Decision No. C03-0074

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01A-381E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR COST RECOVERY OF POWER PURCHASE AGREEMENTS WITH INDECK COLORADO, LLC.

DECISION ON EXCEPTIONS

Mailed Date: January 22, 2003
Adopted Date: October 23, 2002

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of Exceptions to Decision No. R02-862 (Recommended Decision). In that decision the Administrative Law Judge (ALJ) recommended approval of the application by Public Service Company of Colorado (Public Service or Company) for recovery of the costs associated with two power purchase agreements with Indeck Colorado, LLC (Indeck). The Colorado Office of Consumer Counsel (OCC) has filed Exceptions to the Recommended Decision pursuant to § 40-6-109(2), C.R.S. Those Exceptions urge the Commission to disallow a substantial portion of the costs related to the Indeck power purchase agreements. The Company has filed its response to the Exceptions. Now being duly advised in the premises, we grant the Exceptions in part only, consistent with the discussion below. And for the reasons stated below, we approve Public Service's application for cost recovery of the Indeck agreements.

II. STATEMENT OF FACTS

2. In this application, Public Service seeks an order authorizing it to recover, pursuant to standard rate mechanisms, the costs of its power purchase agreements with Indeck. Those two agreements were made by Public Service to provide power to meet the Company's year 2000 summer peak load. Public Service entered into the Indeck agreements after the Commission issued a number of decisions in various dockets: by Decision No. C98-1042 (Mailed Date of November 2, 1998), in the Company's Integrated Resource Planning proceeding (Docket No. 97A-297E), the Commission authorized Public Service to obtain through competitive bids from power suppliers up to 676 megawatts (MWs) of power beginning in the

year 2000. That decision authorized Public Service to enter into seven-year contracts with the power suppliers.

3. North American Power Group (NAPG) was one of the winning bidders to meet the Company's year 2000 power needs. However, NAPG failed to reach an agreement with Public Service by June 1999, and, as a result, Public Service was to be approximately 96 MWs short of 2000 summer peak capacity requirements. Because there was insufficient time to conclude negotiations with the next lowest bidder, Public Service sought approval from the Commission to install three contingency turbines, two at the Company's Arapahoe generation station and one at the Valmont station, to meet the capacity shortfall created by the failure of the NAPG negotiations. By Decision No C99-954 (Mailed Date of August 31, 1999) in Docket No. 99A-385E the Commission granted certificates of public convenience and necessity (CPCNs) to Public Service authorizing it to install the contingency turbines. After receiving those authorizations from the Commission, the Company installed the turbines.

4. In Docket No. 99A-432E, Public Service applied for authority to divest the three contingency turbines through competitive bids. The Company proposed that if the sales were approved, Public Service would enter into seven-year power purchase agreements wherein the successful buyer and operator of the turbines would sell the power from the turbines to Public Service.[1] In its application, the Company reserved the right to retain ownership of the turbines if it did not receive acceptable bids. The Commission, by Decision No. C99-1273 (Mailed Date of November 24, 1999) (Divestiture Decision), granted the application, thereby authorizing Public

[1] In support of its proposal to sell the turbines, Public Service stated that the sale would: (1) improve its year-end financial ratios—the unanticipated capital costs for the contingency turbines was $76 million; and (2) restore credibility, for independent power suppliers, in future competitive bidding processes by the Company.

Service to sell the turbines. Notably, the Divestiture Decision reserved ruling on all cost recovery issues for a later proceeding.

5. Public Service, after the Commission's approval of its proposal to divest the contingency turbines, solicited competitive bids for those facilities. Indeck, an independent power producer (IPP), was the successful bidder to buy and operate the turbines. Public Service then entered into two seven-year agreements with Indeck for the purchase of the power produced from the divested facilities.

