the carbon adder creates valuable, incremental headroom under the 2% retail rate impact cap and appropriately adheres to legislative intent and Commission policy. First, Colorado law specifically authorizes the Commission to incorporate carbon emission regulatory costs in utility resource planning. The first sentence of Section 40-2- 123(1) C.R.S. reads: "The Commission may give consideration to the likelihood of new environmental regulation and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire resources." Second, Colorado statutes provide support for bold, advancement of renewable generation investment: "The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to

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$20/ton is a reasonable starting point. Therefore, we adopt Public Service's rebuttal proposal for CO2 costs of $20/ton plus 7 percent escalation." pp. 83-84.

Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases."[2]

Additionally, modeling of the carbon adder is in compliance with the Commission's rules that the same assumptions be used for modeling resource planning as for RES compliance. Commission Rule 3661(e) acknowledges the nexus between the RES Compliance process and the Resource Planning process; "For purposes of calculating the retail rate impact, the investor owned QRU shall use the same methodologies and assumptions it used in its most recently approved least-cost planning case, unless otherwise approved by the Commission."[3] Furthermore, the Commission's rules state, "... it is in the best interests of the citizens of the state of Colorado to develop and utilize renewable energy resources to the maximum practicable extent."[4]

B. The Commission should reject the OCC's recommendation to exclude the carbon adder.

The OCC's argument is logically inconsistent because removing the carbon adder is an exception to the "lock-down," which the OCC supports. The OCC recommends a backwards-looking, annual reopening of the modeled, No-RES assumptions for one estimated factor based on actual data (in hindsight), but not for any other estimated commodity, such as gas prices. The OCC's demarcation that carbon regulation carbon costs should be ignored until there was actual regulation in place was a distinction without a difference. As the OCC acknowledged, there is no financial difference between a scenario without carbon regulation, and a scenario with carbon regulation and zero cost

[2] Section 40-2-123(10(a), C.R.S.
[3] Commission Rule 3661(e).
[4] Commission Rule 3651.

(as might be the case in some years if Public Service receives early action credit). The OCC's proposal would significantly reduce many of the regulatory advantages of the "lock-down", such as simplicity, certainty and cost.

Additionally, the OCC concedes that removal of the carbon adder serves to restrict the amount of renewable energy that Public Service is permitted to procure with the 2% rate impact cap now.[5] It has the effect of delaying investment in renewables, which the OCC admits is especially significant if future federal carbon regulation contains early action credit for carbon emission reductions taken prior to enactment.[6] With a removal of the carbon adder the Company and its ratepayers will have lost the benefit of receiving early action credit for its early efforts and expenses towards carbon emissions reductions. Early action means that costs PSCo incurs today to reduce carbon will reduce the cost of carbon regulation in the future. So the costs of today's renewables are not incremental because they are reducing future compliance costs. The OCC stipulated that the current discussion draft of the proposed Waxman-Markey federal carbon regulation legislation uses 2005 as the base year for calculation of reduction targets.[7] If 2005 becomes the base year in federal carbon legislation, then any carbon reduction achievements by Public Service after that year are financially valuable.

The OCC takes the position that the carbon adder should be removed from the No-RES plan because it is not "known and measurable." However, in the context of the RES compliance plan analysis the carbon adder is as "known and measurable" as any other estimated modeling input. As explained below, the retail rate impact is based on estimated, forecasted costs from two different possible future scenarios – the RES and

[5] Transcript at p. __. Cross-examination of Mr. Frank Shafer by Mr. Steve Michel on April 7, 2009.
[6] Transcript at p. __. Cross-examination of Mr. Frank Shafer by Mr. Steve Michel on April 7, 2009.
[7] Transcript at p. __. (At the end of the transcript, at the very end of the day on April 8, 2009.)

No-RES plans. The OCC advises adjusting the two scenarios for one specific, presumably known (early action credit would undermine this presumed certainty), event (zero carbon costs). But this presumed certainty is dwarfed by the overall uncertainty of the fictional No-RES scenario to which the RES scenario is compared. It is similar to estimating the sum of two random numbers and thinking that you can make a precise estimate if you know that one of the numbers is zero. Zero is simply not a better, more practical number, especially when an important objective is to build a portfolio that reduces carbon risk. The OCC acknowledged at the hearing that there is no way to know that the carbon adder forecast the Commission has chosen for use now in the company's long-term electric resource plan is any better than a forecast developed when carbon regulation is initially implemented.[8]

II. The Commission should approve the Company's proposal to "lock down" its actual acquisitions of renewable energy.

The Commission should approve implementation of the "lock-down" of ongoing incremental costs for planning and allocating RESA dollars. On this issue, the Commission again has the opportunity to advance the statutory goals and promote more investment in renewable energy generation. Fundamentally, if there is not a lock-down of the actually invested incremental costs there is not symmetrical treatment of risk to the utility. As a result, the utility has the incentive to be below the 2% rate impact cap, rather than spend up to the 2% cap.

[8] Transcript at p. __. Cross-examination of Mr. Frank Shafer by Mr. Steve Michel on April 7, 2009.

