

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

2006 JUL 25 11:4:07

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF COLORADO )  
FOR APPROVAL OF AN ENERGY EXCHANGE ) Docket No. 06A-015E  
AGREEMENT BETWEEN PUBLIC SERVICE )  
COMPANY OF COLORADO AND PACIFICORP )

**STIPULATION AND SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

Public Service Company of Colorado ("Public Service" or "the Company"), the Staff of the Colorado Public Utilities Commission ("Staff"), and the Colorado Office of Consumer Counsel ("OCC"), collectively referred to as the "Parties", hereby enter into this Stipulation and Settlement Agreement ("Stipulation") resolving, as between these Parties, all issues that have been raised or could have been raised in Docket No. 06A-015E. This Stipulation sets forth all the terms and conditions of such settlement.

The Parties to this Stipulation state that the results of the compromises reflected herein are a just and reasonable resolution of the issues addressed in this Stipulation, and that reaching agreement as set forth herein by means of a negotiated settlement is in the public interest. Each Party hereto pledges its support of this Stipulation and states that each will defend the settlement reached. The Parties respectfully request that the Public Utilities Commission of the State of Colorado ("Commission" or "CPUC") approve this Stipulation.

## II. BACKGROUND

On January 10, 2006, Public Service filed its Application together with the Direct Testimony and Exhibits of Karen Hyde and Craig Berg seeking an order approving an Energy Exchange Agreement between PacifiCorp and Public Service and declaring that the Energy Exchange Agreement is exempt from competitive acquisition under Rule 3611(f) of the Commission's Least Cost Planning Rules or, in the alternative, waiving the competitive resource acquisition process requirements with respect to the Energy Exchange Agreement or finding that the LCP rules do not apply to the transaction. Public Service also seeks an order declaring that all power purchases made under the Energy Exchange Agreement are exempt from the Company's Trading Business Rules governing short-term energy purchases and authorizing it to recover the costs of power purchases made during 2008 through 2014 under the Energy Exchange Agreement by the same means that it recovers costs associated with other long-term power purchases.

The Energy Exchange Agreement resolves a dispute between Public Service and PacifiCorp that had arisen due to Public Service's early termination of its Long-term Power Sales Agreement ("LTPSA") with PacifiCorp. By way of background, the LTPSA was entered into and approved by the Commission as part of the Colorado-Ute reorganization in 1992. Pursuant to the LTPSA, Public Service bought 176 MWs of capacity and associated energy from PacifiCorp for a term commencing in 1992 and ending on October 31, 2022. However, Public Service had the right to terminate the LTPSA early by providing notice in 2002.

Public Service elected to exercise this early termination right believing that alternative sources of power would be more economical than continued purchases from PacifiCorp under the LTPSA. As provided for in the LTPSA, after Public Service provided notice of termination, its purchase obligations would begin to ramp down beginning in 2008 and would terminate entirely at the end of 2011. This ramp-down was reflected in the Company's 2003 LCP.

In a companion Power and Transmission Services Agreement (the "PTSA"), dated March 30, 1992, among PacifiCorp, Public Service, and Tri-State Generation and Transmission Association, in the event that Public Service exercised its early termination, Public Service was required to provide to PacifiCorp transmission service for the amounts of capacity and energy that Public Service was not buying under the LTPSA from Craig/Hayden to mutually agreed upon point(s) of delivery. The Public Service transmission function and PacifiCorp were unable to reach agreement on such delivery points, however, and as a result, PacifiCorp made various legal assertions regarding Public Service's obligations to it. In an effort to find a mutually acceptable resolution to the dispute without litigation, and thereby avoid an uncertain outcome, the Public Service merchant function met with PacifiCorp and ultimately reached agreement on the Energy Exchange Agreement.

The Energy Exchange Agreement allows the Company to ramp down its purchases of power under the LTPSA from 2008 through 2014 and provides for a mutually agreeable exchange arrangement whereby PacifiCorp will deliver capacity and associated energy to Public Service at the Craig/Hayden generating

stations, and Public Service will deliver a like amount of capacity and associated energy at delivery points where PacifiCorp will be able to use the power. In this way, PacifiCorp essentially receives “synthetic” transmission service – Public Service delivers capacity and energy, equivalent to the capacity and energy generated from PacifiCorp’s own assets and delivered to Public Service, to a point at which PacifiCorp can use the capacity and energy to serve its load without needing to connect the two points with a continuous transmission path. Since there is not currently any transmission path that would allow Public Service to deliver the exchange power to PacifiCorp at the specified delivery points from its own resources, the Company will need to purchase the power it delivers to PacifiCorp from one or more third parties.