6. Public Service in this proceeding now requests a Commission ruling that it will be allowed to recover the costs related to the Indeck contracts. At hearing before the ALJ, the OCC contended that a substantial portion of the Indeck costs should be disallowed from rates. According to the OCC, retaining the turbines in rate base, instead of selling the facilities and purchasing power under the agreements with Indeck, would have resulted in lower costs to ratepayers. The OCC argues that the excess costs of the power purchase agreements, as compared to the rate base option, should be disallowed.

7. The Recommended Decision rejects the OCC's arguments. The ALJ concluded that Public Service acted prudently in installing the contingency turbines, and in divesting those facilities and entering into power purchase agreements with Indeck. Notably, the ALJ ruled:

> The argument of the OCC that the proper comparison for determining cost recovery is a comparison of rate basing the turbines with the costs associated with divesting the turbines and entering into purchased power agreements is misplaced. The OCC could have, but did not object to the sale and asserted this argument in the docket concerning the application of Public Service to sell the turbines. Having received the authorization by the Commission to divest the turbines and enter into power purchase agreements, Public Service acted prudently in doing what the Commission had authorized.

Recommended Decision, page 12. The OCC now excepts to the Recommended Decision.

III. EFFECT OF THE DIVESTITURE DECISION

A. Parties' Positions

8. In its Exceptions, the OCC argues that the ALJ misconstrued prior Commission decisions relating to the Indeck agreements, particularly the Divestiture Decision. The OCC asserts: It was not possible for the OCC to object to the sale of the contingency turbines in the divestiture docket on the grounds that a rate base option was more beneficial to ratepayers. At the time of the divestiture docket, the costs associated with selling the contingency turbines and entering into power purchase agreements for their output were unknown. Indeed, the competitive bidding for the turbines had not yet taken place. As such, no one—neither the OCC, nor the Commission—could consider the prudence of divestiture as compared to a rate base option. That comparison could not be made until Public Service completed the competitive solicitation and decided whether to accept any bid. The ALJ, therefore, was mistaken in holding that the OCC should have objected to the sale and associated power purchase agreements in the divestiture docket.

9. As for the effect of the Divestiture Decision, the OCC contends that the decision clearly reserved all cost recovery issues for a future docket. In fact, the decision pointed out that any presumption regarding cost recovery (in a future docket) would be adverse to the Company. Furthermore, the OCC argues, while the Divestiture Decision authorized Public Service to conduct a competitive solicitation, the decision did not order the Company to sell the turbines, nor did the decision establish the criteria for an acceptable bid. Because the Divestiture Decision did not compel Public Service to sell the turbines and enter into related power purchase agreements, the Company was under a legal obligation not to harm ratepayers through any sale of those facilities. That legal obligation required Public Service to consider whether retaining the

turbines in rate base was more beneficial to ratepayers than accepting the Indeck bid and associated power purchase agreements.

10. The OCC concludes that, based upon its economic analysis (discussion *infra*), retaining the contingency turbines in rate base would have been substantially more beneficial to ratepayers than the Indeck sale and agreements. Therefore, the Commission should not allow full cost recovery for the Indeck power purchase agreements. Instead, the difference in costs between a rate base option and the Indeck contracts should be disallowed from rates.

11. Public Service disagrees with these contentions. The Company contends: When the Commission reserved cost recovery issues concerning the sale of the contingency turbines in the divestiture docket, it was not reserving debate over whether the Company should sell the turbines or retain them in rate base. In fact, the Divestiture Decision approved the sale of the turbines. Notably, the OCC in the divestiture docket did not object to the Company's proposal to sell the contingency turbines and enter into power purchase agreements with the winning bidder.

12. As for the OCC's assertion that the Company was legally obligated to act prudently even after the Divestiture Decision, Public Service argues that this obligation is not to be measured by comparison to a rate base option. The Company points out that the NAPG bid was one of the winning bidders ensuing from Docket No. 97A-297E. There, the Commission approved the proposal that Public Service acquire new capacity for year 2000 through a competitive solicitation process in which the Company itself would not bid. Public Service's divestiture of the contingency turbines and the related power contracts with Indeck left the Company and its ratepayers in a position comparable to one in which the NAPG bid was implemented. Indeed, the Indeck agreements are even better for ratepayers than the NAPG bid.