A. Colorado statutes and rules support the concept of a "lock-down" of the costs of purchased renewable generation.

Several provisions of Section 40-2-124 support the notion that renewable energy resources, once acquired, are "sunk" for financial and statutory compliance purposes. The renewable energy standard statute provides, "The retail rate impact shall be determined net of new alternative sources of electricity supply from noneligible energy resources that are reasonably available at the time of the determination."[9] The phrase "that are reasonably available at the time of the determination" indicates that the estimated costs of those non-renewable resources should be "locked down" for calculation of the retail rate impact cap. Correspondingly, the actually acquired renewables, the ongoing incremental costs, should be "locked down" as well. Section 124 also provides, "These policies shall provide incentives to qualifying retail utilities to invest in eligible energy resources in the state of Colorado."[10] And, the legislative declaration of intent emphasizes, "...it is in the best interest of the citizens of Colorado to develop and utilize renewable energy resources to the maximum extent possible." Permitting the "lock-down" of ongoing incremental costs, i.e. acquired resources, is the appropriate interpretation of Section 40-2-124.

B. Locking down the costs of acquired renewable resources is a reasonable way to plan for resource acquisitions.

If the "lock-down" proposal is not adopted by the Commission, there will be less investment in clean energy because, depending on highly volatile factors such as gas prices. Public Service's investment decisions would be subject to a 20/20 hindsight re-

[9] Section 40-2-124(1)(g). C.R.S.
[10] Section 40-2-124(1)(f). C.R.S.

analysis, and potentially a violation of the retail rate impact cap. The retail rate impact is calculated using two different Strategist model runs known as the RES and No-RES plans. These two modeling scenarios are then compared and the incremental amount between the RES and the No-RES plans determines the 2% cap. The extent to which the RES/No-RES cost/benefit calculation conforms to the 2% cap directly and significantly impacts the amount of renewable resources that can be acquired. Not "locking down" previous investments in renewables in both the RES and No-RES scenarios in future compliance plans substantially increases the risk of the utility violating the cap. For any risk-averse entity, such as a utility, this unreasonable exposure to a statutory violation will produce a cautious, risk averse approach to investment. Consequently, renewable investment in Colorado would not go up to the 2% retail rate impact ceiling because the Company would err on the side of being conservative.

Instability in the RESA fund would also discourage renewable energy investment. If the available RESA funds are subject to wide, volatile swings, as demonstrated in Ahrens hearing exhibit number 48, and as testified to by Mr. Warren,[11] this could produce a situation where the RESA funds are less than the funds necessary to pay for previously acquired resources. Also, this could have a disparate impact on small renewable resources because that is where the Company might find the financial flexibility to compensate for inadequate funds.

[11] Transcript at p. __. Cross-examination of Mr. Warren by Ms. Mandell. Mr. Warren acknowledged that without the lock-down, some of the variables that might be remodeled are volatile and could have a significant effect on the RESA funds. Additionally, Mr. Warren discussed the logistical problems with rerunning of model runs.

C. The Commission should reject Staff's opposition to the "lock-down."

WRA believes the "lock-down," as structured by the Company, provides stability and certainty for maximum investment in renewable energy within the constraints of the retail rate impact cap. Staff's articulation of its position on the "lock-down" or "time fence" discounted the idea that as a consequence there might be a disparate, negative impact on investment in renewable generation.

On this issue, Staff presented the live testimony of Mr. Camp twice during the hearing, and provided a one-page exhibit, Exhibit 44, further clarifying its position. Although Mr. Camp acknowledged he had not studied what the company was proposing,[12] Mr. Camp opposed the "lock-down." However, it appears Mr. Camp's rationale was based, at least partially, on a lack of concern with violation of the 2% retail rate impact cap.[13] He emphasized that the Company had no risk because of its right to recovery of all expenses.[14] Also, Mr. Camp's testimony was somewhat inconsistent with the other Staff witness, Mr. Dalton. Mr. Dalton focused on a restrictive interpretation that the cost of renewable generation acquisitions each year must not exceed the amount collected from customers each year to remain in compliance with the 2% rate cap.[15] These two positions are difficult to reconcile from a practical, implementation standpoint. Mr. Dalton's approach would restrict the Company's ability to procure long-term resources because of the uncertainty of available revenues. Mr. Camp's approach would

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[12] Transcript at p. __. Cross-examination of Mr. Camp by Mr. Steve Michel on April 7, 2009.
[13] Transcript at p. __. Cross-examination of Mr. Camp by Ms. Brandt-King, Ms. Mandell and Ms. Connelly on April 8, 2009.
[14] Id.
[15] See Mr. Dalton's Answer testimony p. 32, lines 17-19 and p. 36, lines 11-13, and his Cross-Answer testimony p. 5, lines 1-4.

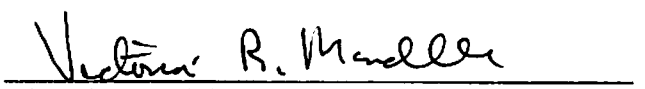
eliminate this restriction by allowing full cost recovery regardless of whether the 2% rate impact cap was violated.

Furthermore, the backwards-looking recalculation of previously estimated inputs recommended by Staff would make the modeling process ***more*** complex and difficult. The testimony provided at the hearing by the modeling experts, Mr. Warren and Mr. Parks, helped explain the practical challenges in implementing Staff's proposal.

In conclusion, WRA supports the Company's proposal to "lock down" renewable resource acquisitions, and to include the price of carbon emissions regulation in the calculation of the RES modeled scenario. Accordingly, we recommend the Commission approve these two elements of this compliance filing. This allows the Company to maximize the procurement of renewable resources under the 2% retail rate impact cap.

WHEREFORE, for the foregoing reasons, WRA prays for a Commission order in this proceeding consistent with the positions expressed herein, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted this 17th day of April, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 2009, the original and 7 copies of **WRA's Statement of Position** were sent to Doug Dean, Director, Colorado Public Utilities Commission, 1560 Broadway Suite 250, Denver CO 80202 and a copy was e-mailed to each of the following:

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