Public Service also explained that it may not be able to fulfill its obligations under the Energy Exchange Agreement at a cost that is below its decremental cost. Therefore, it sought exemption of the short-term purchases made under the Energy Exchange Agreement from its Policy for Resource Management and Cost Assignment for Short Term Electric Energy Transactions (“Trading Business Rules”) approved by the Commission by Decision No. C04-1208 (October 5, 2004) as part of the Stipulation and Settlement Agreement approved in Docket No. 04A-050E. Rather than treating the purchases made under the Energy Exchange Agreement as short term electric energy transactions, Public Service requested that it be authorized to recover the costs of purchases under the Energy Exchange Agreement in the same fashion that it recovers costs of other long-term power purchases through whatever mechanism the Commission

approves for recovery of costs the Company would otherwise have incurred under the LTPSA.<sup>1</sup>

On February 7, 2006, Staff filed its notice of intervention, entry of appearance, notice pursuant to former Rules 9(d) and 24(a)(1) and request for hearing. In its notice of intervention, Staff raised concerns regarding the basis for the Company's application and whether the economic impacts of the Energy Exchange Agreement on retail customers and on the Company's current Least Cost Plan are just and reasonable. Since it filed its notice of intervention, the Staff has propounded data requests upon the Company, and the Company and the Staff have met on a number of occasions for the purpose of addressing Staff's questions and concerns about the proposed Energy Exchange Agreement and the relief requested by the Company in its Application.

On February 8, 2006, the OCC filed its Notice of Intervention of Right and Entry of Appearance. While the OCC did not identify specific areas of concern in its Notice, it did reserve the right to file testimony and conduct cross-examination in this proceeding. On June 2, 2006, the OCC filed the answer testimony of PB Schechter raising concerns regarding how the Company will account for energy purchases made to satisfy the Company's obligations under the Energy Exchange Agreement if the Company is purchasing energy for other purposes in similar quantities and at similar times from the same location.

---

<sup>1</sup> The Company currently recovers its costs of purchased power under the LTPSA through a combination of base rates and the Electric Commodity Adjustment (ECA) Clause.

Other intervenors in this case are LS Power Associates, L.P., Climax Molybdenum and CF&I Steel, and PacifiCorp. None of these parties has submitted Answer Testimony in this proceeding.

On March 13, 2006, the Commission issued Decision No. C06-0235 establishing a procedural schedule. Pursuant to that schedule, Staff and Intervenors' Answer testimony was due on May 23, 2006, Rebuttal and Cross Answer Testimony would be due on June 20, 2006 and hearings are scheduled for three days commencing on July 31, 2006. On May 23, 2006, the Company joined the Staff and OCC in seeking an extension of the deadline for filing Answer testimony to June 2, 2006. On May 25, 2006, the Administrative Law Judge entered interim order R06-0619-I granting the Parties the requested extension to June 2, 2006 to file Answer testimony. On June 2, 2006 the Staff and the Company requested a further extension of the deadline for filing Staff's Answer testimony to June 7, 2006. The ALJ granted this further extension by Decision No. R06-0666-I-E issued on June 7, 2006.

### III. TERMS OF SETTLEMENT

Public Service, the Staff, and the OCC hereby stipulate and agree as follows:

1. **Approval of the Energy Exchange Agreement and other Relief Requested by the Company.** Since the Company filed its Application on January 10, 2006, the Staff and the OCC have had the opportunity to assess the Energy Exchange Agreement. As a result of their investigation, and in consideration for the Company's agreement to account for the costs of

purchases made under the Energy Exchange Agreement as set forth in Paragraph 2 below, the Staff and the OCC are no longer contesting the Company's application in this proceeding. The Parties agree that approval of the Energy Exchange Agreement between the Company and PacifiCorp is consistent with the public interest. The Staff and OCC further agree that the Energy Exchange Agreement is cost effective as compared to the LTPSA and that therefore the Commission should grant Public Service a waiver of the LCP Rules' competitive acquisition requirements to allow it to enter into the Energy Exchange Agreement.

Lastly, subject to the Company's agreement to account for the costs associated with power purchases made under the Energy Exchange Agreement as set forth in Paragraph 2, the Parties agree that the Commission should grant Public Service's request for an order declaring that all power purchases made under the Energy Exchange Agreement are exempt from the Company's Trading Business Rules governing short-term energy purchases. An exemption from the Company's Trading Business Rules is appropriate because, due to the delivery point limitations, the Company can not be restricted in purchasing energy under the Energy Exchange Agreement to energy that is below the Company's decremental costs. The Parties further agree that the Commission should grant Public Service's request for an order authorizing it to recover the costs of power purchases made during 2008 through 2014 under the Energy Exchange Agreement by the same means that it recovers costs associated with other long-term power purchases such as purchases made under the LTPSA.