In light of these facts, Public Service argues, the prudence of the Indeck contracts is to be measured by comparison to the NAPG proposal.

13. Public Service further contends that in other proceedings the Commission has rejected the OCC's position here. Specifically, in Docket Nos. 99A-549E (concerning Public Service's 1999 Integrated Resource Plan (IRP)) and 02R-137E (concerning amendments to the Integrated Resource Planning Rules) the Commission ruled that the OCC's financial comparisons between rate base options and power purchase agreements with independent producers rely upon faulty premises and assumptions. Moreover, in those other proceedings the Commission has ruled that the proper benchmark for judging the prudence of utility actions is the competitive wholesale market, not administrative rate-based decisions.

14. In short, the Company asserts, it had no legal obligation to compare the costs and benefits of the Indeck contracts with the costs and benefits of retaining the contingency turbines in rate base. And, in any event, the OCC's comparison of the two options was substantially flawed. Proper analysis fails to reveal that retaining the contingency turbines in rate base would have been more beneficial to ratepayers as compared to the Indeck power purchase agreements. Public Service concludes that its actions were prudent, and it is, therefore, entitled to recover all costs related to the Indeck agreements.

B. Commission Decision

15. We agree with the OCC that the Recommended Decision misinterprets the legal rulings and effects of our prior decisions relating to the Indeck contracts. As such, it is permissible and proper for the Commission, as the OCC suggests, to consider whether the Indeck agreements are prudent as compared to retaining the contingency turbines in rate base.

16. For purposes of this case, it is important to point out what the Divestiture Decision did and *did not* do. First, the decision *did not mandate* that Public Service sell the contingency turbines to Indeck or anyone else. The decision, in effect, authorized the Company to investigate a sale of the turbines, through a competitive solicitation process, and related seven-year power purchase agreements. However, in the divestiture docket the precise costs and benefits of a sale and associated power purchase contracts were unknown; therefore, that information was not presented in the docket. Without such information the Commission could not--and did not--order the Company to sell the turbines. Indeed, the Company's application for divestiture (bullet point four, page 2 of Divestiture Decision) itself recognized that Public Service might reject all bids and retain the contingency turbines in rate base, notwithstanding the Commission's approval of the divestiture application. And because Public Service was not compelled to sell the turbines even after issuance of the Divestiture Decision, nothing in the decision excused the Company from its obligation to act prudently in considering competitive bids for the turbines and any related purchase power agreements.

17. Second, contrary to the Company's argument, the Divestiture Decision *did not* determine that the proper measure of prudence of any power purchase agreements resulting from a sale of the turbines was the NAPG bid. In 1998 (Decision No. C93-1042), the Commission did approve a competitive solicitation process (not the NAPG bid itself) for Public Service's year 2000 capacity needs. After that approval, however, circumstances changed significantly. The NAPG proposal, one of the winning bids, failed to materialize and Public Service proceeded to install the turbines *as rate based facilities* pursuant to the CPCNs issued by the Commission in Docket No. 99A-385E. In order for the regulatory status of the turbines to change, Public Service was required to obtain Commission permission to sell those facilities. The Divestiture

Decision did authorize Public Service to sell the turbines, but nothing in the decision stated that the NAPG bid would be the proper measure of prudence for any sale. Indeed, as the OCC points out, the Divestiture Decision reserved all cost recovery issues for later determination.

18. We agree with the OCC that consideration of a rate base option, when judging the prudence of the Indeck agreements, is appropriate. Unlike the circumstances existing in Docket Nos. 99A-549E and 02R-137E, the facilities here were originally installed as rate based plant. The Company had to take a number of actions (*e.g.*, obtaining approval from the Commission, soliciting offers from IPPs, etc.) to change the then existing regulatory status of those facilities as rate based plant. Had the Company not sold the contingency turbines and entered into the power purchase agreements with Indeck, those facilities would have served ratepayers in the future as rate based facilities. As such, when considering whether Public Service is entitled to full cost recovery for the Indeck agreements, it is reasonable for the Commission to compare the benefits of retaining the turbines as rate based facilities to the benefits of the agreements. Traditional ratemaking concepts, such as the requirement that a public utility act prudently, justify this comparison.

