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

WESTERN RESOURCE ADVOCATES' REPLY TO EXCEPTIONS

COMES NOW Western Resource Advocates (WRA), by and through its attorney, Victoria Mandell, and for its Reply to Exceptions, states the following:

I. Expenditures for eligible energy resources every year do not have to match the RESA amount collected from retail customers that same year.

WRA believes that Trial Staff's Exceptions misinterpret Rule 4 CCR 723-3661(h)(1).The rule states:

> To the extent the RES plan exceeds this maximum retail rate impact, the QRU shall modify the RES plan to limit the acquisition of eligible energy so that the QRU compliance plan does not exceed the maximum retail rate impact *for the first compliance year* of the RES planning period. (emphasis added) [1]

According to Trial Staff's understanding of this rule, expenditures for eligible energy resources may not exceed the RESA amount collected from retail customers that same year. This restrictive reading of the rule has the effect of delaying the acquisition of renewable resources because the RESA balance could never be negative. Trial Staff explains its strict interpretation of the rule as follows: "However, Trial Staff's position is

[1] 4 Colorado Code of Regulations 723-3661(h)(1).

that the Company would have to under spend in multiple years so that it could spend on large projects in the succeeding years (or the year that project comes on line)."[2] Trial Staff's position, that the Company has to save up in the RESA balance until the entire amount necessary for large acquisitions is fully accumulated, has the effect of postponing renewable energy resource acquisitions. WRA does not believe this is the intent of the Rule.

Contrary to Staff's interpretation, WRA believes it is important to interpret Rule 3661(h)(1) in a manner that accommodates banking and borrowing of RESA funds. Renewable generation acquisitions occur in a lumpy manner, while the revenue stream for the RESA is relatively smooth. It is reasonable to expect inter-year variability in renewable resource acquisition expenditures. An interpretation of 3661(h)(I) that provides flexibility is consistent with Colorado law encouraging the development of renewable resources.

Rule 3661(h)(I) should be viewed within the context of the Renewable Energy Standard (RES) rules as a whole. The entire package of RES rules is lengthy, complex and sometimes contradictory. Many provisions in the rules envision a long-term approach that look beyond the "first" compliance year of each annual filing. For example, Rule 4 CCR 3659(f) permits the carrying forward of costs incurred in acquiring eligible energy. Rules 4 CCR 6359(a)(VI & VII) address the use of RECs for compliance from past and future years. Rule 4 CCR 3661(h)(I) defines the RES planning period as the compliance year and "a minimum of the ten years thereafter." Limiting the acquisition of eligible energy every year to the amount collected that year conflicts with the intent and context of the Commission's RES rules.

[2] Trial Staff's Exceptions, p .2, Docket No. 08A-532E (filed on June 11, 2009).

II. The lock-down mechanism does not hide the actual costs of renewable resources.

Trail Staff argues that the lock-down proposal "appears to intentionally hide the actual costs." Presumably, Staff means that the incremental cost is not accurately portrayed because it is based on projections.[3] WRA disagrees.

It is important to keep in mind that the estimated incremental cost of an eligible resource is the portion of its total cost that is estimated to be incremental to what the Company would have spent, had the Company procured ineligible resources instead (the No-RES scenario). Customers never pay more than the actual total cost of an eligible resource.[4] Each year, the forecast total cost of an eligible resource is compared to its actual total cost and the difference between the forecast total cost and the actual total cost is accounted for and tracked in the ECA (this is what the Recommended Decision recommends.)[5] The locked-down estimated incremental costs are not what customers are charged for an eligible resource.

There is no reason to believe that the lock-down or the use of the ECA, as the true-up accounting mechanism, would make the total actual cost of an eligible resource any more or less transparent to customers. While it is true that the actual "incremental" cost of an eligible resource may never be known with certainty, this is very different than an "intentional" attempt to hide costs.

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[3] Trial Staff's Exceptions, page 4. "Trial Staff is troubled that a public utility will permanently rely on projections of incremental costs rather than actual costs."
[4] Decision No. R09-0549, ¶54.
[5] *Id.* at ¶63

In this same vein, in its Exceptions, Staff requests that the Company "specifically identify its actual incremental costs recovered through the RESA and the actual incremental costs recovered through the ECA."[6] WRA does not believe such a requirement would be meaningful. As we explained above and in our Cross-Answer Testimony, the portion of an eligible resource's costs that are estimated to be incremental is not a number that can be calculated with any mathematical certainty – it can only be estimated, regardless of when that estimation occurs.[7] This is because the No-RES scenario that would be necessary to calculate an "actual incremental cost," is not pursued by the utility, and therefore never produces any data to which the estimated incremental cost could be compared.

III. Banking of RESA funds should be permitted for attractive renewable resource opportunities.

In its Exceptions, Public Service does not take issue with the Recommended Decision's directive to postpone banking of RESA funds until 2012. The Company does, however, request clarification that funds needed to cover eligible resources already under contract are not included in the postponement of banking.[8] Public Service's clarification also includes "any new renewable resources selected from the All Source RFP that come on line prior to the end of 2011..."[9] The Office of Consumer Counsel expresses the concern that the postponement of banking "might preclude the acquisition of larger, more cost-effective, PV systems, since banked RESA funds would not be available to pay for

[6] Trial Staff's Exceptions, page 8.
[7] WRA Cross-Answer Testimony, pages 7-8.
[8] Public Service Exceptions, pages 1-2.
[9] *Id.* at 2.

them."[10] WRA shares a concern that opportunities for acquisition of attractive eligible resources not be lost.

With regard to the postponement of banking of RESA funds until 2012, WRA believes that a postponement of banking should not prevent the Company from taking advantage of an attractive opportunity presented in its current RFP. Should such a resource opportunity exist, with an online date beyond 2011, and should banking of funds be necessary to acquire that resource, WRA believes the banking restriction for the Company's 2010 RES Compliance Plan should be revisited.

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 25th day of June, 2009.

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[10] Office of Consumer Counsel Exceptions, p. 2. Docket No. 08A-532E (filed on June 11, 2009).

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June 2009, the original and 7 copies of **WRA's Reply to Exceptions** 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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