2. **Accounting for Costs Incurred for Power Purchased Under the Exchange Agreement For Delivery to PacifiCorp.** The Company agrees that the Energy Exchange Agreement shall have priority over Public Service's Generation Book and its Proprietary Book during the evaluation of all proposed purchases to satisfy the Company's obligations to deliver power to PacifiCorp under the Energy Exchange Agreement. If the Company purchases power at a particular hub for delivery to PacifiCorp under the Energy Exchange Agreement and on the same day and at the same location purchases power with like conditions for its Generation or Proprietary Book, the Company agrees to assign the lowest cost purchase to the Energy Exchange Agreement. The Company agrees to thoroughly document in its accounting database all power purchases made at the designated hub on the day that the Company purchased power to satisfy its obligations under the Energy Exchange Agreement and to demonstrate that the purchase that was assigned to the Energy Exchange Agreement was the lowest cost of all purchases made on that day at the designated hub that could have satisfied the Energy Exchange Agreement. By complying with this paragraph, the Company will assure that retail customers get the benefit of the best bargain available to the Company for similar purchases made on that day at that hub. The Company may make power purchases to meet its obligations under the Energy Exchange Agreement either on a day ahead basis, or at an earlier point in time, at the Company's discretion.

3. On or about October 15 of each calendar year in which the Energy Exchange Agreement will be in effect, the Company agrees that it shall provide



the Staff and the OCC with a look back of the day-ahead power prices for each day from January 1 to September 30 for the delivery point designated by the Company for that calendar year pursuant to Section 4.5.1 of the Energy Exchange Agreement.<sup>2</sup> The Company shall also provide the Staff and the OCC with information showing the actual price paid for power purchased and assigned to Energy Exchange Agreement for January 1 through September 30 of the applicable calendar year.

4. The Parties agree to meet during November of each year commencing November 2008 through November 2013 to consider the costs that have been incurred by the Company for delivery of power to PacifiCorp under the Energy Exchange Agreement during the current year and to assess the relative costs and benefits from forward purchases versus purchasing power on a day-ahead basis for delivery to PacifiCorp under the Energy Exchange Agreement. The Company agrees to discuss its plans for purchasing power for delivery to PacifiCorp under the Energy Exchange Agreement during the next calendar year. The purpose of this meeting is to provide Staff and the OCC the opportunity to understand the effects of the strategy that Public Service used to fulfill its obligations under the Energy Exchange Agreement in the preceding year, and to discuss with Public Service how it might fulfill this obligation in the future. Notwithstanding the Company's agreement to meet with Staff and the OCC

---

<sup>2</sup> The parties understand that because the power market at the Mona 345 kV tends to be less liquid than at either Palo Verde or Four Corners, it may be necessary to report the day ahead prices for delivery at the Mona 345 kV as the day ahead prices at one of the other hubs, adjusted to reflect the value of deliveries at Mona 345 kV. The Company will provide Staff and OCC with all information supporting its determination of the day-ahead power prices at Mona 345 kV if Mona 345 kV has been selected by the Company as the designated delivery point under the Energy Exchange Agreement for a particular calendar year.

under this paragraph, the Company retains the full discretion—subject to standard prudence review—as to when to purchase power to meet its obligations under the Energy Exchange Agreement.

#### **IV. GENERAL PROVISIONS**

Public Service, the Staff, and the OCC agree to submit this Stipulation to the Commission for approval at the earliest opportunity. Public Service, the Staff, and the OCC shall join in a motion that requests the Commission to approve this Stipulation and to testify in support of this Stipulation.

This Stipulation is a negotiated compromise of issues of concern to the Staff and the OCC relating to the Company's Application for approval of the Energy Exchange Agreement. By signing this Stipulation and by joining the motion to adopt the Stipulation filed with the Commission, the Company, the Staff, and the OCC acknowledge that they pledge support for Commission approval of the Company's Application for approval of the Energy Exchange Agreement and the other relief sought by the Company in its Application.

This Stipulation shall not become effective until the issuance of a final Commission Order approving the Stipulation, which Order does not contain any modification of its terms and conditions that is unacceptable to any of the Parties. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on the issues that may be appropriately raised by that party in Docket No. 06A-015E. The withdrawing Party shall notify the Commission and the Parties to this Stipulation by e-mail within three business days of the

Commission modification that the Party is withdrawing from the Stipulation and that the Party is ready to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (the "Hearing Notice").

The withdrawal of a Party shall not automatically terminate this Stipulation as to the withdrawing Party or any other Party. However, within three business days of the date of the Hearing Notice from the first withdrawing Party, all Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Stipulation. Within five business days of the date of the Hearing Notice, the Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and the list of issues that remain settled. The Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Stipulation. Hearing shall be scheduled on all of the issues designated in the formal notice filed with the Commission as soon as practicable.

In the event that this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding, except as may be necessary in any proceeding to enforce this Stipulation.

Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in the above-captioned proceeding. The Parties state that reaching Stipulation in this docket by means of a negotiated settlement is in the public interest and that the results of the compromises and settlements reflected by this Stipulation are just, reasonable and in the public interest.

All Parties to this Stipulation have had the opportunity to participate in the drafting of this Stipulation. There shall be no legal presumption that any specific Party was the drafter of this Stipulation.

If the Commission approves this Stipulation, and at some later date interprets this Stipulation in a manner harmful to the interests of one of the Parties, but not advocated by any of the other Parties, all Parties agree to support the original intent of this Stipulation with appropriate pleadings before the Commission.

This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire agreement with respect to the issues addressed by this Stipulation.

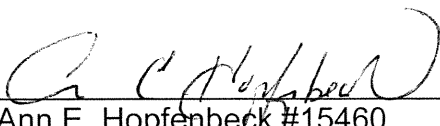
Dated this 25th day of July, 2006.

PUBLIC SERVICE COMPANY OF  
COLORADO

By:   
Karen T. Hyde  
Managing Director, Resource  
Planning and Acquisition  
Xcel Energy Services Inc.  
1099 18th St., Suite  
Denver, Colorado 80202

Agent for Public Service  
Company of Colorado

APPROVED AS TO FORM:

By:   
Ann E. Hopfenbeck #15460  
Ducker, Montgomery, Aronstein  
& Bess, P.C.  
c/o Xcel Energy Services  
1225 17<sup>th</sup> Street, Suite 900  
Denver, CO 80202  
Telephone: (303) 294-2059  
Fax: (303) 294-2988  
  
Attorney for Public Service  
Company of Colorado

STAFF OF THE PUBLIC UTILITIES  
COMMISSION

By: \_\_\_\_\_  
Sharon L. Podein  
1580 Logan Street, OL-2  
Denver, CO 80203  
  
Senior Engineer-Colorado Public  
Utilities Commission

APPROVED AS TO FORM:

JOHN W. SUTHERS  
Attorney General

By: \_\_\_\_\_  
David A. Beckett, #23098  
Assistant Attorney General  
Office of the Attorney General  
Business and Licensing Section  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Telephone: (303) 866-5135  
Fax: (303) 866-5395

Attorneys for Staff of the  
Public Utilities Commission

PUBLIC SERVICE COMPANY OF  
COLORADO

By: \_\_\_\_\_

Karen T. Hyde  
Managing Director, Resource  
Planning and Acquisition  
Xcel Energy Services Inc.  
1099 18th St., Suite  
Denver, Colorado 80202

Agent for Public Service  
Company of Colorado

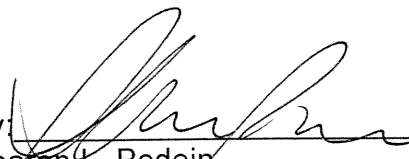
APPROVED AS TO FORM:

By: \_\_\_\_\_

Ann E. Hopfenbeck #15460  
Ducker, Montgomery, Aronstein  
& Bess, P.C.  
c/o Xcel Energy Services  
1225 17<sup>th</sup> Street, Suite 900  
Denver, CO 80202  
Telephone: (303) 294-2059  
Fax: (303) 294-2988

Attorney for Public Service  
Company of Colorado

STAFF OF THE PUBLIC UTILITIES  
COMMISSION

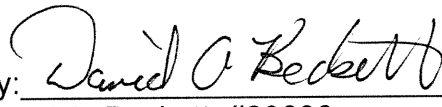
By:  \_\_\_\_\_

Sharon L. Podein  
1580 Logan Street, OL-2  
Denver, CO 80203

Senior Engineer-Colorado Public  
Utilities Commission

APPROVED AS TO FORM:

JOHN W. SUTHERS  
Attorney General

By:  \_\_\_\_\_

David A. Beckett, #23098  
Assistant Attorney General  
Office of the Attorney General  
Business and Licensing Section  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Telephone: (303) 866-5135  
Fax: (303) 866-5395

Attorneys for Staff of the  
Public Utilities Commission

COLORADO OFFICE OF  
CONSUMER COUNSEL

BY: PB Schechter  
P.B. Schechter  
Rate/Financial Analyst  
Office of Consumer Counsel  
1580 Logan Street, Suite 740  
Denver, CO 80203  
(303) 894-2124

APPROVED AS TO FORM

JOHN W. SUTHERS  
Attorney General

BY: Stephen W. Southwick  
Stephen W. Southwick, #30389  
First Assistant Attorney General  
Office of the Attorney General  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
(303) 866-5869  
(303) 866-5342 (Fax)

ATTORNEYS FOR THE  
COLORADO  
OFFICE OF CONSUMER  
COUNSEL