19. We conclude that the Recommended Decision is incorrect in finding that the OCC's rate based comparisons are improper because prior Commission decisions precluded such an inquiry. We proceed to consider the OCC's arguments that the Indeck agreements were imprudent.

IV. PRUDENCE OF INDECK AGREEMENTS

20. Although we agree with the OCC that we should compare the Indeck contracts with a rate base option, there are still a number of methodological questions raised by Public

Service concerning the OCC's comparative analysis. These include: (1) the use of initial versus restructured contracts; (2) the appropriate discount rate for the analysis; (3) the appropriate time period over which the comparison should be made; (4) the appropriate treatment of property taxes; and (5) the impact of several qualitative factors. Each of these issues will be discussed below.

A. Initial Versus Restructured Contracts

21. The OCC offers two separate comparative analyses, one using the initial power purchase agreements with Indeck, and the other using restructured contracts with Black Hills, the successor to Indeck. The first analysis compares the revenue requirement associated with ratebasing the 3 contingency turbines over a 30-year depreciation period to the 7-year power purchase agreements with Indeck, followed by an assumption that the remaining 23 years of power purchase agreements will be at a price equal to the Company's corporate inflation rate minus 1 percent. The second, parallel analysis compares the revenue requirement associated with ratebasing two turbines, operating in simple cycle mode over 30 years, to the first 2 years of the initial Indeck power purchase agreements, followed by the 10-year restructured power purchase agreements with Black Hills (initially offered in April 2000, as part of PSCo's 1999 IRP and entered into in January 2001), and, finally, followed by an assumption that the remaining 18 years of power purchase agreements will be at a price equal to Public Service's corporate inflation rate minus 1 percent. This second analysis includes only two turbines instead of three because two of the original turbines had been converted to combined cycle and a fourth turbine had been built; the OCC chose to use only the remaining two simple cycle turbines in order to keep the analysis strictly comparable.

22. Public Service responds that it is entitled to recover all prudently incurred expenses, and that a finding concerning prudence should take into account only information that the Company could have reasonably known at the time it made the decision to sell the turbines to Indeck in December 1999. At that time, according to the Company, it could not have known that Black Hills would bid in Public Service's 1999 IRP process, what that bid might look like, and whether it would be accepted. Consequently, no evaluation of Public Service's initial contract with Indeck (versus ratebasing) should be based upon data from the restructured contracts with Black Hills.

23. The OCC replies to Public Service's argument that the restructured contract analysis be ignored: Although Public Service did not know, at the time it entered into the initial contracts, whether or how the contracts would be restructured, it should have known that such restructuring could occur and that it would face a tight seller's market for turbines in the near future. That market would drive up turbine prices. This higher price would, in turn, imply that future power purchase agreements would be more costly for Public Service--precisely what the restructured contract analysis reflects and why it should remain an option for consideration.

B. The Appropriate Discount Rate

24. The OCC applies two different discount rates to each of the two analyses discussed above, ultimately resulting in four comparisons between ratebasing the turbines and selling them to Indeck. The two discount rates used are 4.32 and 7.99 percent. According to the OCC, the first is a rate offered by Public Service to its customers in the recent Incentive Cost Adjustment filing (Docket No. 02A-158E); the latter represents the Company's weighted average, after-tax cost of capital. Public Service responds to the appropriateness of these discount rates by arguing that 4.32 percent is a short-term debt rate and, consequently,

inappropriate for use in evaluating long-term investment in generation facilities, the issue in this docket. As such, only the 7.99 percent is relevant.

C. The Appropriate Time Period.

25. The OCC uses a 30-year time period in all of its comparisons because it believes that this is a reasonable approximation of the time period over which Public Service would depreciate these turbines, if they were part of rate base. The Company, on the other hand, argues that the relevant time period for comparison purposes should be seven years since this represents the length of the IRP contracts and the power purchase agreements with Indeck.[2] Moreover, the Company asserts, it is impossible now to know what power purchase agreements will look like after the end of the initial seven-year agreement. Any attempt to forecast the terms of agreements in the future is pure speculation. Therefore, the OCC's analysis, based on a 30-year time frame, should be rejected. In response, the OCC contends that the seven-year comparison proposed by Public Service is inappropriate because it compares the seven most expensive years for the rate base option with the seven least expensive years for the power purchase agreements option, thereby unfairly skewing the analysis in favor of the agreements.

D. The Appropriate Treatment of Property Tax

26. In its answer testimony, the OCC criticizes Public Service's use of a 2.53 percent property tax rate as being too high. It argues that Public Service incorrectly employs gross plant, instead of net plant, in its calculations. The Company contends, however, that gross plant is the appropriate concept because continual investment related to the original turbines is required throughout their lives, and this offsets the decline in the net investment in the turbines

[2] Over this seven-year period, Public Service's payments to Indeck would be less than the revenue requirement associated with rate basing the turbines for every year of the period.

themselves. In response, the OCC suggests that such reasoning is improper unless Public Service can demonstrate that an IPP, such as Indeck, engages in a similar stream of investments over time, but does not charge the Company for them. In contrast to Public Service's 2.53 percent tax rate, the OCC assumed a rate of 1.38 percent, arrived at by dividing total property taxes paid by the Company by its electric plant in service in 2000.

27. Public Service, in its rebuttal testimony, points out that, not only does it normally assume that property taxes will be constant over time, but other utilities do so as well in their generation planning processes. The Company argues that a continuous stream of supplemental investment would be engaged in by an IPP, and reflected in its bid price. Therefore, the OCC is unfairly underestimating the cost of the rate base option by not including similar investment in that option. Finally, to further support its use of gross plant, Public Service observes that property tax is based upon the fair market value of assets; this, in turn, is based largely upon an income evaluation approach that is unrelated to depreciated net plant.

28. In the second revision to its answer testimony, the OCC lowers its property tax rate from 1.38 percent to 1.367 percent. It also reports on a discussion with a senior utility appraiser in the Office of the State Property Tax Administrator of the Colorado Department of Local Affairs. In that discussion the appraiser described his method for calculating property tax liability as assessing the property at 29 percent of appraised value, multiplying the result by a proprietary, utility-specific percentage adjusting for the amount of plant past its economically useful life, and then applying the relevant mill levies. This appraiser also indicated to the OCC that 80 percent would be a reasonable estimate of the proprietary, utility-specific adjustment referred to above.

29. The Company filed additional rebuttal testimony in which it disagrees with including this 80 percent adjustment factor, arguing that no such adjustment should be applied to a new facility, which is what is at issue here. Moreover, the Company criticizes the OCC for using current mill levies instead of the higher ones related to the fourth quarter of 1999 when the Indeck power purchase agreements were signed. Public Service contends that the Colorado Department of Local Affairs relies upon both cost and income approaches when evaluating property, and that only the former is closely related to net book value. Finally, the Company lowers its own property tax rate estimate from 2.53 to 2.34 percent.

30. In its statement of position, the OCC agrees with Public Service's mill levy criticism; making that adjustment raises the OCC's property tax rate, still to be applied to net plant, from 1.367 to 1.86 percent. The OCC contends that the income evaluation approach to property tax computation will result in higher property taxes than applying the cost approach, if and only if the contingency turbines were to provide above average revenue to Public Service in the revenue requirement analysis. According to the OCC, this is clearly not the case. The OCC asserts that, to the contrary, peaking units typically have lower than average capital costs which, in turn, implies a lower than average contribution to the revenue requirement for the coverage of fixed costs. Furthermore, peaking units typically have lower than average capacity factors which also implies a lower than average contribution to the revenue requirement for the coverage of variable costs.

E. Qualitative Factors

31. The Company and the OCC both recommend that we examine risks to ratepayers associated with the options being considered in this comparison. However, each party emphasizes different risks. Public Service concentrates on the risks associated with retaining the

turbines in rate base, including risks related to the future market price, technological change, fuel cost, operating cost, and environmental regulations. The OCC, on the other hand, focuses on the risk associated with the divestiture of the turbines. It contends that the new owner of the turbines can submit, in a future Public Service IRP process, a bid whose price exceeds that of the existing contract. If accepted as part of the least-cost portfolio, that bid would represent increased costs that ratepayers would not incur if the turbines had been retained in rate base. The OCC points out that this, in fact, has happened with the restructured contracts with Black Hills; so, the possibility of this risk is not idle speculation. Conversely, according to the OCC, the risks enumerated by Public Service, while they may be theoretically plausible, have never been seen to materialize. In addition, the OCC argues that the risks mentioned by the Company are faced by any owner of a power plant. These risks would be taken into account by an IPP, when it formulates its bids to sell power. Hence, ratepayers would not avoid the costs of these risks through divestiture. Public Service agrees with the observation that IPPs would include these risks in their bids. However, the Company argues, the OCC does not include a similar consideration of such risks in its revenue requirement calculations, thus favoring a rate base option over divestiture.

32. In addition to the qualitative factor of risk, the Company is also concerned about the negative impact that ratebasing the turbines might have had on maintaining a strong balance sheet as reflected by its year-end financial ratios, and on solicitations from IPPs in future IRP processes. Related to the first concern, the Company argues that it did not originally plan on constructing these contingency turbines, but instead planned to purchase that power as part of the 1996 IRP process. Consequently, retaining the turbines in rate base would have hurt Public Service's financial ratios by increasing debt relative to equity, which would, in turn, have

lowered its credit rating and increased its cost of capital for all future capital expenditures. The OCC counters by observing that the Company did not quantify what effect this would have had on ratepayers. Moreover, the OCC does not believe that the effect on the Company's cost of borrowing would have been substantial because debt-rating agencies primarily focus on Public Service being a regulated utility with low risk and reasonable ability to earn adequate return on rate base.

33. Finally, the Company argues that retaining the turbines in rate base would have hurt the solicitation of bids from IPPs in subsequent IRP processes, because their confidence in Public Service being serious about purchasing power from independent producers would have been undermined. The IPPs, according to Public Service, would be more likely to believe that the Company will resort to building its own turbines and retaining ownership thereof if anything were to go wrong in the IRP bidding process in the future. This lack of confidence would have arisen just at the time that the Company was hoping to receive as many bids as possible from the IPPs in its 1999 IRP process, because of its need for substantial additional capacity. Receiving a maximum number of bids, in turn, would result in greater competition with the benefits inuring to ratepayers.

F. Commission Decision

34. We address each of the methodological issues outlined above in order to arrive at a conclusion regarding the relative benefits to ratepayers from the options of retaining the contingency turbines versus selling them. Beginning with the question of whether to use data solely from the original contracts or from a combination of the original and the restructured contracts, we agree with Public Service that relying upon data from the restructured contracts violates standard regulatory principles. Since these contracts did not exist at the time the

Company was evaluating its choice of divesting itself of the turbines and signing power purchase agreements with Indeck, the Company could not have known that such contracts would be accepted in the upcoming 1999 IRP process. Therefore, Public Service could not have taken the specifics of such future contracts into account when making the decision to divest. Only information that the Company could have reasonably known at the time of the decision (*e.g.*, the structure of the original contract) is relevant.

35. Turning to the issue of the appropriate discount rate to use in the comparative analysis, we again find in favor of Public Service. The discount rate must reflect the opportunity cost of capital, and, when evaluating long-term capital expenditures by a utility, this would most accurately be represented by some estimate of the weighted average, after-tax cost of capital, not a short-term debt rate. Consequently, we conclude that, when comparing a rate base option to divestiture and the Indeck contracts, the surrogate value for the weighted average, after-tax cost of capital of 7.99 percent should be used as the discount rate for computing the net present values of these options.

36. On the other hand, we agree with the OCC as to the appropriate time period for the comparative analysis. If Public Service had retained the turbines in rate base, it likely would have depreciated them over a time period approximating 30 years. As such, truncating the analysis at seven years grossly misrepresents the rate base option based upon nothing more than the artificial construct of the IRP bids and the Indeck power purchase agreements being seven years in duration. While Public Service is correct in asserting that using a 30-year time frame requires projections concerning the nature of power purchase agreements in years 8 through 30, we find that the OCC made a plausible assumption in this regard. Therefore, we conclude that the comparative analysis should be conducted assuming a 30-year period.

37. Given these conclusions, namely, that the analysis should be based upon the original contracts only, a 7.99 percent discount rate, and a 30-year time frame, we observe that the OCC spreadsheet analysis results in a net present value difference between retention and divestiture of approximately $8 million in favor of the retention option.[3] This magnitude is derived by the OCC's further assumption that the property tax rate to be applied to net plant is 1.367 percent. In its statement of position, however, the OCC revises this tax rate to a level of 1.86 percent. This revision, in turn, results in a higher revenue requirement for the rate base option, and the net present value difference in favor of the rate base option becoming less than $8 million.[4] On the other hand, using the same spreadsheet but assuming a property tax rate of 2.34 percent applied to gross plant, not net plant, Public Service arrives at a net present value difference of minus $3.9 million (the minus sign reflecting that this difference favors the divestiture option). We conclude, therefore, that the true net present value difference between the rate base and divestiture options is some value between less than $8 million and minus $3.9 million.

38. Turning to the qualitative factors, we find that both parties raise legitimate concerns but that, on balance, these considerations favor Public Service's position. The risks to ratepayers from ratebasing the turbines, as Public Service enumerates, are significant, even if not easily quantified. In addition, the unexpected capital expenditure of approximately $76 million would have had a negative impact on the Company's year-end financial ratios that, in turn, could

[3] The larger values for this difference (the largest exceeding $100 million) offered in this Docket by the OCC disappear when the possibilities of using the restructured contracts and/or the 4.32 percent discount rate are rejected.

[4] Public Service argues that there is yet another reason to believe that the $8 million difference is an overestimate. The Company contends that using the OCC's spreadsheet introduces several simplifying assumptions that the PROSCREEN Capital Expenditure and Recovery Module, relied upon by Public Service, does not, and that these assumptions cause the results to be skewed in favor of the rate base option.

have adversely affected ratepayers by raising the cost of capital. Finally, ratebasing the turbines could have had an adverse effect on the Company's credibility with IPPs and their bidding in future IRP processes. If fewer bids were forthcoming, the process would be less competitive, and the benefits to ratepayers that would have been realized through greater competition would be lost.

39. While neither party nor the Commission is in a position to precisely quantify these factors, we find that incorporation of these factors into the analysis is sufficient to lower the net present value difference between retention and divestiture of the turbines to at least zero, even if the OCC's treatment of property tax were adopted. A difference of zero means that the rate base option is no more beneficial to ratepayers than the divestiture option. These considerations persuade us that the Company acted prudently in divesting the contingency turbines and entering into power purchase agreements with Indeck, instead of retaining those facilities in rate base. This record fails to support the OCC's contention that any costs associated with the Indeck agreements should be disallowed from rates.

V. CONCLUSION

40. For the foregoing reasons, we conclude that the Company's application for full cost recovery for the power purchase agreements with Indeck should be granted. The OCC's suggestion that some portion of the costs related to the Indeck agreements should be disallowed from rates is denied.

VI. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R02-862 by the Colorado Office of Consumer Counsel are granted in part only, consistent with the above discussion. Otherwise the Exceptions are denied.

2. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 23, 2002.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

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